

2008 BCSECCOM 419

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – 1996 Securities Act s. 48
Adviser - Exemption from 1996 Securities Act s. 34(1)(c) requirement to be registered as an adviser – 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; the BC client will obtain advice from and give all instructions through the BC registrant.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(c) and 48

July 22, 2008

**In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)**

and

**In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions**

and

**In the Matter of
Nomura Asset Management U.S.A. Inc.
(the Filer)**

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for exemptive relief from the adviser registration requirement (the Registration Requirement) set out in Section 34(1)(c) of the Securities Act (British Columbia) with respect to certain persons who are not registered in the Jurisdiction (the Sub-Advisers) in order to allow such Sub-Advisers to provide investment adviser and portfolio management services to certain clients of the Filer who reside in the Jurisdiction (the Exemption Sought).

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Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in the Province of Alberta.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 Definitions and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer(s):
- 1. the Filer is a corporation incorporated under the laws of the State of New York with its registered and head office in New York City, New York;
 - 2. the Filer is a wholly-owned subsidiary of Nomura Asset Management Co., Ltd., headquartered in Tokyo, Japan, which is in turn a direct subsidiary of Nomura Holdings Inc., headquartered in Tokyo, Japan, which is the publicly traded holding company for the Nomura Group, a financial services group comprising Japanese and overseas subsidiaries;
 - 3. the Filer is registered under the Legislation as a portfolio manager and investment counsel, and is also registered under the Securities Act (Alberta) as a portfolio manager and investment counsel, under the Securities Act (Ontario) as an international adviser, and under the Securities Act (Québec) as an adviser with unrestricted practice. The Filer does not have any establishment, office, employees or assets located in Canada;
 - 4. the Filer presently has clients in the provinces of Ontario and Québec, however, the exemptive relief under this decision is not required in such provinces as there are already statutory exemptions available. The Filer presently does not have (nor has it ever had) any clients in either of British Columbia or Alberta, but it was registered in British Columbia prior to being registered in Alberta, therefore, British Columbia was chosen as the principal regulator;

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5. the Filer will provide investment counselling and portfolio management services to institutional investor clients resident in the Jurisdiction (the Clients);
6. the Filer wishes to retain, from time to time, the Sub-Advisers to provide specialized investment counselling and portfolio management services for the accounts of the Clients who wish to have exposure to capital markets located in a jurisdiction or types of investments in which such Sub-Advisers have experience and expertise;
7. the Sub-Advisers may, but will not all, be affiliates of the Nomura Group;
8. the Sub-Advisers will not be resident in Canada, but each Sub-Adviser will be registered, licensed or otherwise legally permitted to provide investment advice and portfolio management services under applicable laws of the foreign jurisdiction in which it is resident;
9. in retaining the Sub-Advisers, the obligations and duties of each Sub-Adviser with respect to the services it will provide in respect of Client accounts will be set out in a written agreement with the Filer;
10. each Client will enter into an investment services agreement with the Filer which:
 - (a) provides the Filer with full discretionary authority to purchase and sell securities on behalf of the Client or non-discretionary authority to provide the Client with investment counselling and advice, and
 - (b) authorizes the Filer to retain Sub-Advisers to provide investment advisory services for the benefit of the Client or to delegate its discretionary or non-discretionary authority over all or a portion of the Client's assets to one or more of the Sub-Advisers;
11. the Filer will contractually agree with its Clients on whose behalf investment advice is or portfolio management services are to be provided by a Sub-Adviser to be responsible for any loss that arises out of the failure of the Sub-Adviser so acting:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and each Client of the Filer for whose benefit the advice is or portfolio management services are to be provided, or

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

and such contractual agreements shall provide that the Filer cannot be relieved by its Clients from such responsibilities for loss (the Assumed Liabilities);

- 12. if there is any direct contact between a Client and a Sub-Adviser, a representative of the Filer, duly registered to provide investment counselling and portfolio management services for securities in the jurisdiction where the client is resident, will be present at all times, either in person or by telephone;
- 13. the Filer will be responsible for ensuring that all reports and statements required under the Legislation are provided to its Clients;
- 14. each Sub-Adviser who provides investment counselling and portfolio management services with respect to the accounts of Clients would be considered to be acting as an “adviser” within the meaning of the Legislation, and in the absence of the Registration Relief, would be subject to the Registration Requirement unless otherwise exempt;
- 15. there are no statutory exemptions from the Registration Requirement that the Sub-Advisers may rely on to provide investment counselling and portfolio management services to the Clients;
- 16. the Filer is not in default of securities legislation in any jurisdiction.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- 1. the Filer is registered in good standing under the Legislation as an adviser in the category of portfolio manager and investment counsel;
- 2. the obligations and duties of each Sub-Adviser are set out in a written agreement with the Filer;
- 3. the Filer contractually agrees with its Clients on whose behalf investment advice is or portfolio management services are to be provided by a Sub-Adviser to be responsible for the Assumed Liabilities;

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4. the Filer cannot be, and at no time is, relieved by its Clients from its responsibility for the Assumed Liabilities;
5. each Sub-Adviser will be registered, licensed or otherwise legally permitted to provide investment advice and portfolio management services under applicable laws of the foreign jurisdiction in which it is resident; and
6. the Sub-Advisers have no direct contact with the Clients unless a representative of the Filer, duly registered to provide investment counselling and portfolio management services for securities in the jurisdiction where the client is resident, will be present at all times, either in person or by telephone.

Doug MacKay
Acting Director, Capital Markets Regulation
British Columbia Securities Commission