

2010 BCSECCOM 600

October 28, 2010

Headnote

A portfolio manager wants relief from s. 13.5(2)(b)(iii) of NI 31-103 for trades in portfolio securities between investment funds for which a responsible person acts as an adviser - The purchase or sale of portfolio securities is consistent with the investment objective of the funds; the value of the portfolio securities being transferred to a fund in payment of a purchase of securities of a fund are equal to the value that the holder of the portfolio securities used to calculate the net asset value of its units; the value of the portfolio securities being transferred from a fund in payment for a purchase of securities of another fund is at least equal to the issue price of the securities of the other fund for which they are used as payment, valued as if the portfolio securities were portfolio assets of the fund; the filer will not receive any compensation for any of the in-specie transactions; for delivery of securities further to an in-specie transaction, the only charge paid by a fund may be any administrative charges levied by the custodian

Exemption Order

Shoreline West Asset Management Inc. (the Filer)

Section 48 of the *Securities Act*, R.S.B.C. 1996, c. 418
Section 15.1 of National Instrument 31-103 *Registration Requirements and Exemptions*

Background

- ¶ 1 The Filer has applied to the British Columbia Securities Commission (the Commission) under section 15.1 of National Instrument 31-103 – *Registration Requirements and Exemptions* (NI 31-103) for an exemption from subsection 13.5(2)(b)(iii) of NI 31-103 that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase or sell a security from or to the investment portfolio of an investment fund for which a responsible person acts as an adviser, in order to permit the purchase and sale of portfolio securities between Shoreline West Limited Partnership (the CAD LP) and Shoreline West Fund Ltd (the Feeder Fund) and between the Feeder Fund and Shoreline West Master Fund Ltd (the Master Fund and, together with the CAD LP and the Feeder Fund, the Funds) (the In-Specie Transactions), in the circumstances and on the conditions herein proposed (the Requested Relief).

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Representations

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

The Filer

1. The Filer is a corporation established under the laws of Canada with its head office located in Vancouver, British Columbia.
2. The Filer is registered under NI 31-103 with (i) the British Columbia Securities Commission as a Portfolio Manager, Investment Fund Manager and Exempt Market Dealer; (ii) the Ontario Securities Commission as an Exempt Market Dealer; and (iii) the Autorité des marchés financiers as an Exempt Market Dealer.
3. The Filer is, or will be, the investment adviser for the CAD LP and the Master Fund and, as such, is, or will be, responsible for making investment decisions on behalf of the CAD LP and the Master Fund. Furthermore, the Filer intends to assist in the marketing of the CAD LP and the Feeder Fund and act as a distributor of securities of the CAD LP and the Feeder Fund not otherwise sold through a registered dealer.
4. The Filer is not a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation in any province or territory of Canada.

The Funds

5. The CAD LP is a limited partnership established under the laws of Manitoba. The General Partner of CAD LP is Shoreline West General Partner Inc., a corporation incorporated under the laws of Canada with its head office and principal place of business in Vancouver, British Columbia.
6. In Canada, securities issued by the CAD LP have been and will be, sold solely to investors pursuant to exemptions from the prospectus requirements in accordance with National Instrument 45-106 – *Prospectus and Registration Exemptions*.
7. As of the date hereof, the sole unitholders of the CAD LP are Gregory Daniel Sullivan and Christine Frances Bergeron, both of whom are registered as advising representatives of the Filer.

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8. The Feeder Fund is an exempted company incorporated with limited liability under the laws of the Cayman Islands.
9. The Master Fund is an exempted company incorporated with limited liability under the laws of the Cayman Islands.
10. Gregory Daniel Sullivan will be a director of the Feeder Fund and the Master Fund.
11. The investment objective of each of the CAD LP, the Feeder Fund and the Master Fund, is to maximize absolute returns on its investments while mitigating overall market risk to some extent.
12. None of the Funds are, or will become, a reporting issuer in Canada. Each Fund is not in default of securities legislation in any province or territory of Canada.

