

2003 BCSECCOM 581

Headnote

Securities Act s. 48 Adviser and s. 48 Dealer – Exemptions to permit non-resident advisers and dealers to advise and trade for a mutual fund.

Exemption Order

Horizons Funds Inc. and Horizons Global Macro Fund

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

Background

- ¶ 1 Horizons Funds Inc. (Horizons) applied for an exemption from:
1. the adviser registration requirements in section 34(1)(c) of the Act (the adviser registration requirement) to permit certain non-resident advisers (Sub-Advisers) to provide investment counselling and portfolio management services to Horizons Global Macro Fund (the Fund); and
 2. the dealer registration requirements in section 34(1)(a) of the Act (the dealer registration requirement) to permit certain non-resident future commission merchants (FCMs) to make trades in derivatives for the Fund;

Representations

- ¶ 2 Horizons represents that:
1. the Fund is a mutual fund trust and a commodity pool established under the laws of British Columbia;
 2. the Fund filed a preliminary prospectus dated July 30, 2003;
 3. Horizons is the trustee and manager of the Fund;
 4. Horizons appointed Toron Capital Markets Inc. to provide portfolio management services to the Fund;
 5. Toron is registered with the Ontario Securities Commission as an adviser and limited market dealer and commodity trading manager and with the Commission as a portfolio manager for securities and exchange contracts;

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6. Toron will have complete discretionary authority to purchase and sell securities on behalf of the Fund and will be able to delegate the authority to Sub-Advisers;
7. Toron will retain Sub-Advisers to manage the portions of the Fund's assets that it has allocated to them;
8. Toron will only retain Sub-Advisers that are registered with, or a member of, the U.S. Commodity Futures Trading Commission and the National Futures Association, or similar regulatory bodies;
9. the Sub-Advisers will be legally qualified to provide investment counseling or portfolio management services in the jurisdictions in which they reside;
10. the Fund will maintain accounts with FCMs and the Sub-Advisers will instruct the FCMs to execute trades in derivatives for the Fund; and
11. the FCMs will be legally qualified to trade derivatives in the jurisdiction in which they reside.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that:

1. the Sub-Advisers are exempt from the adviser registration requirement for investment counseling and portfolio management services provided to the Fund, provided that:
 - (a) the obligations and duties of each Sub-Adviser retained to provide advice for the benefit of the Fund are set out in a written agreement with Toron;
 - (b) Toron contractually agrees with the Fund to be responsible for any loss to the Fund that arises out of the failure of a Sub-Adviser to:
 - (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Fund, or
 - (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances
- and this responsibility cannot be waived; and

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- (c) the current prospectus of the Fund discloses Toron's responsibility for the advice of the Sub-Advisers retained by Toron to provide advice for the benefit of the Fund and, to the extent applicable, that there may be difficulty enforcing any legal rights against the Sub-Advisers and all or a substantial portion of the Sub-Advisers' assets may be situated outside of Canada, and
- 2. the FCMs are exempt from the dealer registration requirement for trades in derivatives for the Fund.

¶ 4 August 21, 2003

Leslie R. Rose
Acting Manager