

2003 BCSECCOM 701

Headnote

Securities Act s. 48 Adviser – exemption from s. 34(1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and rules – 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

Exemption Order

Goldman, Sachs & Co.

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

Background

- ¶ 1 Goldman, Sachs & Co. (GS&Co.) applied for exemption from the adviser registration requirement in section 34(1)(c) of the Act (the adviser registration requirement) to permit certain portfolio managers (the Sub-advisers) to provide portfolio management services for the benefit of GS&Co.'s clients who are resident in British Columbia (the Clients) and participating in the Global Manager Strategies Separate Accounts program (the Program).

Representations

- ¶ 2 GS&Co. represents that:
1. it is a limited partnership formed under the laws of New York with its head office in New York;
 2. it is registered under the Act as an adviser in the category of portfolio manager;
 3. it is also registered as:
 - (a) a portfolio manager and investment counsel (foreign) in Alberta;

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- (b) a non-resident adviser in the category of investment counsel and portfolio manager in Saskatchewan;
 - (c) an international dealer and international adviser (investment counsel and portfolio manager) in Ontario;
 - (d) an adviser in the category of portfolio manager and investment counsel in Prince Edward Island; and
 - (e) a broker-dealer and an investment adviser with the United States Securities and Exchange Commission;
4. the Sub-advisers are registered or otherwise qualified under applicable laws in the United States or in a jurisdiction where the Sub-adviser's head office is located to provide investment counselling or portfolio management services;
 5. each Sub-adviser will exercise discretionary authority over a portion of the assets of Clients who wish to have exposure to particular jurisdictions, industries or types of securities in which the Sub-adviser has experience and expertise; and
 6. there are no adviser registration exemptions that the Sub-advisers can rely on to provide investment counselling and portfolio management services to Clients.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that the Sub-advisers are exempt from the adviser registration requirement for investment counselling and portfolio management services provided to Clients participating in the Program, provided that GS&Co.:

1. enters into an agreement with each Sub-adviser setting out the terms and conditions governing the relationship between GS&Co., the Sub-adviser and the Clients and the rights, obligations and duties of the parties;
2. contractually agrees with the Clients to be responsible for any loss that arises out of the failure of a Sub-adviser to;
 - (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of GS&Co. and the Clients for whose benefit the investment advice is, or portfolio management services are, to be provided, and

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- (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances

and this responsibility cannot be waived.

¶ 4 October 20, 2003

Derek E. Patterson,
Manager