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Headnote

1996 Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - A person who resides outside BC wants to advise BC residents. - The person is registered or qualified to provide the advice in the jurisdiction in which they reside or carry on business; the person will only advise a small number of BC clients; the person will not carry on any other business in BC; the BC clients are sophisticated and have a high net worth; the clients are aware that the person is not registered in BC and the consequences.

Applicable British Columbia Provisions

Securities Act, ss. 34(1)(c) and 48

National Instrument 45-106 Prospectus and Registration Requirements, s. 2.3

Exemption Order

Inverlochy Capital Ltd.

Section 48 of the *Securities Act*, RSBC 1996, c. 418

Background

- ¶ 1 Inverlochy Capital Ltd. (ICL) applied for an exemption from the adviser registration requirement in section 34(1)(c) of the Act (the Adviser Registration Requirement) to provide securities advice to an existing client that is relocating from another jurisdiction to British Columbia.

Representations

- ¶ 2 ICL represents that:
1. it is incorporated under the laws of, and has its principal office and place of business in Ontario;
 2. is registered with the Ontario Securities Commission as an Investment Counsel and Portfolio Manager;
 3. it intends to provide securities advice to an individual (the Client) who is resident in British Columbia;
 4. the Client is an “accredited investor” as defined in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106);
 5. it will advise the Client that:
 - (a) it is not registered as an adviser under the Act;
 - (b) it may not have the same proficiency requirements as other persons registered under the Act, and

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- (c) the Client may not have the same protection that it otherwise might have if ICL were registered as an adviser under the Act;
- 6. it does not:
 - (a) maintain an office or sales force in British Columbia;
 - (b) currently have any clients in British Columbia, or
 - (c) intend to actively solicit other clients in British Columbia;
- 7. in providing securities advice to the Client, ICL would be considered to be acting as an adviser under the Act and without this order would be required to be registered or otherwise exempt from registration, as an adviser under the Act; and
- 8. there are no exemptions from the Adviser Registration Requirement that ICL can rely on to provide securities advice to the Clients.

Order

¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that ICL is exempt from the Adviser Registration Requirement for securities advice to the Client, provided that;

- 1. the client is an accredited investor as defined in NI 45-106, and
- 2. ICL maintains in good standing its registration as an Investment Counsel and Portfolio Manager with the Ontario Securities Commission.

¶ 4 November 2, 2007
Sandra Jakab
Director, Capital Markets Regulation