

Citation: 2023 BCSECCOM 489

Headnote

1996 Securities Act, s. 48 Dealer – Exemption from s. 34(1)(a) requirement to be registered as a dealer – s. 48 Adviser – Exemption from s. 34(1)(b) requirement to be registered as an adviser. A community foundation wants to accept investable moneys from BC-based charities and to co-invest such moneys alongside its own, via third-party managers. The applicant sets the investment policies and the third-party managers conduct day-to-day administration of the investments. The program constitutes trading and advising in securities and will be operated on a cost-recovery basis. The applicant is required to observe certain obligations analogous to those of a registrant and to make certain other disclosures to co-investing charities.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

October 17, 2023

Exemption Order

Vancouver Foundation

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

Background

- ¶ 1 The Vancouver Foundation (the **Filer**) has filed an application with the British Columbia Securities Commission (the **Commission**) for a decision under section 48 of the *Securities Act* (British Columbia) (the **Securities Act**) that provides for the following (the **Requested Relief**):
- (a) that the registration requirements of Section 34(1)(a) of the Securities Act, do not apply to the Filer (including its respective directors, officers, representatives and employees acting on its behalf) in respect of all trades of Units to Participating Qualified Charities and all activities in furtherance of such trades that are incidental to the provision by the Filer of Managed Asset Services to Qualified Charities; and
 - (b) that the registration requirements of Section 34(1)(b) of the Securities Act do not apply to the Filer (including its respective directors, officers, representatives and employees acting on its behalf) acting as an adviser in connection with the provision by the Filer of Managed Asset Services to Qualified Charities.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 – *Definitions* have the same meaning if used in this order, unless otherwise defined.
- Managed Asset Services** means services to be offered by the Filer to Qualified Charities, on a cost-recovery basis, whereby the Filer would accept, hold and co-invest monies of Participating Qualified Charities with the Filer's funds and issue Units to Participating Qualified Charities, as further described in this order.

Participating Qualified Charities means Qualified Charities that participate in the Managed Asset Services.

Qualified Charities means organizations:

- (a) that are registered charities and qualified donees under the *Income Tax Act* (Canada) (the **Tax Act**);
- (b) that have their mind and management primarily located within British Columbia;

(c) the operations of which are not conducted primarily in another jurisdiction of Canada; and

(d) that are either:

- i. established and authorized to operate under the laws of British Columbia; or
- ii. established under the laws of another jurisdiction and authorized to operate under the laws of British Columbia.

Units has the meaning given such term in representation 18(a) below.

Representations

¶ 3 This order is based on the following facts represented by the Filer:

1. The Filer is a corporation, without share capital, consisting of the members of the board of directors of the Filer (the **Board**) and is also a registered charity under the Tax Act (CRA Business Number 11928 1640 RR0001).
2. The head and principal office of the Filer is located at Suite 200, 475 West Georgia Street, Vancouver, British Columbia, Canada V6B 4M9.
3. The Filer is not a reporting issuer and is not listed on any stock exchange. The Filer is not registered with the Commission and no specific order has yet been granted that would relieve it from the registration requirements under the Securities Act.
4. The Filer is not in default of securities legislation in any jurisdiction in which the Filer carries on operations.
5. The Filer was established in 1943 and, since that time, has granted in excess of \$1.5 billion to thousands of British Columbia-based charities and projects. At present, the Filer manages its assets valued at approximately \$1.5 billion by, among other things, setting investment objectives, restrictions and allocations in its investment policies, and liaising with third party investment managers (**External Managers**) tasked with making investment decisions on behalf of the Filer. The *Vancouver Foundation Act* (British Columbia) (the **Vancouver Foundation Act**) governs, among other things, the Filer's governance structure, board composition and operational objectives.
6. Each External Manager is registered as a dealer and adviser under the Securities Act, or is exempt from registration.
7. The Vancouver Foundation Act establishes the following charitable purposes for the Filer: (a) provide care for needy men, women and children, and in particular the sick, aged, destitute and helpless; (b) promote educational advancement and scientific or medical research for the increase of human knowledge and the alleviation of human suffering, (c) support the relief of poverty; (d) promote recreational activities and the conservation of human, natural and heritage resources; (e) support any other charitable purposes that the Board considers to be of benefit to communities; and (f) make grants to qualified donees within the meaning of the Tax Act.
8. Section 17 of the Vancouver Foundation Act specifically permits the Filer to accept, manage and invest funds from Qualified Charities on terms agreeable to the Filer.
9. The Board must be comprised of at least 10 and not more than 18 persons. The Board oversees, among other things, the Filer's investment committee (the **Investment Committee**). The Investment Committee's mandate is to provide ongoing oversight and monitoring of the Filer's investments, including by: (a) reviewing the Filer's investment policies, (b) reviewing asset

