



Citation: 2013 BCSECCOM 31

March 4, 2013

Headnote

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 registrant 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.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

Exemption Order

Pier 21 Asset Management Inc. (the Filer)

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

Background

- ¶ 1 The Filer has applied to the British Columbia Securities Commission (the Commission) on behalf of those foreign portfolio managers that the Filer may engage from time-to-time (each, a Sub-Adviser and, collectively, the Sub-Advisers) for an exemption from the adviser registration requirement under section 34(b) of the *Securities Act* (British Columbia) (the Act) in order to allow the Sub-Advisers to provide portfolio and investment management services to certain clients of the Filer resident in British Columbia.

Representations

- ¶ 2 This decision is based on the following facts represented by the Filer:
1. the Filer is a corporation organized under the laws of Canada with its principal office and place of business located in Montréal, Québec;
 2. the Filer is registered as a portfolio manager in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia, an exempt market dealer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and an investment fund manager in the Provinces of Newfoundland and Labrador, Ontario and Québec;

3. the Filer has entered into separate agreements with Nicola Wealth Management Limited (Nicola) and British Columbia Investment Management Corporation (bcIMC) whereby the Filer provides portfolio and investment management services to Nicola and bcIMC;
4. the Filer may enter into agreements with other British Columbia clients that are sophisticated investors within the definition of “accredited investor” (as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*) (the Potential British Columbia Clients), whereby the Filer will be engaged to provide portfolio and investment management services to the other Potential British Columbia Clients;
5. the Filer has engaged a Sub-Adviser under the respective investment management agreements it entered into with Nicola and bcIMC, to provide portfolio and investment management services;
6. the Filer also expects other Potential British Columbia Clients to authorize the Filer to engage Sub-Advisers to provide portfolio and investment management services for their investment assets;
7. each Sub-Adviser will be registered or otherwise qualified under the applicable laws in the foreign jurisdiction in which its head office is located to provide portfolio and investment management services;
8. the obligations and duties of each Sub-Adviser for Nicola and bcIMC are set out in written agreements between the Filer and each Sub-Adviser, and the obligations and duties of each Sub-Adviser for any other Potential British Columbia Client’s account will be set out in a written agreement between the Filer and each Sub-Adviser;
9. the Filer has contractually agreed with Nicola and bcIMC, and will contractually agree with any other Potential British Columbia Clients, to be responsible for any loss that arises out of the failure of each 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 Filer and any of Nicola, bcIMC and any other Potential British Columbia Clients for whose benefit it provided services; or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;

(the Assumed Liabilities)

and such agreements do and shall provide that the Filer will not be relieved by Nicola, bcIMC or any other Potential British Columbia Clients from its responsibility for the Assumed Liabilities;

10. each of Nicola, bcIMC and the other Potential British Columbia Clients are or will be “accredited investors” as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*;
11. the Filer has advised Nicola and bcIMC and will advise any other Potential British Columbia Clients that:
 - (a) each Sub-Adviser is not registered as an adviser under the Act;
 - (b) each Sub-Adviser may not have the same proficiency requirements as other persons registered under the Act; and
 - (c) each of Nicola, bcIMC and the other Potential British Columbia Clients may not have the same protection that it would otherwise have if each Sub-Adviser was registered as an adviser under the Act;
12. each Sub-Adviser does not:
 - (a) maintain an office or sales force in British Columbia;
 - (b) have any client resident in British Columbia, other than Nicola, bcIMC, and, as the case may be, the other Potential British Columbia Clients; or
 - (c) intend to actively solicit other clients in British Columbia;
13. in providing portfolio and investment management services to the Filer for the benefit of Nicola, bcIMC and any other Potential British Columbia Clients, each Sub-Adviser 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
14. there are no statutory exemptions from the adviser registration requirement that the Sub-Advisers can rely on to provide securities advice for the benefit of Nicola, bcIMC or the other Potential British Columbia Clients.

Order

¶ 3 The Commission is satisfied that the decision meets the test set out in the Act for the Commission to make the decision.

1. The decision of the Commission under the Act is that the exemption sought is granted provided that:

- (a) the obligations and duties of each Sub-Adviser are set out in a written agreement with the Filer;
- (b) the Filer contractually agrees with Nicola, bcIMC and any other Potential British Columbia Clients to be responsible for the Assumed Liabilities;
- (c) the Filer cannot be, and at no time is, relieved by Nicola, bcIMC or any other Potential British Columbia Clients from its responsibility for the Assumed Liabilities;
- (d) each Sub-Adviser that is not resident in Canada will be licensed or otherwise legally permitted to provide portfolio and investment management services under the applicable laws of the jurisdiction where its head office is located;
- (e) each Sub-Adviser, if a resident in a jurisdiction of Canada, will be registered as an adviser in such jurisdiction;
- (f) each Sub-Adviser does not have direct contact with Nicola, bcIMC or any other Potential British Columbia Clients unless a representative of the Filer, duly registered to provide portfolio and investment management services for securities in the jurisdiction where Nicola, bcIMC or the other Potential British Columbia Clients are resident, is present at all times, either in person or by telephone;
- (g) the Filer is registered in good standing under the Act as a portfolio manager or otherwise in a category which permits the Filer to provide portfolio and investment management services to Nicola, bcIMC and the other Potential British Columbia Clients; and
- (h) this decision will terminate 90 days after the coming into force of any rule, regulation, blanket order or ruling under the Act that provides an equivalent exemption to the Sub-Advisers.

Sandra Jakab
Director, Capital Markets Regulation
British Columbia