

# 2003 BCSECCOM 734

## Headnote

Relief from adviser registration requirement for an Ontario registrant advising two sophisticated clients in British Columbia – previous order revoked

## Exemption Order

**Scarthingmoor Asset Management Inc.**

**Sections 48 and 171 of the *Securities Act*, R.S.B.C. 1996, c. 418**

## Background

- ¶ 1 On August 16, 2002, the British Columbia Securities Commission made an order (the initial order) under Section 48 of the Act, exempting Scarthingmoor from the requirement in section 34(1)(c) of the Act to be registered as an adviser (the adviser registration requirement). The initial order permitted Scarthingmoor to provide advice to a certain charity foundation (the Foundation) organized under the laws of British Columbia on the investment in or purchase or sale of securities (securities advice). Scarthingmoor wishes to update the initial order to allow it to also provide securities advice to an entity related to the Foundation.

## Representations

- ¶ 2 Scarthingmoor represents that:
1. it was incorporated under, and is governed by, the laws of Canada;
  2. it is registered as an adviser in the categories of investment counsel and portfolio manager under the *Securities Act* (Ontario);
  3. it has been in operation as an adviser since 1996 and was established to provide investment advice, including portfolio management services, to certain select high net worth individuals and institutional clients;
  4. John Weatherall, its president, secretary, sole employee, sole director and sole shareholder, has been registered in various capacities under the *Securities Act*

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(Ontario) since 1977 and is currently a counselling officer with Scarthingmoor;

5. under the initial order, Scarthingmoor provides securities advice to the Foundation;
6. the Foundation has financial assets of over \$30 million and is a sophisticated investor, which employs other advisers to manage portions of its assets;
7. in addition to providing securities advice to the Foundation, Scarthingmoor intends to provide securities advice to a company (the Company) in British Columbia controlled by the individual who established the Foundation;
8. the Company is a sophisticated investor with substantial assets;
9. Scarthingmoor has advised the Foundation and the Company (together, the clients) as follows:
  - a. it is not registered as an adviser under the Act;
  - b. it may not have the same proficiency requirements as other persons registered under the Act; and
  - c. the clients may not have the same protections they would have if Scarthingmoor were registered as an adviser under the Act;
10. it does not:
  - a. maintain offices or a sales force within British Columbia;
  - b. have any clients other than the Foundation and the Company resident in British Columbia; or
  - c. intend to actively solicit other clients within British Columbia;
11. in providing securities advice to the clients, it would be considered to be acting as an adviser under the Act and, without this order, would be required to be registered, or otherwise exempt from registration, as an adviser under the Act; and
12. there are no exemptions from the adviser registration requirement that it can rely on to provide securities advice to the clients.

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### Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders:
- (a) under section 48 of the Act that Scarthingmoor is exempt from the adviser registration requirement for securities advice provided to the clients, provided that it maintains its registration as an adviser under the *Securities Act* (Ontario) in good standing; and
  - (b) under section 171 of the Act that the initial order is revoked.

¶ 4 November 3, 2003

Brenda Leong  
Director