

2003 BCSECCOM 327

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 registered or qualified to provide the advice in the jurisdiction in which they reside; the person will only advise one BC client or a small group of BC related clients; the person will not carry on any other business in BC; the BC clients are sophisticated and have a high net worth; the clients are aware that the person is not registered in BC and the consequences.

Exemption Order

Mavrix Fund Management Inc.

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

Background

- ¶ 1 Mavrix applied for an exemption from the requirement in section 34(1)(c) of the Act to be registered as an adviser (the adviser registration requirement) in order to provide securities advice, including portfolio management services (securities advice), to a client resident or otherwise located in British Columbia.

Representations

- ¶ 2 Mavrix represents that:
1. it was incorporated under the laws of Ontario and its head office is in Ontario;
 2. it is registered under the *Securities Act* (Ontario) as an adviser in the categories of investment counsel and portfolio manager, and as a dealer in the category of limited market dealer;
 3. it is the trustee and manager of the eleven Mavrix Mutual Funds and Mavrix Emerging Companies Fund, and provides investment advice, including portfolio management services, to those funds;
 4. its individual advisers are Malvin C. Spooner, William Shaw and Raymond M. Steele, each of whom is an officer and director of Mavrix, and is registered under the *Securities Act* (Ontario) as an adviser in the categories of investment counsel and portfolio manager;

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5. it provides securities advice to Contrarian Resource Fund 2002 Management Limited (Contrarian 2002 Management), a company incorporated under the laws of British Columbia which is the general partner of Contrarian Resource Fund 2002 Limited Partnership;
6. it is exempt from the adviser registration requirement to provide advice to Contrarian 2002 Management under exemption order 2002 BCSECCOM 930 that was granted on November 13, 2002 by the Executive Director of the British Columbia Securities Commission;
7. it intends to provide securities advice to Contrarian Resource Fund 2003 Management Limited (Contrarian 2003 Management), a company incorporated under the laws of British Columbia and a sophisticated investor;
8. Contrarian 2003 Management is the general partner of Contrarian Resource Fund 2003 No. 1 Limited Partnership, units of which will be offered under a prospectus proposed to be dated on or about May 16, 2003 under which the minimum offering will be \$5,000,000;
9. it has advised Contrarian 2003 Management as follows:
 - (a) Mavrix is not registered as an adviser under the Act;
 - (b) Mavrix may not be subject to the same proficiency requirements as other persons registered under the Act; and
 - (c) Contrarian 2003 Management may not have the same protections that it would have if Mavrix were registered as an adviser under the Act;
10. it does not:
 - (a) maintain offices or a sales force within British Columbia;
 - (b) have any other clients resident in British Columbia, other than Contrarian 2002 Management; or
 - (c) intend to actively solicit other clients within British Columbia;
11. there are no exemptions from the adviser registration requirement that it can rely on to provide the securities advice to Contrarian 2003 Management.

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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 Mavrix is exempt from the adviser registration requirement for securities advice provided to Contrarian 2003 Management, provided that Mavrix maintains its registration as an adviser under the *Securities Act* (Ontario) in good standing.
- ¶ 4 May 15, 2003

L.E. Evans, C.A.
Director