

2004 BCSECCOM 730

Headnote

Securities Act s. 48 Adviser - Exemption from s.34 (1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and rules - 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 - 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 delivering confirmation statements to clients. - The client's account is fully managed by the dealer; account fees paid by the client are based on the amount of assets, and not the trading activity in the account; trades in the account are only made on the client's adviser's instructions; the client agreed in writing that confirmation statements will not be delivered to them; confirmations are provided to the client's adviser; the client is sent monthly statements that include the confirmation information

Exemption Order

Richardson Partners Financial Limited

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

¶ 1 Background

Richardson Partners Financial Limited (RPFL) applied for exemption from

- (a) the adviser registration requirement in section 34(1)(c) of the Act (the Adviser Registration Requirement) to permit certain portfolio managers that are not registered in British Columbia (the Advisers) to provide portfolio management advice or services for the benefit of RPFL's clients who are resident in British Columbia and participating in the Pioneer Investment Management Program or similar programs (a Program); and
- (b) the requirement in section 36 of the Rules under the Act that a registered dealer send a written confirmation of any trade in securities (the Confirmation Requirement).

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¶ 2 **Representations**

RPFL represents that:

1. it is a corporation formed under the laws of Canada, with its head office in Winnipeg, Manitoba;
2. it is registered as an investment dealer under the Act, and is a member of the Investment Dealers Association;
3. it offers its clients a discretionary asset management service through which clients participating in a Program (the clients) have granted discretionary authority to RPFL and/or the Advisers and may invest in a portfolio of securities based on the investment advice of and/or management by the Advisers through arrangements RPFL has made with those Advisers;
4. it charges clients a single fee for the discretionary investment counselling and portfolio management services calculated on the basis of assets in a Program and not based on transactions effected in the account (the associated trades);
5. each Adviser will be licensed, qualified or registered as a portfolio manager or investment counsel in the jurisdiction where its head office is located to provide discretionary investment counselling and portfolio management services; and
6. it will provide to each client who has, under a Program, waived receipt of trade confirmations, a monthly statement of account with respect to their account containing the information required under the Confirmation Requirement.

¶ 3 **Order**

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

1. the Advisers are exempt from the Adviser Registration Requirement for investment counselling and portfolio management services provided to clients participating in the Program, provided that RPFL:
 - (a) enters into (or has entered into) an agreement with each Adviser setting out the terms and conditions governing the relationship between RPFL, the Adviser and the clients and the rights, obligations and duties of the parties;

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- (b) contractually agrees with the clients to be responsible for any loss that arises out of the failure of an Adviser to
 - (i) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the clients for whose benefit the investment advice is, or portfolio management services are, to be provided; and
 - (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; and
 - (c) cannot be relieved of its responsibility for loss under condition (b) above; and
2. the Confirmation Requirement shall not apply to RPFL in respect of a client's account in which RPFL acts as principal or agent in connection with associated trades.

¶ 4 December 23, 2004

Leslie Rose
Acting Manager