COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

IN THE MATTER OF:	)	
	)	ORDER
Registration Exemption for Certain	)	
Canadian Broker-Dealers and	)	PURSUANT TO KRS 292.330,
Agents	)	292.330(14), 292.500(1), and
	)	292.500(3).
	)	

BACKGROUND AND FINDINGS

The Office of Financial Institutions, ("Office") (formerly the Department of Financial Institutions) is a member of the North American Securities Administrators Association ("NASAA"). Said organization consists of members from the United States, Canada, and other countries in North America. The membership of NASAA, through committees, drafted and circulated a proposal for consideration by the membership wherein certain treatment would be permitted for Canadian broker-dealers under certain limited circumstances. In substance, the proposal provides for limited registration for certain Canadian broker-dealers that have Canadian clients in the United States. Requirements for the limited registration are somewhat streamlined. It should be added that the Kentucky General Assembly has encouraged the Office in KRS 292.330(12)(g) to streamline or ease the registration process when possible.

As part of the proposal above, in exchange for limiting certain inquiries by state administrators into the past activities of Canadian broker-dealers that would have been acceptable under the proposal but for the effective date of this Order being too late, the Canadian Securities Administrators have agreed not to make inquiries of any American broker-dealer or agent on a reciprocal basis. In short, by reciprocal agreement, technical

violations before the date of this Order that would not have been violations had this Order been in effect at the time of said events will generally be excused. This would not be construed to prevent the Office from prosecuting a serious or blatant violation.

Pursuant to KRS 292.500(1), the administration of the provisions of the Securities Act of Kentucky ("Act") is under the Office. Pursuant to KRS 292.500(3), the Executive Director of the Office ("Executive Director") (formerly the Commissioner of the Department of Financial Institutions) is expressly permitted to "classify securities, persons, and matters within his jurisdiction, and prescribe different treatment for different classes." Also, pursuant to KRS 292.500(3), the Executive Director may "from time to time promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, notice filings, and reports and defining any terms." Finally, pursuant to KRS 292.330(14), "any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the executive director expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section."

The proposal above was adopted in substance by Order of this Office entered March 14, 2001, except that a registration exemption was granted with a requirement that the exemption be claimed by a filing. After several years of experience with the issues and further reflection upon the motivation for the earlier order, the Office finds that if a broker-dealer qualifies for the registration exemption in the March 14, 2001 order, there should be no requirement for a filing and that the registration exemption should also be

available for similarly situated foreign broker-dealers, that is, broker-dealers based in countries outside the United States, and not just Canadian broker-dealers.

ORDER

IT IS HEREBY ORDERED that the Order (pertaining to Canadian broker-dealers) entered March 14, 2001, is hereby amended as follows:

(a) This Order is never available to any broker-dealer or its agents if the broker-dealer has an office or other physical presence in Kentucky or any other state of the United States. Such office or other physical presence disqualifies the broker-dealer and its agents from use of the registration exemption in this Order. Foreign broker-dealers are defined as those broker-dealers that are residents of a country other than the United States and do not include any broker-dealers that are residents of any state in the United States. Agents as used herein are only the agents employed by the subject broker-dealer, that is, a broker-dealer that can utilize the registration exemption in this Order, and do not include any agents of any broker-dealers not subject to this Order or able to use the registration exemption herein.

(b) A foreign broker-dealer may, provided the broker-dealer meets the terms and conditions of this Order, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:

(1.) a person from Canada or any country other than the United States who is temporarily resident in this state with whom the foreign broker-dealer had a bona fide broker-dealer/client relationship before the person entered the United States; or

(2.) a person from Canada or any country other than the United States who is resident in this state and whose transactions are in a self-directed tax-advantaged retirement plan (of which the person is the holder or contributor) in that foreign country.

(c) A foreign broker-dealer may transact a securities business, as authorized and conditioned by this Order, provided that it is properly and legally transacting said business in the foreign country in which it resides and from which the acts enumerated in section (b) *supra* occur.

(d) An agent who will be representing a foreign broker-dealer relying on this exemption may, provided the agent meets the terms and conditions of this Order, effect transactions in securities in this state as permitted for the broker-dealer *supra*.

(e) A foreign broker-dealer transacting securities business, as authorized and conditioned by this Order, shall:

(1.) provide the Office upon request with its books and records relating to its business in Kentucky as a broker-dealer;

(2.) disclose to its clients in Kentucky that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.

(f) A foreign broker-dealer or agent transacting a securities business under the terms and conditions of this Order may effect transactions in this state only as permitted in subsection (b) *supra*;

(g) A foreign broker-dealer or agent transacting a securities business, as authorized and conditioned by this Order, and acting in accordance with the

limitations set out herein, is exempt from all of the requirements of the Act, ***except*** the anti-fraud provisions.

IT IS FURTHER ORDERED as follows:

Pursuant to KRS 292.330(14), the transactions in securities offered and sold by those foreign broker-dealers and their agents that have met the qualifications for the KRS 292.330 registration exemption granted herein shall be exempt from the registration requirements of KRS 292.340 through KRS 292.390 provided that:

(a) The transactions in the subject securities are proper and legal in the foreign country, and

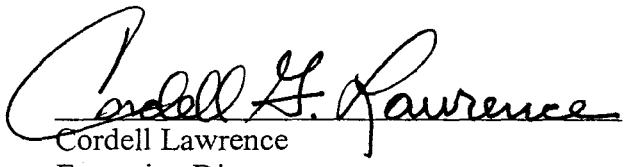
(b) But for the fact that the foreign offeree/purchaser of the securities is residing in Kentucky at the time of the offer or sale, and not in the other country, the securities would not have been required to be registered in Kentucky.

IT IS FURTHER ORDERED that this Order is intended to provide an exemption from the registration requirements of KRS 292.330 to 292.390 for certain foreign broker-dealers, as well as their agents, that are servicing the account of a customer who is a foreign country's citizen temporarily residing in Kentucky and to provide a concurrent registration exemption for the transactions in securities that they offer and sell to said customers. This exemption shall not apply to a plan or scheme to circumvent that purpose, including one to raise capital in contravention of the securities registration laws and regulations. In those cases, registration or another exemption from registration shall be required.

IT IS FURTHER ORDERED that this does not preclude the Office from making inquiries into whether a foreign broker-dealer or agent may have been engaged in

improper trading activities in the state or whether the antifraud provisions of the Act may have been violated.

This Order entered and signed this 12 day of October, 2006.



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