



Headnote

1996 Securities Act s. 48 Adviser Exemption from s.34(b) requirement to be registered as an adviser – A person who resides in BC wants to advise US residents – The person will provide advice solely to one sophisticated institutional client located in the US; the US client is aware that the person will not be registered in BC and it may not have the same protections that it might have if the person were registered in BC; the person will not be registered with the SEC but will be subject to appropriate regulation and oversight by the SEC; the person will not advise any BC resident in reliance on the relief; the person will comply with applicable US securities laws.

Applicable Legislative Provisions

Securities Act, ss. 34(b) and 48

Exemption Order

0991787 B.C. Ltd.

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

Background

- ¶ 1 0991787 B.C. Ltd. (the Filer) has applied to the Commission under section 48 the *Securities Act* R.S.B.C. 1996, c. 418 (the Act) for an exemption from the adviser registration requirement under section 34(b) of the Act in order for the Filer and Pavel Volfbeyn (the Manager) to provide portfolio management services and other investment advisory services to one client in the United States (the Requested Exemption).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

- ¶ 3 This order is based on the following facts represented by the Filer:
- (a) The Filer is a company formed under the laws of British Columbia on January 23, 2014.
 - (b) The Filer is not in default of securities legislation in any jurisdiction.
 - (c) The Manager is the Filer's sole securityholder, and is currently resident in the United States.



Current advisory relationship

- (d) The Manager currently is a member of and a Senior Quantitative Portfolio Manager to a United States resident subsidiary (the Subsidiary) of Schonfeld Group Holdings, LLC (Schonfeld).
- (e) Schonfeld is a limited liability company formed under the laws of Delaware on December 20, 1999, and operates from its head offices in Jericho, New York. Schonfeld is at all relevant times resident in the United States.
- (f) Schonfeld has extensive experience in the securities markets, as well as sophisticated systems and a large staff, as certified in a signed officer's certificate of Schonfeld submitted in support of the Filer's application.
- (g) Schonfeld, with the Subsidiary, Whitney (as defined and described below) and certain other entities owned by Schonfeld, currently form part of a family office (as that term has been defined by the United States Securities and Exchange Commission (the SEC)) (the Family Office), which is neither registered nor required to be registered under applicable securities laws in the United States. The Family Office is operated by Schonfeld.
- (h) The entities forming the Family Office do not hold themselves out to the public as investment advisers. Rather, the Family Office exclusively manages the assets of the members of one United States resident family (the Family Members), certain United States resident employees of the Family Office, and certain United States resident legal entities funded by, benefitting, or owned by such individuals (together and including the Family Members, the Family Clients) (the Family Advice).
- (i) In providing the Family Advice, the Subsidiary and its employees, including the Manager, are specifically excepted from the term "investment adviser" under the United States *Investment Advisers Act of 1940* and are not required to be registered as "investment advisers" with the SEC.

Proposed advisory relationship

- (j) The Manager proposes to relocate to and become resident in Vancouver, British Columbia.
- (k) For business and tax reasons, the Manager cannot continue to be a member of the Subsidiary after he relocates to British Columbia. Thus, the Manager will no longer be able to provide the Family Advice under the exception from the term "investment adviser".



- (l) Schonfeld wishes to continue to employ the Manager after his relocation to British Columbia. For this reason, the Manager formed the Filer. The Filer intends to employ the Manager upon his relocation to British Columbia.
- (m) The Filer does not and will not qualify as part of the Family Office.
- (n) Whitney Capital Series Fund LLC is a series limited liability company formed under the laws of Delaware (Whitney). Whitney operates from its head offices in Jericho, New York. Whitney is at all relevant times resident in the United States. Whitney forms part of the Family Office.
- (o) The Filer and the Manager intend to provide portfolio management services and other investment advisory services (the Advisory Services) to Whitney, or a series within Whitney (the Client) pursuant to a proposed investment management agreement to be entered into between the Filer and Whitney (the Agreement). The Filer and the Manager intend to provide the Advisory Services from a head office and place of business in Vancouver, British Columbia.
- (p) Neither the Filer nor the Manager will provide the Advisory Services to any persons or companies resident in British Columbia or any other jurisdiction of Canada.
- (q) In providing the Advisory Services, the recommendations of the Filer and the Manager will be based entirely on a computer program that will propose orders based on a particular algorithm (the Program). From time to time, the Program may propose the purchase of securities of a Canadian issuer. However, the Program's design is focused on very large cap companies and thus, the number of Canadian issuers that could potentially be recommended by the Program is very small.
- (r) In providing the Advisory Services to the Client, the Filer and the Manager will have full discretion to direct trades based on the Program's orders; however, at all relevant times, such trades will be executed and cleared through J.P. Morgan Clearing Corp., J.P. Morgan Securities LLC, and their affiliates or such other third party execution and clearing firms designated by the Family Members, and not by the Filer or the Manager.
- (s) Section 202(a)(29) of the United States *Investment Advisers Act of 1940* defines "private fund" as an issuer that would be an investment company under Section 3 of the United States *Investment Company Act of 1940* but for the exclusions from the definition of "investment company" under Section 3(c)(1) or 3(c)(7) of that Act. Section 3(c)(1) or 3(c)(7) private funds are not required to register under the United States *Investment Company Act of 1940*.



