

# 2005 BCSECCOM 565

## Headnote

1996 Securities Act s. 48 Dealer - Exemption from s. 34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - A BC registered dealer wants an exemption from the suitability rules - Clients are using an on-line execution service; clients acknowledge that they are responsible for their own investment decision; and policies and procedures exist so that representatives will not provide advice or recommendations.

## Exemption Order

### FXCM Canada Ltd. (FXCM)

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

### Background

- ¶ 1 FXCM applied for an exemption from the suitability requirement under section 48(1)(b) of the *Securities Rules* (suitability requirements).

### Representations

- ¶ 2 FXCM represents that:
1. it is a corporation incorporated under the laws of the province of Nova Scotia;
  2. it is registered as an exchange contracts dealer in British Columbia;
  3. it will offer clients on-line execution services for currency forwards contracts (currency contracts);
  4. its representatives will not provide investment advice or recommendations regarding the purchase or sale of specific currency contracts;
  5. it has adopted policies and procedures to ensure that representatives will not provide investment advice or recommendations regarding trading in specific currency contracts;
  6. it will refer a client that requests advice, recommendations or a determination as to suitability to a full-service dealer;
  7. it will not compensate representatives on the basis of transactional values, but rather on a system of salaries and bonuses based on performance;

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8. it will ask each customer and client to acknowledge, in an accessible form (acknowledgement), that:
  - (a) its representatives will not provide any recommendations and will not be responsible for making a suitability determination of trades when accepting orders, and
  - (b) the person is responsible for their own investment decisions and that FXCM's representatives will not consider the financial situation, investment knowledge, investment objectives and risk tolerances when accepting orders;
9. it will advise each client that the client may transfer his or her account(s) to a full-service dealer at no cost to the client, if the client does not wish to provide the acknowledgement; and
10. it will adopt policies and procedures to ensure that evidence of all client acknowledgements is established and retained under the record keeping requirements of applicable securities legislation.

### **Order**

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders, under section 48 of the Act, that the suitability requirements shall not apply to FXCM and its representatives.

September 2, 2005

Leslie Rose  
Acting Manager