

2004 BCSECCOM 579

Headnote

Relief from the requirement to be registered to trade in exchange contracts for a United States broker-dealer trading with accredited investors in British Columbia

Exemption Order

Bear, Stearns & Co. Inc.

Section 48 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Bear, Stearns & Co. Inc. (BS&Co.) applied for an exemption from the requirement in Section 34(1)(a) of the Act to be registered as a dealer (the registration requirement), in order to trade in exchange contracts on markets located in the United States, on behalf of clients in British Columbia (the clients).

Representations

- ¶ 2 BS&Co. represents that:
1. it is formed under the laws of the State of Delaware and its head office is located in New York, New York;
 2. it is registered as a broker-dealer with the United States Securities and Exchange Commission (the SEC) and the National Association of Securities Dealers (the NASD);
 3. it has carried on the business of a broker-dealer in the United States since 1923;
 4. it had (with its affiliated group of companies) total capital of U.S.\$40.0 billion and total assets of U.S.\$226.6 billion, as of February 29th, 2004;
 5. it intends to trade in exchange contracts on markets located in the United States, on behalf of the clients, who will be accredited investors, as that term is defined in Section 1.1 of Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103);
 6. it will inform each of the clients that:

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- (a) it is not registered as a dealer under the Act; and
 - (b) the clients may not have the same protection that they otherwise might have if BS&Co. were registered as a dealer under the Act;
7. it does not:
- (a) maintain an office or sales force in British Columbia;
 - (b) intend to actively solicit additional clients in British Columbia in connection with the establishment of one or more brokerage accounts for the purposes of trading exchange contracts;
 - (c) provide securities advice to the clients, and does not intend to act as an adviser to the clients;
8. in providing trading and brokerage services to the clients, BS&Co. would be considered to be acting as a dealer under the Act and without this order would be required to be registered, or otherwise exempt from registration, as a dealer under the Act; and
9. it usually relies on MI 45-103 in connection with its securities dealing activities in British Columbia; however, securities and exchange contracts are separately regulated and there are no exemptions from the registration requirement that BS&Co. could rely on to provide trading and brokerage services to the clients with respect to exchange contracts.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under Section 48 of the Act that BS&Co. is exempt from the registration requirement for trading in exchange contracts on behalf of the clients provided that:
- 1. each client purchases the security as principal and is an accredited investor as that term is defined in MI 45-103;
 - 2. BS&Co. maintains its registration as a broker-dealer with the SEC and NASD; and

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3. BS&Co. does not trade in exchange contracts on behalf of more than five clients in any 12 month period.

¶ 4 October 7, 2004

Leslie Rose
Acting Director
Capital Market Regulation