allocation, (c) monitoring risk and return by fund and by External Manager, (d) monitoring compliance, and (e) recommending the appointment or termination of External Managers.

10. The Investment Committee is comprised of senior financial sector volunteers, each with extensive knowledge in the investment field, and at least one of whom satisfies the proficiency requirements of an “advising representative”, under National Instrument 31-103 – *Registration Requirements* (**NI 31-103**).
11. The Filer has dedicated staff members (the **Internal Portfolio Managers**) who are responsible for overseeing the Filer’s investment portfolio and monitoring the services provided by the External Managers, at least one of whom satisfies the proficiency requirements of an advising representative and at least two of whom satisfy the proficiency requirements of either an advising representative or “associate advising representative”, as described under NI 31-103. None of the Internal Portfolio Managers is registered under the Securities Act.
12. All Filer funds are pooled for investment purposes in one of two asset pools: (a) the Consolidated Trust Fund (the **CTF**); and (b) the Socially Responsible Investment Fund (the **SRI** and, together with the CTF, the **Foundation Funds**).
13. The Foundation Funds are not separate legal entities from the Filer, but are accounted for as segregated pools in the Filer’s financial records.
14. The Investment Committee reviews the performance, as well as any changes to investment process, personnel or philosophy for each of the External Managers involved in the Foundation Funds on a quarterly basis, and requires each External Manager to make an annual presentation to the Investment Committee or, if the full Investment Committee is not available, to the Filer’s dedicated investment staff members, with respect to performance. Based on performance of the Foundation Funds and the findings of the Investment Committee, the Investment Committee recommends the appointment or termination of External Managers to the Board.
15. Other than determining the scope and objectives of the Foundation Funds via the investment policy of each such fund, the Managed Asset Services will not entail discretionary portfolio management; day-to-day portfolio management and advisory services in respect of the Foundation Funds will be provided by External Managers.
16. The Filer’s custodian, presently Northern Trust Corporation, is a Canadian custodian as defined in NI 31-103 that provides custodial, financial reporting and detailed quarterly performance reports on the Foundation Funds, and on each External Manager.
17. The annual financial statements of the Filer are required to be audited pursuant to the Vancouver Foundation Act. Copies of the auditor’s report are made available to the public on the Filer’s website.
18. The Filer has adopted and adheres to policies and procedures that, in substance, provide protections similar to certain of the regulations governing registered firms under NI 31-103. The Filer’s principal policies are publicly available on the Filer’s website (vancouverfoundation.ca). Furthermore:
 - (a) the Filer will only be offering interests in, or units of, the Foundation Funds (the **Units**) to Qualified Charities and will collect and maintain the know-your-client information required to allow it to ascertain and verify the identity of each Participating Qualified Charity and otherwise to comply with applicable anti-money laundering and counter-terrorist financing laws;

