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March 27, 2007

Headnote

1996 Securities Act s. 48 - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities - A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer. - The person is registered or qualified as a dealer in the jurisdiction in which they reside or carry on business; the person will only trade exchange contracts with “accredited investors”; the person is not providing advice or only providing advice as incidental to the trades.

Applicable Legislative Provisions

Securities Act, s. 34(1)(a) and 48

In the Matter of the Securities Legislation of British Columbia and Alberta (the Jurisdictions)

and

In the Matter of the Mutual Reliance Review System (the System) for Exemptive Relief Applications

and

In the Matter of Mizuho Securities USA Inc. (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement to be registered as a dealer in order to trade exchange contracts with Qualified Parties as defined in Appendix 1 (Qualified Parties) (the Registration Relief).

Under the System:

- (a) the British Columbia Securities Commission is the principal regulator for this application; and

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- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. it is a corporation incorporated under the laws of the state of Delaware;
 2. it is a broker-dealer registered with the U.S. Securities and Exchange Commission (SEC), a member of the U.S. National Association of Securities Dealers, Inc. (NASD), a registered futures commission merchant with the U.S. Commodity Futures Trading Commission (CFTC), and a member of the U.S. National Futures Association (NFA);
 3. it is also a member of the Chicago Mercantile Exchange, the Chicago Board of Trade, the New York Mercantile Exchange, the London International Financial Futures Exchange, Eurex AG and, through its wholly-owned subsidiary Mizuho Futures (Singapore) Pte Ltd, the Singapore Exchange;
 4. it is one of 23 firms registered with the Federal Reserve Bank of New York as a primary dealer in U.S. Government securities;
 5. it is a market maker for U.S. agency securities and acts as broker for customers buying and selling equity and/or debt securities, and as a broker for futures and options on futures contracts;
 6. its clients include financial institutions, corporations and hedge funds;
 7. it proposes to offer Qualified Parties in the Jurisdictions the ability to trade in exchange contracts on exchanges, listed in ASC Order 91-501 *Recognition of Exchanges Outside of Alberta* and in Schedule A of British Columbia Instrument 21-501 *Recognition of exchanges, self-regulatory bodies and jurisdictions* (collectively, the Recognized Foreign Exchanges) outside the Jurisdictions, through the Filer;
 8. it will not maintain an office or sales force in the Jurisdictions;
 9. it will restrict its activity in the Jurisdictions to trading in exchange contracts for Qualified Parties;

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10. it will not act as an adviser, except for advice provided to Qualified Parties that is incidental to trading in exchange contracts for Qualified Parties;
11. it will attorn to the jurisdiction of the courts of each Jurisdiction and will appoint an agent for service in each Jurisdiction;
12. it will execute an order on a Recognized Foreign Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders; the Filer will be responsible for ensuring that the execution of each trade is in accordance with the rules and customary practices of the relevant Recognized Foreign Exchange; and
13. as a futures commission merchant subject to regulatory oversight by the CFTC, the Filer is required to ensure that customer positions and monies be separately accounted for and segregated from the positions and monies of the Filer; the CFTC regulations are designed to protect customers in the event of insolvency or financial instability of a futures commission merchant through which they clear their futures and futures options business; the Filer receives acknowledgements from those of its banks and brokers holding the Filer's client funds that such funds are to be separately held on behalf of the Filer's clients, with no right of set-off against the Filer's obligations or debts.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the tests contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Registration Relief is granted provided that:

- (a) the trade is made on a Recognized Foreign Exchange such that trade order execution and clearance is wholly conducted outside the Jurisdictions;
- (b) the trade is conducted for a Qualified Party that is a client of the Filer;
- (c) at the time of the trade the Filer is:
 - (i) registered with the SEC as a broker-dealer in good standing;
 - (ii) registered as a futures commission merchant with the CFTC in good standing; and,

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- (iii) a member in good standing with the NASD and the NFA; and,
- (d) the Filer provides the following disclosure to each client when opening the client's account:
 - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers, employees or agents, because they are resident outside of the Jurisdictions and all or substantially all of their assets are situated outside of the Jurisdictions;
 - (ii) a statement that the Filer is not registered under the Legislation and, accordingly, the protection available to clients of a dealer registered under the Legislation will not be available to clients of the Filer;
 - (iii) the name and address of the agent for service in the Jurisdictions, as applicable; and,
 - (iv) a risk disclosure statement providing substantially similar disclosure to that required under the Legislation for registered dealers trading in exchange contracts.

