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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Relief from certain requirements of ATS Rules, including market integration requirements and requirements to enter into an agreement with a regulation services provider and a prescribed subscription agreement with subscribers, subject to certain conditions

Applicable British Columbia Provisions

National Instrument 21-101 *Marketplace Operation*

National Instrument 23-101 *Trading Rules*

IN THE MATTER OF NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION AND NATIONAL INSTRUMENT 23-101 TRADING RULES

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF ARCHIPELAGO CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator in each of the Provinces of Ontario, Quebec and British Columbia (each, a "Decision Maker") has received an application (the "Application") from Archipelago Canada Inc. ("Archipelago Canada") for a decision under section 15.1 of National Instrument 21-101 Marketplace Operation ("NI 21-101") and section 12.1 of National Instrument 23-101 Trading Rules ("NI 23-101") granting Archipelago Canada:

- (a) an exemption from subsection 9.2(1) of NI 21-101 to relieve Archipelago Canada from the market integration requirements;
- (b) an exemption from sections 8.1 and 8.3 of NI 23-101 to relieve Archipelago Canada from the requirement to enter into an agreement with a regulation service provider; and
- (c) an exemption from sections 8.1 and 8.4 of NI 23-101 to relieve Archipelago Canada from the requirement to enter into the prescribed agreement with its subscribers.

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AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal jurisdiction for this Application;

AND WHEREAS Archipelago Canada has represented to the Decision Makers as follows.

1. Archipelago Canada is a private corporation formed under the laws of New Brunswick and is a wholly-owned subsidiary of Archipelago Holdings L.L.C. (“Archipelago Holdings”), a limited liability company organized under the laws of the State of Delaware with its registered office in Chicago.
2. Archipelago Canada is a marketplace and alternative trading system (“ATS”) as defined in NI 21-101. It is registered as an investment dealer in Ontario, has applied for an exemption from subsection 6.1(a) of NI 21-101 by the Decision Makers in British Columbia and Quebec and has pending applications for registration as a dealer in the Provinces of British Columbia and Quebec. Archipelago Canada is a member of the Investment Dealers Association (the “IDA”).
3. Archipelago Canada is an affiliate of Archipelago Securities, L.L.C (“Archipelago Securities”), the sponsor of an electronic communications network (the “Archipelago ECN”) in the United States. Archipelago Securities is a registered broker-dealer with the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934, is a member in good standing of the National Association of Securities Dealers in the United States (“NASD”) and is an ATS under Regulation ATS in the United States.
4. Archipelago Canada provides subscribers in Canada with access to the Archipelago ECN. The Archipelago ECN executes trades of Nasdaq National Market Securities and Nasdaq SmallCap securities or routes orders to Nasdaq or other ATSs.
5. The Archipelago ECN currently accepts as subscribers in Canada only entities that are registered as investment dealers in Ontario, Quebec and British Columbia (“Canadian Dealers”). Archipelago Canada intends to accept institutions that qualify as “acceptable institutions” and “acceptable counterparties” as defined in the Joint Regulatory and Financial Questionnaire of the IDA (“Canadian Institutions”).
6. Archipelago Canada is an affiliate of Wave Securities L.L.C. (“Wave”). Wave is a registered broker-dealer under the Securities Exchange Act of 1934 and is

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a member in good standing of the NASD. Wave is registered as an international dealer in Ontario.

7. Wave, under a service agreement with Archipelago Canada, provides, directly and through its arrangements with third party service providers, certain operating, clearing, settlement and execution services and books and records services to Archipelago Canada in connection with the operation of the Archipelago ECN for subscribers in Canada.
8. The third party service providers providing clearing, settlement and execution services are currently registered and will always be registered as International Dealers in Ontario.
9. The Archipelago ECN provides order and trade information to Nasdaq as its exclusive securities information processor in compliance with the requirements of Rule 11A under the Securities Exchange Act of 1934.
10. The Archipelago ECN is connected to the Nasdaq and all other registered ATSs in the United States trading Nasdaq stocks directly or through SelectNet and SuperSoes, in accordance with section 3 of Regulation ATS under the Securities Exchange Act of 1934.
11. All subscribers to the Archipelago ECN are required to agree to comply with United States trading rules and securities laws requirements. Canadian subscribers are also required to comply with applicable requirements of Canadian securities legislation.
12. The Archipelago ECN is subject to regulatory oversight by the NASD-Regulation ("NASD-R") and the SEC in the United States.
13. All subscribers in Ontario and British Columbia to Archipelago ECN have confirmed to Archipelago Canada that they have the ability to see and directly access quotes from the Toronto Stock Exchange ("TSX").
14. Section 8.1 of NI 23-101 prohibits an ATS from executing a subscriber's order unless the ATS has executed and is subject to the written agreements in sections 8.3 and 8.4 of NI 23-101.
15. Archipelago Canada has requested an exemption from section 8.3 of NI 23-101 which requires an ATS to enter into an agreement with a regulation services provider.

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16. Subsection 9.2(1) of NI 21-101 requires a marketplace subject to 7.1(1) to have an electronic connection to the principal market for each security traded on that marketplace.

17. Subsection 9.2(1) of NI 21-101 is not currently in force in the Province of Quebec.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in NI 21-101 and NI 23-101 provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers, except the Decision Maker in Quebec, is that Archipelago Canada is:

- (a) exempt from subsection 9.2(1) of NI 21-101, provided that all present and future subscribers resident in Provinces of Canada other than Quebec have confirmed to Archipelago Canada that they have direct access to quotes on the TSX;

AND THE DECISION of the Decision Makers is that Archipelago Canada is:

- (b) exempt from sections 8.1 and 8.3 of NI 23-101 with respect to foreign exchange- traded securities and exchange-traded securities that are inter-listed on Nasdaq, provided that the securities are executed on a marketplace that is subject to regulatory oversight by the SEC or the NASD-R; and
- (c) exempt from section 8.4 of NI 23-101 with respect to foreign exchange-traded securities and exchange-traded securities that are inter-listed on Nasdaq, provided that Archipelago Canada includes as part of its agreement with its subscribers an acknowledgement by subscribers that orders executed on, or routed by the Archipelago ECN to Nasdaq or other ATSS, will not be regulated by a regulation services provider but by the regulatory body in the jurisdiction to which the order is executed or routed.

DATED October 7, 2002.

Randee B. Pavalow