- (t) Whitney is a qualifying private fund under Section 3(c)(7) of the United States *Investment Company Act of 1940*, and, therefore, is not required to register under such act.
- (u) Section 203(m)-1(b) of the United States *Investment Advisers Act of 1940* exempts from registration a “foreign private adviser” which (1) has no client that is a United States person, except for qualifying private funds, and (2) all assets managed by the adviser at a United States place of business are solely attributable to private fund assets having a value of less than US\$150 million.
- (v) In providing the Advisory Services to the Client, the Filer and the Manager will be exempt from registration as an investment adviser in the United States under Section 203(m)-1(b) of the *Investment Advisers Act of 1940* since the Filer and the Manager will have no client that is a United States person except for the Client, a qualifying private fund, and will not manage any assets from a place of business in the United States.
- (w) Notwithstanding the fact that the Filer and the Manager will be exempt from registration in the United States under the *Investment Advisers Act of 1940* in providing the Advisory Services, the Filer and the Manager will be obligated to comply, if applicable, with numerous securities regulatory requirements in the United States, including:
 - (i) requirements to file certain information on Form ADV with the SEC as a “exempt reporting adviser” under the *Investment Advisers Act of 1940*;
 - (ii) the antifraud provisions in Section 206 of the *Investment Advisers Act of 1940*; and
 - (iii) requirements to make certain other filings with the SEC as a “Large Trader” and a manager with discretion over US\$100 million in eligible securities.
- (x) Neither the Filer nor the Manager is or has been a registrant under the Act or under securities laws in any other jurisdiction of Canada.
- (y) Neither the Filer nor the Manager is or will be registered with state securities authorities in the United States.
- (z) Neither the Filer nor the Manager is subject to any regulatory action described in Appendix A and Appendix B, as applicable (Regulatory Action).
- (aa) Each of the Filer and the Manager undertakes not to rely on section 4.7(1) of Multilateral Instrument 11-102 *Passport System* to passport this order into Québec



without the prior written consent of the securities regulatory authority in that jurisdiction.

Order

¶ 4 Considering that it would not be prejudicial to the public interest, the Commission orders under section 48 of the Act that the Requested Exemption is granted provided that:

- (a) The Filer and the Manager provide the Advisory Services solely to the Client;
- (b) The Filer and the Manager continue to be exempted from registration as “investment advisers” with the SEC or register with the SEC if they are no longer exempted;
- (c) The Filer and the Manager be in compliance with all applicable registration and other regulatory requirements of United States; and
- (d) The Filer and the Manager notify the Commission of any Regulatory Action by completing and filing Appendix A or Appendix B, as applicable, within 10 days of receiving notification of the commencement of such action.

Nigel P. Cave
Vice-Chair
British Columbia Securities Commission



APPENDIX A
NOTICE OF REGULATORY ACTION – FIRM

1. The firm has entered into a settlement agreement with a financial services regulator, securities or derivatives exchange, SRO or a similar agreement with a financial services regulator, securities or derivatives exchange, SRO or similar organization.

Provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. A financial services regulator, securities or derivatives exchange, SRO or similar organization has:

	Check where applicable
(a) determined that the firm violated securities regulations or rules of a securities or derivatives exchange, SRO or similar organization.	
(b) determined that the firm made a false statement or omission.	
(c) issued a warning or requested an undertaking by the firm.	
(d) suspended or terminated registration, licence or membership of the firm.	
(e) imposed terms or conditions on any registration or membership of the firm.	
(f) conducted a proceeding or investigation involving the firm.	
(g) issued an order (other than an exemption order) or a sanction to the firm for securities or derivatives-related activity (e.g. cease trade order).	

Provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	



3. The firm is aware of an ongoing investigation of which the firm is the subject.

Provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted to the following address:

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Manager, Registration Department
Telephone: (604) 899-6692
email: Registration@bcsc.bc.ca



APPENDIX B
NOTICE OF REGULATORY ACTION – INDIVIDUAL

Name of Individual

Last name <input type="checkbox"/>	First name	Second name (N/A <input type="checkbox"/>)	Third name (N/A
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1. Securities and derivatives regulation

The individual is subject to a disciplinary proceeding or an order resulting from disciplinary proceedings under securities legislation or derivatives legislation or both in any province, territory, state or country.

Complete the following:

For each order or disciplinary proceeding, state below (1) the name of the firm, (2) the securities or derivatives regulator that issued the order or is conducting or conducted the proceeding, (3) the date any notice of proceeding was issued, (4) the date any order or settlement was made, (5) a summary of any notice, order or settlement (including any sanctions imposed), (6) whether the individual is or was a partner, director, officer or major shareholder of the firm and named individually in the order or disciplinary proceeding, and (7) any other relevant details.

2. SRO regulation

The individual is subject to a disciplinary proceeding conducted by an SRO or similar organization in any province, territory, state or country.

Complete the following:

For each order or disciplinary proceeding, state below (1) the name of the firm, (2) the SRO that issued the order or that is, or was, conducting the proceeding, (3) the date any notice of proceeding was issued, (4) the date any order or settlement was made, (5) a summary of any notice, order or settlement (including any sanctions imposed), (6) whether the individuals is or was a partner, director, officer or major shareholder of the firm and named individually in the order or disciplinary proceeding, and (7) any other relevant details.



3. Non-securities regulation

The individual is a subject of a disciplinary action conducted under legislation relating to professional activities unrelated to securities or derivatives in any province, territory, state or country.

Complete the following:

For each order or disciplinary proceeding, indicate below (1) the party against whom the order was made or the proceeding taken (if insurance licensed, indicate the name of the insurance agency), (2) the regulatory authority that made the order or that is, or was, conducting the proceeding, or under what legislation the order was made or the proceeding is being, or was conducted, (3) the date any notice of proceeding was issued, (4) the date any order or settlement was made, (5) a summary of any notice, order or settlement (including any sanctions imposed), (6) whether the individual is or was a partner, director, officer or major shareholder of the firm and named individually in the order or disciplinary proceeding and (7) any other relevant details.

Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

This form is to be submitted to the following address:

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Manager, Registration Department
Telephone: (604) 899-6692
email: Registration@bcsc.bc.ca