

Headnote

ASC Policy 12-601 *Applications to the ASC – Securities Act* section 213 – Exemption from section 213 requirement to be registered as an adviser – a person who resides outside of Alberta wants to advise Alberta residents – the person is hired under a written agreement with an Alberta registered adviser to provide advice to the Alberta registrant and its Alberta clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its Alberta clients or the person, the Alberta registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person; the Alberta client will obtain advice from and give all instructions through the Alberta registrant.

Applicable Legislative Provisions

Securities Act (Alberta) sections 75(1)(b) and 213

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Pier 21 Asset Management Inc., Re, 2010 ABASC 99

Date: 20100308

**In the Matter of
Pier 21 Asset Management Inc.
(the Filer)**

Background

The Filer has applied to the Alberta Securities Commission (the "**Commission**") on behalf of Carnegie Asset Management Fondsmæglerselskab A/S ("**Carnegie**"), Polunin Capital Partners Limited ("**Polunin**"), ValueInvest Asset Management S.A. ("**ValueInvest**") and any other foreign portfolio managers that may be engaged by the Filer from time to time (each, a "**Sub-Adviser**" and, collectively with Carnegie, Polunin and ValueInvest, the "**Sub-Advisers**") for an order (the "**Order**") pursuant to section 213 of the *Securities Act* (Alberta) (the "**Act**") that the Sub-Advisers be exempt from the requirement to be registered as advisers under section 75(1)(b) of the Act (the "**Registration Requirement**") in order to allow the Sub-Advisers to provide general portfolio management services to future clients of the Filer that are resident in Alberta.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer:

1. the Filer is a corporation organized under the laws of Canada with its principal office and place of business located in Montréal, Québec;
2. the Filer is currently registered as a portfolio manager in Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, Québec, New Brunswick and Nova Scotia, and as an exempt market dealer in Ontario;

3. the Filer may enter into agreements with clients in Alberta that fall within the definition of "accredited investors" in National Instrument 45-106 *Prospectus and Registration Exemptions* (the "**Potential Alberta Clients**"), whereby the Filer will be engaged to provide investment management services to the Potential Alberta Clients;
4. the Potential Alberta Clients are expected to authorize the Filer to engage Carnegie, Polunin, ValueInvest and other Sub-Advisers to provide general portfolio management services regarding their investment assets;
5. the Sub-Advisers will not be residents of Canada;
6. each Sub-Adviser will be registered or otherwise qualified under applicable laws in the foreign jurisdiction in which its head office is located to provide investment counseling and portfolio management services;
7. each Sub-Adviser will have the personnel and expertise to manage the assets of a Potential Alberta Client in a manner that is consistent with the investment objectives and strategies of the Potential Alberta Client;
8. the obligations and duties of the Sub-Advisers with respect to the services they will respectively provide to any Potential Alberta Client will be set out in a written agreement with the Filer;
9. the Filer will contractually agree with the Potential Alberta Clients to be responsible for any loss that arises out of the failure of the Sub-Advisers to exercise the powers and discharge the duties of their respective offices honestly, in good faith and in the best interests of the Filer and the Potential Alberta Clients and to exercise the degree of care, diligence and skill that a reasonable prudent person would exercise in the circumstances (the "**Assumed Liabilities**") and such agreements shall provide that the Filer will not be relieved by the Potential Alberta Clients from its responsibility for the Assumed Liabilities;
10. the Filer will advise each Potential Alberta Client that:
 - (a) the Sub-Advisers are not registered as advisers under the Act;
 - (b) the Sub-Advisers may not have the same proficiency requirements as other persons registered under the Act; and
 - (c) each Potential Alberta Client may not have the same protection that it would have were the Sub-Advisers registered as advisers under the Act;
11. none of the Sub-Advisers:
 - (a) maintains an office or sales force in Alberta; or
 - (b) intends to actively solicit other clients in Alberta on behalf of the Filer;

12. the Sub-Advisers will not have direct contact with the Potential Alberta Clients unless a representative of the Filer, duly registered to provide investment counselling and portfolio management services, is present at all times, either in person or by telephone;
13. in providing general portfolio management services to the Filer for the benefit of the Potential Alberta Clients, the Sub-Advisers would be considered to be acting as advisers under the Act and, without this order, would be subject to the Registration Requirement or otherwise require and exemption from registration, as advisers under the Act; and
14. there are no exemptions from the adviser registration requirement that the Sub-Advisers can rely on to provide securities advice for the benefit of the Potential Alberta Clients.

Decision

The Commission orders under section 213 of the Act that the exemption sought is granted provided that:

- (a) the obligations and duties of the Sub-Advisers are set out in written agreements with the Filer;
- (b) the Filer contractually agrees with the Potential Alberta Clients to be responsible for the Assumed Liabilities;
- (c) the Filer cannot be relieved by the Potential Alberta Clients from its responsibility for the Assumed Liabilities;
- (d) each Sub-Adviser will be registered or otherwise qualified, under applicable laws in the foreign jurisdiction in which its head office is located, to provide investment counseling and portfolio management services;
- (e) the Sub-Advisers do not have direct contact with the Potential Alberta Clients unless a representative of the Filer, duly registered under the Act to provide investment counselling and portfolio management services for securities, is present at all times, either in person or by telephone; and
- (f) the Filer maintains its good standing under securities legislation.

“original signed by”

Glenda A. Campbell, QC, Vice-Chair
Alberta Securities Commission

“original signed by”

Stephen R. Murison, Vice-Chair
Alberta Securities Commission