

# 2011 BCSECCOM 392

July 8, 2011

## Headnote

MI 11-102 *Passport System* - Relief granted from the requirement to be registered as a dealer to carry on business as an ATS in section 6.1(a) of NI 21-101

*Marketplace Operation* - The Filer wants relief from the obligation to register as a dealer in a jurisdiction where it carries on business as an ATS – The Filer is registered as a dealer in another jurisdiction – The Filer's subscribers are all registered dealers who do not need the protection of the registration system

## Applicable Legislative Provisions

National Instrument 21-101 – *Marketplace Operation*, section 6.1(a) and 15.1.

In the Matter of  
the Securities Legislation of  
the British Columbia Securities Commission (the Jurisdiction)

and

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

and

In the Matter of  
TMX Select Inc. (the Filer)

## Decision

## Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under securities legislation of the Jurisdiction (the Legislation) of the principal regulator for exemptive relief from the requirement of Section 6.1(a) of *National Instrument 21-101 - Marketplace Operation* (NI 21-101) to be registered as an investment dealer in the Jurisdiction (**the Exemption Sought**) so that the Filer may operate as an alternative trading system (ATS).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a Passport Application):

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- (a) the British Columbia Securities Commission (BCSC) has been chosen by the Filer as the principal regulator for the purpose of this application, and
- (b) the Filer has provided notice that section 4.7(1) of *Multilateral Instrument 11-102 Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

### Interpretation

- ¶ 2 Terms defined in *National Instrument 14-101 Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. The Filer is a corporation under the *Business Corporations Act* (Ontario) with its head office located in Toronto, Ontario;
  - 2. the Filer is a wholly-owned subsidiary of TMX Group Inc., the parent company that owns and operates, among other entities, the Toronto Stock Exchange and TSX Venture Exchange;
  - 3. the Filer intends to operate as an ATS subject to NI 21-101 for securities that are listed on exchanges recognized in a jurisdiction in Canada;
  - 4. the Filer has filed its initial operation report on Form 21-101F2 as prescribed in NI 21-101;
  - 5. on June 6, 2011, the Filer received regulatory approval as an investment dealer from the Investment Industry Regulatory Organization of Canada (IIROC) and the Ontario Securities Commission (OSC);
  - 6. the Filer will enter into a written agreement with a regulation services provider, namely IIROC, in accordance with Section 8.3 of *National Instrument 23-101 – Trading Rules* (NI 23-101); and
  - 7. only a registered investment dealer member under the securities legislation in one or more Canadian jurisdiction who has entered into a written agreement with the Filer in accordance with Section 8.4 of NI 23-101 will be eligible as a subscriber of the Filer.

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### Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer is granted and maintains registration as an investment dealer with a Canadian securities regulatory authority, namely the OSC, and membership with IIROC;
- (b) all subscribers to the ATS are registered investment dealers under the securities legislation in one or more jurisdictions in Canada; and
- (c) the Filer shall notify the principal regulator in writing if during at least three of the preceding four calendar quarters, the average daily dollar value of the trading volume, the total trading volume or the number of trades on the ATS, for a calendar quarter in any type of security, is equal to or greater than 10 percent of the average daily dollar value, the total trading volume or the number of trades in that type of security on all marketplaces in Canada (Thresholds).

If one of the Thresholds is met, the principal regulator could initiate an examination of the structure and operations of the ATS with the other Canadian securities regulatory authorities to consider if it would be appropriate to review the present decision.

Doug MacKay  
Acting Director, Capital Market Regulation  
The British Columbia Securities Commission