In-Specie Transactions

13. The Filer wishes to engage in In-Specie Transactions pursuant to which:
 - (a) the CAD LP will purchase participating shares of the Feeder Fund and as payment for such participating shares make good delivery to the Feeder Fund of securities currently held in the investment portfolio of the CAD LP (the Subject Securities); and
 - (b) the Feeder Fund will, in turn, purchase participating shares of the Master Fund and as payment for such participating shares make good delivery to the Master Fund of the Subject Securities,such that, the end result of the In-Specie Transactions will be that the Subject Securities held in the investment portfolio of the CAD LP will be held by the Master Fund.
14. The Subject Securities meet the investment objective of each of the Feeder Fund and the Master Fund.

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15. The Filer considers an investment by the CAD LP in participating shares of the Feeder Fund and the subsequent investment by the Feeder Fund in the Master Fund, by way of an In-Specie Transaction, to be a more cost effective and efficient way for the Funds to acquire and dispose of the Subject Securities.
16. In the circumstances, instead of the CAD LP disposing of the Subject Securities and the Master Fund purchasing the same securities and incurring unnecessary brokerage costs, the Subject Securities would, pursuant to the In-Specie Transactions, be acquired by the Master Fund.
17. It is anticipated that each In-Specie Transaction will be executed by the Filer.
18. On the day each In-Specie Transaction is entered into, the Filer will value the Subject Securities using the same values that are used to calculate the net asset value for the units of the CAD LP. The value of the Subject Securities will be at least equal to the issue price of the securities of the Feeder Fund or Master Fund, as applicable, for which they are payment, valued as if the Subject Securities were portfolio assets of the Feeder Fund or Master Fund, as applicable.
19. The Filer will keep a written record of each In-Specie Transaction in a financial year of the CAD LP, Feeder Fund and Master Fund, reflecting the details of the securities delivered to the relevant fund and the value assigned to such securities, for a period of five years after the end of the fiscal year, the most recent two years in a reasonably accessible place.
20. As the Filer is, or will be at the time of the In-Specie Transaction, the investment adviser for each of the CAD LP and Master Fund, the Filer would be considered to be a “responsible person” within the meaning of section 13.5 of NI 31-103. Accordingly, without the Requested Relief, the Filer would be prohibited from engaging in each In-Specie Transaction.
21. Each In-Specie Transaction will represent the business judgment of the Filer uninfluenced by considerations other than the best interests of the CAD LP, the Feeder Fund and the Master Fund.

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Decision

- ¶ 3 Considering that it is not prejudicial to the public interest, the Commission orders that the Requested Relief is granted provided that:
- (a) where the CAD LP purchases securities of the Feeder Fund and the Feeder Fund receives portfolio securities from the CAD LP as payment:
 - (i) the Feeder Fund would, at the time of payment, be permitted to purchase the portfolio securities;
 - (ii) the portfolio securities are consistent with the investment objective of the Feeder Fund; and
 - (iii) the value of the portfolio securities is equal to the issue price of the securities of Feeder Fund for which they are payment, valued as if the securities were portfolio assets of the Feeder Fund;
 - (b) where the Feeder Fund purchases securities of the Master Fund and the Master Fund receives portfolio securities from the Feeder Fund as payment:
 - (i) the Master Fund would, at the time of payment, be permitted to purchase the portfolio securities;
 - (ii) the portfolio securities are consistent with the investment objective of the Master Fund; and
 - (iii) the value of the portfolio securities is equal to the issue price of the securities of the Master Fund for which they are payment, valued as if the securities were portfolio assets of the Master Fund;
 - (c) The Filer will obtain the prior written consent of the clients of the CAD LP before it engages in any In-Specie Transaction.
 - (d) Each Fund will keep written records of each In-Specie Transaction in a financial year of such Fund, reflecting the details of the portfolio securities delivered to, or delivered by, such Fund and the value assigned to such portfolio securities, for a period of five

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years after the end of the fiscal year, the most recent two years in a reasonably accessible place; and

- (e) The Filer does not receive any compensation in respect of the In-Specie Transaction and, in respect of the delivery of portfolio securities under the In-Specie Transaction, the only charge paid by a Fund may be any administrative charges levied by the custodian.

Sandra Jakab
Director, Capital Markets Regulation
British Columbia Securities Commission