

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: Canoe Financial LP, Re, 2010 ABASC 543

Date: 20101123

Canoe Financial LP
(the **Filer**)

Background

The Filer has applied to the Alberta Securities Commission (**Commission**) on behalf of Haber Trilix Advisors, LP (the **Sub-Adviser**) for an order pursuant to section 213 of the *Securities Act* (Alberta) (the **Act**) that the Sub-Adviser and its partners, managers, directors, officers and employees be exempt from the requirement to be registered as an adviser under section 75(1)(b) of the Act (the **Registration Requirement**) in order to allow the Sub-Adviser and its partners, managers, directors, officers and employees to provide portfolio management services to existing and 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 limited partnership formed under the laws of Alberta. The Filer's head office is located in Calgary, Alberta.
2. The Filer is registered with the Commission and with each of the securities commissions of the remaining provinces and territories of Canada as an adviser in the category of

portfolio manager, as a dealer in the category of exempt market dealer and as an investment fund manager.

3. The Filer intends to offer the portfolio management services of the Sub-Adviser to existing and future clients of the Filer that are investment funds for which the Filer acts (or may act in the future) as portfolio manager, as well as to trusts, corporations and individuals that fall within the definition of “accredited investors” in National Instrument 45-106 *Prospectus and Registration Exemptions*, each of which is resident in Alberta (each a **Client** and collectively the **Clients**).
4. The Sub-Adviser will not be a resident of Canada.
5. The Sub-Adviser is registered to provide portfolio management services under applicable laws in the foreign jurisdiction where its head office is located.
6. The Sub-Adviser has or will have the personnel and expertise to manage the assets of a Client in a manner that is consistent with the investment objectives and strategies of the Client.
7. Each Client has entered or will enter into a written investment management agreement (an **IMA**) with the Filer which:
 - (a) provides the Filer with complete discretionary authority to purchase and sell securities on behalf of the Client; and
 - (b) authorizes the Filer to delegate its discretionary authority over all or a portion of the Client’s assets to the Sub-Adviser.
8. Under each IMA, the Filer will agree to be responsible for any loss arising directly out of the failure of the Sub-Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client for whose benefit the portfolio management services are to be provided; or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;and will acknowledge that it cannot be relieved by the Client from this responsibility (collectively, the **Assumed Obligations**).
9. The Filer will be responsible for providing the Clients with all applicable reports and statements required under the Act.
10. The Filer will enter into an agreement with the Sub-Adviser that will set out the duties and obligations of each party in connection with the portfolio management services

provided to each Client and under which the Sub-Adviser will agree to act as the Sub-Adviser to the Filer for the benefit of Clients.

11. The Filer will advise each Client that:
 - (a) the Sub-Adviser is not registered as an adviser under the Act;
 - (b) the Sub-Adviser may not have the same proficiency requirements as other persons registered under the Act; and
 - (c) the Client may not have the same protection that it would have were the Sub-Adviser registered as an adviser under the Act.
12. The Sub-Adviser does not:
 - (a) maintain an office or sales force in Alberta; or
 - (b) intend to actively solicit other clients in Alberta on behalf of the Filer.
13. If there is any direct contact between a Client and the Sub-Adviser in connection with the provision of portfolio management services, a representative of the Filer, duly registered under the Act to provide portfolio management services, will be present at all times, either in person or by telephone.
14. The Sub-Adviser and those of its partners, managers, directors, officers and employees who provide portfolio management services with respect to the assets of a Client would be considered to be acting as an “adviser” within the meaning of the Act and, in the absence of the exemption sought, would be subject to the Registration Requirement unless otherwise exempt.
15. There are no exemptions from the Registration Requirement that the Sub-Adviser and its partners, managers, directors, officers and employees may rely on to provide portfolio management services to the Clients.
16. The Filer is not in default of Canadian securities legislation.

Decision

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

- (a) the duties and obligations of the Sub-Adviser are set out in one or more written agreements with the Filer;
- (b) the Filer contractually agrees with the Clients to be responsible for the Assumed Obligations;

- (c) the Filer cannot be relieved by any Client from its responsibility for the Assumed Obligations;
- (d) the Sub-Adviser is registered to provide portfolio management services under applicable securities laws in the foreign jurisdiction where its head office is located;
- (e) the Sub-Adviser does not have direct contact with a Client unless a representative of the Filer, duly registered under the Act to provide portfolio management services, is present at all times, either in person or by telephone; and
- (f) the Filer maintains its good standing under Canadian securities legislation.

For the Commission:

“original signed by”

Glenda Campbell, QC
Vice Chair

“original signed by”

Stephen Murison
Vice-Chair