L.E. Evans, CA
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British Columbia Securities Commission

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Appendix 1

In this MRRS decision document, “Qualified Party” means:

- (A) a bank to which the *Bank Act* (Canada) applies;
- (B) Business Development Bank of Canada continued under *the Business Development Bank of Canada Act* (Canada);
- (C) a bank subject to the regulatory regime of a country that is a member of the Basle Accord (the "Accord") or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the bank has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);
- (D) a person or company that sells, buys, trades, produces, markets, brokers or otherwise uses in its business a commodity and as a consequence enters into exchange contracts;
- (E) a credit union central or a federation of caisses populaires or any credit union or regional caisse populaire located, in each case, in Canada;
- (F) a loan or trust corporation registered under the loan and trust corporations legislation of a province or territory of Canada or under the *Trust and Loan Companies Act* (Canada);
- (G) a loan or trust company subject to the regulatory regime of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the loan company or trust company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);
- (H) an insurance company licensed to do business in Canada or a province or territory of Canada if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);
- (I) an insurance company subject to the regulatory regime of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);
- (J) a person or company that
 - (i) together with its affiliates has entered into one or more transactions involving exchange contracts with counterparties that are not its affiliates, if

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- (a) the transactions had a total gross dollar value of or equivalent to at least \$1 billion in notional principal amount; and
 - (b) any of the contracts relating to one of these transactions were outstanding on any day during the previous 15 month period, or
- (ii) together with its affiliates had total gross marked-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, with counterparties that are not its affiliates in one or more transactions involving exchange contracts on any day during the previous 15 month period;
- (K) an individual who has a net worth of at least \$5 million (or its equivalent in another currency) excluding the value of his or her principal residence, and any holding company of which such individual owns all of the shares;
- (L) Her Majesty in right of Canada or any province or territory of Canada and all crown corporations, instrumentalities and agencies of the Canadian federal or provincial or territorial governments or the Alberta Treasury Branch;
- (M) a national government of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord and any instrumentality or agency of that government or corporation wholly-owned by that government;
- (N) a Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;
- (O) a company, partnership, unincorporated association, organization or trust, other than an entity referred to in (A), (B), (C), (D) (E), (F), (G), (H), (I) and (J) with total assets, as shown on the last audited balance sheet, in excess of \$25 million (or its equivalent in another currency);
- (P) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial or territorial pension commission, if the pension fund has total net assets, as shown on the last audited balance sheet, in excess of \$50 million, provided that, in determining net assets, the liability of a fund for future pension payments shall not be included;
- (Q) a mutual fund or non-redeemable investment fund if each investor in the fund is a Qualified Party;
- (R) a mutual fund if the investments of the fund are managed by a company that is registered under the Act or securities legislation of another province or territory in Canada as a portfolio manager;
- (S) a non-redeemable investment fund if the person responsible for providing investment advice to the fund is registered under the Act or securities

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- legislation of another province or territory in Canada as an adviser, other than a securities adviser;
- (T) a person or company registered under the Act or securities legislation of another province or territory in Canada as a broker or an investment dealer or both;
 - (U) a person or company registered under the Securities Act (Ontario) as an international dealer if the person or company has total assets, as shown on its last audited balance sheet, in excess of \$100 million or its equivalent in another currency;
 - (V) a person or company whose account is fully managed by a registered portfolio manager or broker or investment dealer acting as a trustee or agent for such person or company;
 - (W) a direct or indirect wholly-owned subsidiary of any of the entities described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (L), (M), (N), (O), (P), (T) and (U);
 - (X) a holding body corporate of which any of the entities described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (L), (M), (N), (O), (T) and (U) is a direct or indirect wholly-owned subsidiary;
 - (Y) a direct or indirect wholly-owned subsidiary of a holding body corporate described in paragraph (X);
 - (Z) a firm, partnership or joint venture or other form of unincorporated association in which one or more of the entities described in paragraphs (W), (X) or (Y) have a direct or indirect controlling interest;
 - (AA) a party whose obligations in respect of the exchange contract for which the determination is made are fully guaranteed by another Qualified Party;
 - (BB) a portfolio manager or a financial intermediary referred to in paragraphs (A), (E), (F), (H), (L), (T) or (U) above, while acting as manager of accounts of a person, company, pension fund or pooled fund trust, which accounts are fully managed by such portfolio manager or financial intermediary; and
 - (CC) a broker or investment dealer acting as a trustee or agent for the person, company, pension fund or pooled fund trust.

For the purposes of the foregoing:

- (i) a party is a Qualified Party if that party is a Qualified Party at the time the party enters into the transaction or contract; and
- (ii) all requirements that are based on the amounts shown on the balance sheet of an entity shall be determined by reference to the audited consolidated balance sheet of the entity for its most recently completed financial year end.