

2009 BCSECCOM 77

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered dealer wants an exemption from delivering confirmation statements to clients. - The client is an institutional client of a clearing broker. The dealer is acting as the executing broker for the client under a “give-up” arrangement. The clearing broker provides the client with a written confirmation of these trades. The dealer has controls in place to maintain an audit trail of the trade cycle. The dealer will enter into a give-up agreement with the clearing broker and the client that sets out the rights and responsibilities of each party.

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 48 Dealer Obligations - Exemption from obligations in Part 5 of the Act and Rules for registered dealers - A BC registered dealer wants an exemption from delivering to clients monthly account statements, quarterly account statements, or both. - The client is an institutional client of a clearing broker. The dealer is acting as the executing broker for the client under a “give-up” arrangement. The clearing broker provides these clients with monthly and quarterly statements documenting these trades. The dealer has controls in place to maintain an audit trail of the trade cycle. The dealer will enter into a give-up agreement with the clearing broker and the client that sets out the rights and responsibilities of each party.

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c.418, s. 48

Securities Rules, B.C. Reg. 194/97, s. 36, 38

January 21, 2009

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia and
New Brunswick
(the Jurisdictions)

and

In the Matter of
The Process for Exemptive Relief Applications in Multiple Jurisdictions

2009 BCSECCOM 77

and

In the Matter of
ITG Canada Corp.
(the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the requirement to deliver confirmations and statements of trades to customers (the **Requirements**) in connection with trade “give-ups” (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- a) The Autorité des marchés financiers is the principal regulator for this application, and
- b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

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 Applicant is a corporation formed under the laws of Nova Scotia.
2. The head office of the Filer is located in Toronto, Ontario.
3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). The Filer is also registered as an investment dealer in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan and as a dealer (unrestricted practice) in

2009 BCSECCOM 77

Québec. The Filer is also a participating organization of the TSX, TSX Venture Exchange and CNSX.

4. The Filer intends to register under the *Commodity Futures Act* (Ontario) to trade commodity futures contracts and commodity futures options. In addition, the Filer intends to register as an approved participant on the Montreal Exchange.
5. The Filer engages in the following two, distinct types of customer trading relationships:
 - (a) the Filer acts as executing and introducing broker for customers; and
 - (b) the Filer acts solely as executing broker in give-up transactions.
6. The Filer only provides trading services to “institutional customers” as defined in IIROC Rule 2700.
7. In a typical give-up situation, a customer has an existing relationship with its clearing broker, and has signed account documentation with such clearing broker, but desires to utilize one or several other executing brokers for purposes of executing on one or more markets, whether domestic or global. In such an instance, the executing broker will execute trades as directed by the customer and “give-up” such trades to the clearing broker via various futures exchange mechanisms that allow for and govern this procedure, as more fully explained below. The customer does not sign account documentation with the executing broker, nor does the executing broker receive monies, securities, margin or collateral from the customer. The customer is a customer of the clearing broker and the executing broker is merely providing a limited execution transaction service. The executing broker is responsible for its own record keeping, bookkeeping, custody, and other requirements with respect to its customers, but is not responsible for most of these requirements with respect to an execution only customer, as that customer is on the books of the clearing broker.
8. Each give-up trade executed by Filer is captured in the Filer’s books and records and accounting system. A daily control performed by Filer’s back-office identifies equity options, commodity futures contracts and commodity futures options positions held by the Filer and not allocated to

2009 BCSECCOM 77

any of its customers' accounts. Each such position is investigated and is either i) sent to the clearing broker as a trade that was executed under a give-up agreement, or ii) upon receipt of new instructions allocated to a customer's account. For each customer a monthly invoice detailing all give-up trades for a given month is sent to the clearing broker. After reconciliation with the clearing broker's own records, the clearing broker pays the invoice sent by Filer. Consequently, upon payment of any invoice sent by Filer to the clearing broker, the Filer considers the invoice as evidence of trade reconciliation between its internal accounting and the client.

9. The Filer is in compliance with IIROC requirements relating to the maintenance of records of executed transactions.
10. The Legislation requires that on carrying out an order, a dealer shall without delay send to his client a confirmation slip in the form prescribed by regulation.
11. The Filer is seeking a decision from the Decision Maker that it be exempt from the Requirements with respect to give-up arrangements because the imposition of those requirements is unnecessary, duplicative and not industry practice globally in the futures market. Accordingly, granting the Exemptive Relief Sought would not be prejudicial to the public interest.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Exemptive Relief Sought is granted, for the purposes of the Filer acting as executing broker for give-up transactions where the clearing broker provides customers a written confirmation of the trades, provided that the Filer enters into a give-up agreement with the clearing broker and the customer.

The Assistant Executive Director, Registrant Services,

(s) « Claude Prévost »

Claude Prévost

CP/cd