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Headnote

Securities Act s. 48 Dealer – Exemption from s. 34(1)(a) requirement to be registered as a dealer to trade securities and the obligation of dealers in Part 5 of the Act and rules; clients are using an order-execution only service; clients acknowledge that they are responsible for their own investment decision; and policies and procedures exist so that representatives will not provide advice or recommendations.

Exemption Order

Cirplus Futures Inc.

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

Background

- ¶ 1 Cirplus applied for an exemption from the suitability requirements under section 48(1)(b) of the *Securities Rules* (suitability requirements) for
- its discount futures division (discount division), and
 - registered salespersons, partners, officers and directors whose activities relate to its discount division (discount representatives).

Representations

- ¶ 2 Cirplus represents that:
1. it is registered as an exchange contracts dealer in British Columbia;
 2. it has the discount division, which offers clients on-line execution services for futures and futures options under the name Cirplus Futures Direct;
 3. it has another division, which offers clients full services by providing specific or tailored investment advice and recommendations for trades executed by Cirplus (full-service division);
 4. its discount division will, in relation to any other division of Cirplus,
 - (a) operate independently, and

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- (b) use separate letterhead, accounts, and account documentation;
- 5. it will maintain a current list of its representatives in each of the discount division and any other divisions;
- 6. discount representatives will not provide advice or recommendations regarding the purchase or sale of any future or future option;
- 7. it has adopted policies and procedures to ensure that discount representatives will not provide advice or recommendations regarding the purchase or sale of any future or future option;
- 8. it will refer a client of the discount division that requests advice, recommendations or a determination as to suitability to a registered salesperson in the full-service division;
- 9. it will not compensate discount representatives on the basis of transactional values, but rather on a system of salaries and bonuses based on performance;
- 10. it will ask each customer and client in the discount division to acknowledge, in an accessible form (acknowledgment), that:
 - (a) the discount representatives will not provide any recommendations and will not be responsible for making a suitability determination of trades when accepting orders, and
 - (b) the person is responsible for their own investment decisions and that the discount representatives will not consider the financial situation, investment knowledge, investment objectives and risk tolerances when accepting orders;
- 11. it will inform each client of the discount division that the client may transfer his or her account(s) to the full-service division at no cost to the client, if the client does not wish to provide the acknowledgment; and
- 12. it will adopt policies and procedures to ensure that evidence of all client acknowledgements is retained under the record keeping requirements of applicable securities legislation.

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Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders, under section 48 of the Act, that the suitability requirements do not apply to the discount division and discount representatives.
- ¶ 4 August 11, 2005

Sandy Jakab
Manager