

# 2007 BCSECCOM 409

June 29, 2007

## Headnote

1996 Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities - A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer. - The person is registered or qualified as a dealer in the jurisdiction in which they reside or carry on business; the person will only trade exchange contracts with “accredited investors”; the person is not providing advice or only providing advice as incidental to the trades.

## Applicable Legislative Provisions

*Securities Act*, s. 34(1)(a) and 48

**In the Matter of  
the Securities Legislation of Alberta and British Columbia  
(the Jurisdictions)**

**and**

**In the Matter of the Mutual Reliance Review System**

**and**

**In the Matter of  
J.P. Morgan Securities Limited (JPMSL)  
J.P. Morgan Futures Inc. (JPMFI)  
J.P. Morgan Securities Canada Inc. (JPMSCI)  
(the Filers)**

**MRRS Decision Document**

## Background

- ¶ 1 1. The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filers be exempt from the requirement to be registered as a dealer in order to trade exchange contracts with qualified parties as defined in Alberta Securities Commission Blanket Order 91-502 *Over the Counter Derivatives Transactions and Commodity Contracts* (the **Qualified Parties**) (the **Registration Relief**).

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### 2. Under the System:

- (a) the Alberta Securities Commission is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 2 3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

- ¶ 3 4. This decision is based on the following facts represented by the Filers:
- (a) JPMSL is registered with the United Kingdom Financial Services Authority (**FSA**) and is authorized to trade in securities and exchange contracts in the United Kingdom;
  - (b) JPMFI is registered as a futures commission merchant with the U.S. Commodity Futures Trading Commission (**CFTC**) and is a member of the U.S. National Futures Association (**NFA**);
  - (c) JPMSCI is registered as an investment dealer in the provinces of Ontario and Quebec and is a member of the Investment Dealers Association of Canada (**IDA**);
  - (d) the Filers propose to offer Qualified Parties in the Jurisdictions the ability to trade in exchange contracts on exchanges listed in Alberta Securities Commission Blanket Order 91-501 *Recognition of Exchanges Located Outside Alberta for the Purposes of Trading in Exchange Contracts* and Schedule A of British Columbia Instrument 21-501 *Recognition of exchanges, self-regulatory bodies and jurisdictions* (the **Recognized Foreign Exchanges**);
  - (e) the Filers have no establishment in the Jurisdictions or directors, officers, employees or agents resident in the Jurisdictions;
  - (f) the Filers will restrict their activity in the Jurisdictions to trading in exchange contracts for Qualified Parties on Recognized Foreign Exchanges, and providing incidental advice therewith;

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- (g) the Filers will attorn to the jurisdiction of the courts of each Jurisdiction and will appoint an agent for service in each Jurisdiction;
- (h) if the Filers are a member of the Recognized Foreign Exchange on which the trade will be made, they will execute the trade order on the exchange in accordance with the rules and customary practice of the exchange.
- (i) If a Filer is not a member of the Recognized Foreign Exchange on which the trade will be made, it will engage a local dealer, which may be an affiliate of one of the Filers, to assist in the execution and clearance of the trade; and
- (j) notwithstanding whether the Filers conduct order execution and clearance of a trade or engage another dealer to assist in the execution and clearance of a trade, the Filers remain responsible for the execution and, unless the client has directed otherwise, clearance of each trade in an exchange contract.

### **Decision**

- ¶ 4
5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.
  6. The decision of the Decision Makers under the Legislation is that the Registration Relief is granted provided that:
    - (a) the trade is made on a Recognized Foreign Exchange such that trade order execution and clearance is wholly conducted outside the Jurisdictions;
    - (b) the trade is conducted for a Qualified Party that is a client of the Filers;
    - (c) at the time of the trade:
      - (i) JPMSL is registered with the FSA in good standing;
      - (ii) JPMFI is registered as a futures commission merchant with the CFTC in good standing and is a member in good standing with the NFA; and
      - (iii) JPMSCI is registered as a dealer in the province of Ontario and is a member in good standing with the IDA; and

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- (d) each Filer provides the following disclosure to each client when opening the client's account:
  - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers, employees or agents, because they are resident outside of the Jurisdictions and all or substantially all of their assets are situated outside of the Jurisdictions;
  - (ii) a statement that the Filer is not registered under the Legislation and, accordingly, the protection available to clients of a dealer registered under the Legislation will not be available to clients of the Filer;
  - (iii) the name and address of the agent for service in the Jurisdictions, as applicable; and
  - (iv) a risk disclosure statement providing substantially similar disclosure to that required under the Legislation for registered dealers trading in exchange contracts.

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Alberta Securities Commission

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