



December 18, 2012

Headnote

Securities Act s.48 Dealer –Exemption from s.34(a) requirement to be registered as a dealer to trade securities – A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer – The person was only registered for a brief period of time, many years ago. Purchasers will receive similar disclosure and protections as those found in BC Instrument 32-513 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions*

Applicable Legislative Provisions

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

Exemption Order

Terry Dempsey (the Filer)

Section 48 of the *Securities Act*, R.S.B.C. 1996, c.18

Background

- ¶ 1 The Filer applied to the Commission for a decision (the Exemption Sought) under section 48 of the Securities Act (British Columbia) (the Act) that the Filer be exempt from the dealer registration requirement in section 34(a) of the Act to enable the Filer to trade in the exempt market, under certain conditions, without registering as an exempt market dealer (EMD).

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) classifies a registrant who trades in securities distributed under an exemption from the prospectus requirement as an EMD. NI 31-103 prescribes conditions of registration and other requirements and restrictions applicable to an EMD.

The registration exemption in BC Instrument 32-513 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* (the Northwest Exemption) is not available to a former registrant or a person who has provided financial services to a purchaser.

Interpretation and Definitions

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* or NI 31-103 have the same meaning if used in this decision, unless otherwise defined.



“financial services” includes but are not limited to, doing any or all of the following things:

- (a) carrying on business as a mortgage broker;
- (b) selling or providing insurance or related services;
- (c) acting as a financial planner who considers the tax, personal or financial situation of a person and then provides that person with advice about how to make financial plans.

“prospectus-exempt distribution” means a distribution of securities made relying on any of the following exemptions in NI 45-106 *Prospectus and Registration Exemptions*:

- (i) s. 2.3 [accredited investor]
- (ii) s. 2.5 [family friends and business associates]
- (iii) s. 2.9 [offering memorandum]
- (iv) s. 2.10 [minimum investment amount]

Representations:

¶ 3 This decision is based on the following facts represented by the Filer:

1. The Filer is presently the sole proprietor of Twenty First Century Capital Inc., a company organized under the laws of British Columbia, with a head office in Surrey at Unit 67-5811-122nd Street, Surrey BC V3X 3N5.
2. The Filer is not registered under any provincial or territorial securities legislation or the securities legislation of a foreign jurisdiction.
3. The Filer relied on the Northwest Exemption in British Columbia until April 16, 2012, when changes to that exemption meant the Filer was no longer qualified to use it.
4. The Filer was briefly registered as an investment advisor from Dec 2nd 1987 to July 29th 1988 with Jefferson Securities Inc. in the province of British Columbia. The Filer was in the business of buying and selling equities and fixed income investments for investors.



5. The Filer was briefly registered as a registered representative restricted to mutual fund sales from March 11, 1994 to July 4, 1994 with PFSL Investments Canada Ltd. (PFSL). The Filer did not trade securities for PFSL and did not represent PFSL at anytime to prospective investors.
6. The Filer is not in default of British Columbia securities legislation.
7. Other than when the Filer was a registrant, the Filer has not provided financial services to a person except in connection with a prospectus-exempt distribution.
8. The Filer will not provide financial services to a purchaser in connection with a prospectus-exempt distribution if that purchaser was a client of the Filer when the Filer was a registrant.
9. The Filer does not have any referral arrangements in place with a registrant.
10. The Filer was previously registered for a brief period of time and unless the Filer receives the Exemption Sought, the Filer is required to register as an EMD. If the Filer had not previously been registered for a brief period of time, the Filer would otherwise be able to rely on the Northwest Exemption.

Decision

- ¶ 4 Considering that it is not prejudicial to the public interest, the Commission orders under section 48(1) of the Act, that the dealer registration requirement does not apply to a trade in a security by the Filer in connection with a prospectus-exempt distribution, provided that:
- (a) the Filer is not registered under any provincial or territorial securities legislation or the securities legislation of a foreign jurisdiction;
 - (b) prior to the trade, the Filer does not advise, recommend or otherwise represent to the purchaser that the security being traded is suitable for the purchaser, with regard to the purchaser's
 - (i) investment needs and objectives,
 - (ii) financial circumstances, or
 - (iii) risk tolerance;
 - (c) at or before the time at which the purchaser enters into an agreement to purchase the security, the Filer obtains from the purchaser a signed Risk



Acknowledgement Form in the form in Appendix A of the Northwest Exemption;

- (d) the Filer does not hold or have access to the purchaser's assets;
- (e) the Filer has not provided financial services to the purchaser other than in connection with a prospectus-exempt distribution;
- (f) the Filer has not provided financial services to the purchaser in connection with a prospectus-exempt distribution if that purchaser was a client of the Filer when the Filer was a registrant;
- (g) the Filer will not refer to their prior registration in British Columbia for the purpose of soliciting a prospective client or retaining an existing client;
- (h) notwithstanding condition (g), if a purchaser asks about the Filer's registration history, the Filer will provide the purchaser with a copy of this order, and refer the purchaser to representation 4 and 5;
- (i) the Filer files with the Commission an information report in the form in Appendix B of the Northwest Exemption, or has filed an update of a previously filed information report, on or before the 10th day after each prospectus-exempt distribution; and
- (j) the relief granted to the Filer by this decision is no longer effective on the effective date of amendments to or the revocation of, the Northwest Exemption.

Brent W. Aitken
Vice Chair
British Columbia Securities Commission