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September 20, 2010

Headnote

Multilateral Instrument 11-102 - *Passport System* – Securities Act s. 48 Adviser – Exemption from s. 34(b) requirement to be registered as an adviser – A person who resides outside BC wants to advise BC residents – The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registered dealer and its BC clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person; the BC client will obtain advice from and give all instructions through the BC registrant.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 34(b) and 48

In the Matter of
the Securities Legislation of
British Columbia (the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Scotia Asset Management L.P. (the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the adviser registration requirement contained in the Legislation to be registered as an adviser (the **Adviser Registration Requirement**) does not apply to advisory services provided to the Filer by portfolio managers carrying on business in Canada, the United States and elsewhere who act as sub-advisers to the Filer (the **Sub-Advisers**) in providing

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portfolio management services for the benefit of retail clients of the Filer or its affiliates (the **Participating Clients**) who participate in a managed account program designated as the Summit Program and such other similar wrap programs established from time to time (the **Program**) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (the **Non-principal Jurisdictions**).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. Scotia Capital Inc. (**SCI**) is an investment dealer registered under the Legislation, is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**), and has its head office in Ontario. SCI is also registered as an investment dealer in Ontario and in each of the Non-principal Jurisdictions. SCI is exempt from registration as an adviser pursuant to section 8.24 of National Instrument 31-103 as it is a member of IIROC and complies with the IIROC requirements with respect to managed accounts. SCI is an affiliate of the Filer. Pursuant to the IIROC requirements, a managed account may be managed by SCI or another party selected by SCI and supervised by SCI.
 2. The Program is a wrap account program whereby Participating Clients retain SCI to manage on a discretionary basis investment strategies offered by SCI and selected by clients. Each Participating Client enters into a Program agreement with SCI (**Program Agreement**) with respect to their assets under management. Pursuant to the Program Agreement, SCI

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identifies Sub-Advisers for the selected strategies to provide advice to SCI and monitors and, as appropriate, changes such Sub-Advisers in SCI's discretion. Such investment advisers typically provide model portfolios and portfolio execution is typically done by SCI. The Sub-Advisers historically included both an affiliated investment adviser and third party advisers.

3. As a result of a reorganization in the Scotia group of companies relating to wealth management, the Filer was created to be the primary adviser in the group. As a result of such reorganization and pursuant to an agreement between SCI and the Filer, the Filer was appointed as the agent of SCI to select and monitor Sub-Advisers and SCI has also authorized the Filer to select securities for particular strategies. All portfolio execution is generally carried out by SCI. SCI is responsible for supervising the activities of the Filer pursuant to the IIROC requirements.
4. The Filer is a limited partnership established under the laws of the Province of Ontario. The Filer is registered as an adviser with each of the securities commissions in each province and territory of Canada, other than the Northwest Territories and Nunavut. The Filer is also currently registered with the OSC and with the Securities Commission of Newfoundland and Labrador as an exempt market dealer and with the OSC as a commodity trading manager.
5. All Sub-Adviser agreements entered into by SCI have been assigned to the Filer and the Filer will enter into future agreements with Sub-Advisers, which set out the obligations and duties of each party in connection with the Program and pursuant to which the Sub-Advisers will agree to act as sub-advisers to the Filer for the benefit of Participating Clients.
6. All Sub-Advisers in Canada (the **Canadian Sub-Advisers**) are or will be Canadian portfolio managers registered as advisers under the securities legislation of one or more provinces or territories of Canada.
7. All Sub-Advisers in jurisdictions other than Canada (**Other Sub-Advisers**) will be portfolio managers registered as advisers or otherwise licensed or legally qualified to provide portfolio management services under applicable legislation in the foreign jurisdiction in which they carry on business.

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8. Participating Clients will be provided with a list of one or more strategies appropriate to the Participating Client's investment objectives.
9. If the Participating Client selects one or more strategies, the Filer will manage the Participating Client's account on the basis of advice received by it from a Sub-Adviser concerning the strategy.
10. SCI will send monthly statements and quarterly performance reports for each account to the relevant Participating Client and will have custody of all assets of the Participating Client.
11. A Participating Client must obtain all advice and information and give all instructions and directions through SCI and may meet with the Filer or a Sub-Adviser only if a registered representative of SCI is present at all times.
12. Each Participating Client will provide SCI with its investment objectives and other information necessary to enable SCI, or another entity acting on behalf of SCI, to prepare a client profile for the Participating Client.
13. Participating Clients are charged by SCI for investment advisory services in the Program through a single wrap fee calculated on the basis of the type of investment mandate (ie equity, high yield, fixed income) and assets under management in such strategies of the Participating Clients, and SCI is responsible for the fees payable to the Filer and the Sub-Advisers.
14. SCI will assume responsibility to Participating Clients for any loss arising directly out of the failure of the Filer and the Filer will assume responsibility to SCI on behalf of the Participating Clients for any loss arising directly out of the failure of a Sub-Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Participating Client for whose benefit the investment advice is, or portfolio management services are, to be provided; or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,

and SCI has acknowledged that it cannot be relieved by Participating Clients from this responsibility (**Assumed Obligations**).

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15. The Sub-Advisers who are not otherwise registered in Ontario will not be required to register as advisers under the securities legislation of Ontario as the terms of the Program and their agreements with the Filer will bring them within the exemption from registration in section 7.3 of OSC Rule 35-502 – *Non-Resident Advisers (OSC Rule 35-502)*.
16. The Sub-Advisers who are not otherwise registered in Quebec will not be required to register as advisers under the securities legislation of Quebec as the terms of the Program between SCI and the Participating Clients and their agreements with the Filer will bring them within the general exemption from registration granted by the Autorité des Marché Financiers (AMF) on December 18, 2009, with effect on December 28, 2009 (**Quebec Exemption**).

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer is registered in good standing under the Legislation in a category that permits it to provide portfolio management services;
- (b) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer, directly or through an agent of the Filer;
- (c) SCI agrees to be responsible to each Participating Client for the Assumed Obligations and that SCI cannot be, and at no time is, relieved by the Participating Client from SCI's responsibility for the Assumed Obligations;
- (d) each Sub-Adviser will not have any direct contact with a Client in connection with the provision of portfolio management services unless a representative of the Filer, duly registered as an adviser or a dealing representative in the jurisdiction where the Client is resident, is present at all times, either in person or by telephone;

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- (e) each Sub-Adviser will be registered, licensed or otherwise legally permitted to provide discretionary portfolio management services under the applicable securities laws of the jurisdiction or foreign jurisdiction in which the Sub-Adviser's head office is located;
- (f) in Manitoba, the Exemption Sought is available only to Sub-Advisers who are not registered in any Canadian jurisdiction; and

for each jurisdiction, this decision will terminate 90 days after the coming into force of any rule, regulation or blanket order or ruling under the securities legislation of the jurisdiction that provides an equivalent exemption.

Sandra Jakab
Director, Capital Markets Regulation
British Columbia Securities Commission