- (b) the Filer will collect know your product information in respect of the Units in accordance with NI 31-103 as if it were a registrant;
 - (c) the Filer will take reasonable steps to assess the Participating Qualified Charity's financial circumstances, investment needs and objectives, risk profile, investment knowledge, investment restrictions and investment time horizon;
 - (d) the Filer will conduct a suitability determination in respect of a Participating Qualified Charity in accordance with sections 13.3 and 13.3.1 of NI 31-103 as if it were a registrant, and will conduct an additional suitability determination at the time of any significant change to the investment policy of either of the Foundation Funds;
 - (e) the Filer will take reasonable steps to keep current the information collected under paragraphs (a) and (c) above, including updating the information within a reasonable time after the becoming aware of a significant change in the Participating Qualified Charity's information and no less frequently than once every 12 months;
 - (f) the Filer will not lend money, extend credit or provide margin to any Participating Qualified Charity;
 - (g) the Filer will act in accordance with the conflicts of interest provisions in NI 31-103 as if it were a registrant, and will cause any representative of the Filer who interacts with Participating Qualified Charities, in respect of their participation in the Managed Asset Services, to observe the conflicts of interest provisions in NI 31-103 as if the individual were a registered individual;
 - (h) Participating Qualified Charities will receive quarterly reports containing quarterly fund statements and updates on market performance. At each fiscal year end, such investors will receive the Filer's Annual Report on Investment Performance; and
 - (i) Participating Qualified Charities will receive online access to fund information through a secure portal of the Filer's website that provides 24/7 access to information on the Foundation Funds.
19. The Filer will offer Qualified Charities the ability to participate in the Foundation Funds under investment participation arrangements whereby the monies of Participating Qualified Charities would be included with the applicable Foundation Fund selected by the Participating Qualified Charity. A Participating Qualified Charity would have an entitlement to a proportionate share of the returns on the invested capital of the CTF or SRI, as applicable, based on its proportionate share, from time to time, of the total contributed capital of the applicable Foundation Fund.
20. The Filer will charge each Participating Qualified Charity a nominal management fee which will be used to cover certain direct expenses incurred by the Filer in connection with the Managed Asset Services as well as a reasonable recovery of overhead and indirect expenses.
21. In providing the Managed Asset Services, the Filer will:
- (a) hold itself out as accepting the assets of and distributing Units to Qualified Charities;
 - (b) agree to manage those assets in the same manner that it manages its own assets, as set out in representation 5;
 - (c) receive compensation on a cost-recovery basis for managing Participating Qualified Charities' assets; and

- (d) ensure that Participating Qualified Charities are entitled to: (i) receive investment income or exposure to losses; and (ii) the return of their assets upon request, subject to the terms of the investment participation arrangements.
- 22. By providing Managed Asset Services, the Filer would be considered to be acting as a dealer and an adviser under the Securities Act and, in the absence of the Requested Relief, would be required to be registered, or be otherwise exempt from registration, as a dealer and an adviser under the Securities Act.
- 23. There are no exemptions from the registration requirements available in connection with the provision of the Managed Asset Services.
- 24. The Requested Relief would better enable the Filer to fulfill its legislative objective of supporting charitable causes to the benefit of British Columbia communities.

Order

- ¶ 4 Considering that it is not prejudicial to the public interest, the Commission orders that the Requested Relief is granted provided that:
- (a) the Filer will only provide Managed Asset Services to Participating Qualified Charities;
 - (b) the Filer will, in performing the Managed Asset Services:
 - (i) deal fairly, honestly and in good faith with Participating Qualified Charities;
 - (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
 - (iii) comply with the policies and procedures set out in representation 18 of this Decision; and
 - (iv) disclose anticipated costs and fees associated with the provision of Managed Asset Services by the Filer in writing to each Qualified Charity prior to the Qualified Charity purchasing Units;
 - (c) before receiving any monies from a Participating Qualified Charity with respect to the Managed Asset Services, the Filer provides the Participating Qualified Charity a written statement that:
 - (i) it is not registered in any capacity under the Securities Act; and
 - (ii) the Participating Qualified Charity will not have the same protection that it would otherwise have if the Filer were registered as a dealer or an adviser under the Securities Act, including the protection available by applicable investor compensation funds;
 - (d) at any time not more than the lesser of \$150 million and 10% of the total value of the Foundation Funds is subject of the Managed Asset Services;
 - (e) the Filer will not engage third parties or finders to solicit Qualified Charities in respect of the Managed Asset Services;
 - (f) the Filer notifies the Commission immediately upon becoming aware that any of the representations in this order are no longer true and accurate or if the Filer becomes unable to fulfil any of these terms and conditions;

- (g) the Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Commission arising from the provision of the Managed Asset Services;
- (h) the Filer will promptly notify the Commission of any change made to the investment policy in respect of either of the Foundation Funds; and
- (i) the Filer will provide to the Commission, on a timely basis, any report, data, document or information that may be requested by the Commission or its staff from time to time as reasonably necessary for the purpose of monitoring compliance with the Securities Act and these Conditions, in a format acceptable to the Commission or its staff.

"Gordon Johnson"

Gordon Johnson
Vice Chair
British Columbia Securities Commission