

Headnote

Application for exemption from the requirement to be registered as an adviser - A company which resides outside NS wants to advise a NS resident – The company is registered or qualified to provide the advice in the jurisdiction in which it resides or carries on business; the company will only advise one NS client which is sophisticated and has a high net worth; the client will be made aware that the company is not registered in NS and the consequences.

Applicable legislative provisions

Securities Act, R.S.N.S. 1989, c. 418, as amended, sections 31(1)(c) and 79

IN THE MATTER OF: **The *Securities Act*, R.S.N.S. 1989, c. 418,
as amended**

- and -

IN THE MATTER OF: **Victory Capital Management Inc.**

RULING

(Section 79)

UPON the application of Victory Capital Management Inc. (“Victory”) to the Nova Scotia Securities Commission (the “Commission”) under the *Securities Act*, R.S.N.S. 1989, c. 418, as amended (the “Act”) for a ruling, pursuant to section 79 of the Act, that Victory be exempted from the registration requirement of clause 31(1)(c) of the Act;

AND UPON reading the application and the recommendation of staff of the Commission;

AND UPON Victory having represented to the Commission that:

1. Victory was incorporated under the laws of the state of New York on February 22, 1972.
2. Victory is an investment adviser firm, having its principal place of business situated at 127 Public Square, Cleveland, Ohio, with offices in Cincinnati, Ohio, Greenwood Village, Colorado, New York, New York and San Francisco, California. Victory does not have a place of business in Canada.
3. Victory is a registered investment adviser with the United States Securities and Exchange Commission pursuant to the *Investment Advisers Act of 1940*, as amended, and is registered as an international adviser with the Ontario Securities Commission.
4. Victory engages in the business of an adviser in the United States in respect of securities of the type for which it intends to act as an adviser in Nova Scotia and not more than 25% of the aggregate consolidated gross revenues from advisory activities of Victory and its affiliates, for

its most recently completed financial year, namely December 31, 2007, arise from its acting as an adviser for clients in Canada.

5. Victory will act as an adviser in Nova Scotia in reliance upon this ruling solely for the Nova Scotia Association of Health Organizations Pension Plan (“NSAHOPP”) acting as pension fund administrator only.
6. The NSAHOPP is a trustee pension fund for a wide range of health and community services providers from across Nova Scotia, including 9 district health authorities, the IWK Health Centre, nursing homes, homes for the aged, adult residential centres and regional rehabilitation centres, home care and home support agencies, group homes, small options group homes and community care facilities, healthcare foundations and community-based health providers. Therefore, the NSAHOPP is a trustee pension fund for the benefit of various unrelated employers and their employees in Nova Scotia.
7. The net assets available for benefits and accrued pension benefits of the NSAHOPP as of December 31, 2006, were \$2,321,372,000 according to the 2006/2007 annual report of the NSAHOPP.
8. Victory does not solicit clients in Nova Scotia.
9. Any acting as adviser in Nova Scotia in respect of Canadian securities is incidental to Victory acting as an adviser in Nova Scotia in respect of foreign securities.
10. Prior to advising the NSAHOPP in Nova Scotia, Victory will notify the NSAHOPP that it is not registered as an adviser in Nova Scotia and that there may be difficulty enforcing legal rights against Victory because it is resident outside Canada and all or substantially all of its assets are situated outside Canada, and will advise NSAHOPP of the name and address of its Nova Scotia agent for service of process.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS RULED, pursuant to section 79 of the Act, that Victory is exempted from the registration requirement of clause 31(1)(c) of the Act, provided that:

1. Victory, together with its affiliates that are international advisers, have not acted as an adviser during the preceding 12 months for more than a total of 5 persons and companies in Canada, excluding:
 - (a) persons or companies who are advised in reliance on exemptions from the requirement to register as adviser available in another jurisdiction in Canada; and
 - (b) persons or companies who are advised by Victory in its capacity as a registered international adviser in another jurisdiction in Canada;
2. all funds, securities and other assets of the NSAHOPP are held by the NSAHOPP, or by custodians:

- (a) that meet the guidelines prescribed for acting as a sub-custodian of the portfolio securities of a mutual fund in National Instrument 81-102 *Mutual Funds*;
- (b) that are subject to the agreement announced by the Bank for International Settlements on July 1, 1988 concerning international convergence of capital measurement and capital standards; and
- (c) where such funds, securities and other assets are held by a custodian that is Victory or an affiliate of Victory, the funds, securities and other assets are held in compliance with the requirements of sections 33 to 36 inclusive of the General Securities Rules;

provided however, that securities held by the NSAHOPP may be deposited with or delivered to The Canadian Depository for Securities Limited or The Depository Trust Company or with any other depository or clearing agency that is duly authorized to operate a book-based system in its jurisdiction of incorporation or organization or to operate a transnational book-based system;

- 3. Victory maintains in good standing its registration as an investment adviser in the United States and as an international adviser with the Ontario Securities Commission;
- 4. Victory complies with paragraphs 5, 8, 9 and 10 above;
- 5. not more than 25% of the aggregate consolidated gross revenues from advisory activities of Victory and its affiliates, for its most recently completed financial year as disclosed in its annual financial statements for that year prepared not more than 6 months following the end of that year, arise from their acting as advisers for clients in Canada;
- 6. prior to advising the NSAHOPP in Nova Scotia in reliance on this ruling, Victory and each partner and officer of Victory who will be advising in Nova Scotia have filed with the Director of Securities a duly executed submission to jurisdiction and appointment of agent for service of process substantially in the form attached as Appendix A to the Commission's Blanket Order No. 31-504; and
- 7. this ruling will terminate 90 days after the coming into force of any rule that provides an alternate exemption.

SIGNED at Halifax, Nova Scotia, this 1st day of October, 2008.

NOVA SCOTIA SECURITIES COMMISSION

“R. Daren Baxter”