

## 2007 BCSECCOM 495

Date: August 15, 2007

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - 1996 Securities Act s. 187(c) - Relief from requirement to file a report of exempt distribution within prescribed time or in the prescribed form - The Filers seek relief on behalf of the affected subscribers to the Alternative Trading System from the requirement that the trade confirmation delivered by a registered dealer to its customers contain a statement indicating whether the registered dealer acted as principal or agent in respect of the trade (Principal/Agent Information). - The system by virtue of its lack of visible orders provides automatic price improvement over the best available price and offers no opportunity for the client orders to be taken advantage; the relief is up to July 31, 2008; information will be made available to a client by the Affected Subscribers upon request; it is not prejudicial to public interest; without the Requested Relief, the Affected Subscribers would not be able to use the alternative trading system until the technological deficiency is resolved; postponement or disruption of the trading system can vitally affect the level of interest in the trading system by potential subscribers and may cause commercial harm to the ATS.

### **Applicable British Columbia Provisions**

*Securities Act* ss.187

In the Matter of the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec,  
Nova Scotia, New Brunswick, Prince Edward Island, Nunavut,  
Northwest Territories, Yukon Territory and  
Newfoundland and Labrador (the Jurisdictions)

and

In the Matter of  
the Mutual Reliance Review System for  
Exemptive Relief Applications (the System)

and

In the Matter of  
TriAct Canada Marketplace LP

and

ITG Canada Corp.

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and

Canaccord Capital Corporation

## MRRS Decision Document

### **Background**

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from TriAct Canada Marketplace LP (TCM), ITG Canada Corp. (ITG) and Canaccord Capital Corporation (Canaccord) (Canaccord, ITG and TCM being collectively the Filers), on behalf of themselves and on behalf of those Affected Subscribers (as defined below) for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief (the Requested Relief) for those Affected Subscribers (as defined below) from the requirement that the trade confirmation to be delivered by a registered dealer to their customers contain a statement indicating whether or not the registered dealer is acting as principal or agent in respect of a trade (Principal/Agent Information).

Under the System

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

Defined terms contained in National Instrument 14-1 01 *Definitions* have the same meaning in this decision unless they are defined in this decision.

### **Representations**

This decision is based on the following facts represented by the Filers:

- (a) TCM is a limited partnership established under the laws of Ontario with its registered office in Toronto, Ontario.
- (b) TCM intends to operate an electronic trading system (the trading system) which permits certain registered investment dealers to confidentially trade securities that are listed on the Toronto Stock Exchange and the TSX Venture Exchange (collectively, the Subscribers).

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- (c) The trading system is an alternative trading system (ATS) under National Instrument 21-101 *Marketplace Operation* (NI 21-101) and TCM has completed the filing and settlement of its initial operation report (Form 21-101 F2) with the Ontario Securities Commission (the OSC).
- (d) TCM is registered with the OSC and the Alberta Securities Commission as a dealer in the category of investment dealer and is a member of the Investment Dealers Association of Canada (the IDA) in good standing.
- (e) TCM is authorized to carry on business as an ATS in the Jurisdictions.
- (f) TCM has contracted with Market Regulation Services Inc. for market regulation of the ATS.
- (g) ITG is a Nova Scotia Unlimited Liability Corporation under the Companies Act (Nova Scotia).
- (h) ITG is registered as a dealer in the category of investment dealer in the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan and is a member of the IDA in good standing.
- (i) Canaccord is a corporation existing under the Business Corporations Act (British Columbia).
- (j) Canaccord is registered as a dealer in the category of investment dealer in all of the Jurisdictions and is a member of the IDA in good standing.
- (k) Certain registered dealers, including ITG and Canaccord, that intend to use the "MATCH Now" electronic trading system operated by TCM are unable to access the Principal/Agent Information for certain MATCH Now trades (collectively, Affected Subscribers) and are therefore unable to include this information in the trade confirmations they send to their customers.
- (l) All Affected Subscribers are registered as dealers in the category of investment dealer and are members of the IDA in good standing.
- (m) TCM is aware of a technological deficiency in the trading system that temporarily prevents Affected Subscribers from accessing the Principal/Agent Information and is in the process of making suitable modifications to the trading system to address this deficiency. The modifications are expected to be completed in early 2008.

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- (n) The trading system does not match visible orders and is a "blind pool" with the result that Affected Subscribers do not know whether there will be a match with client orders. TCM only executes trades when there is a price improvement which ensures that all orders are not prejudicial to the customer.
- (o) TCM is able to and will provide information upon request as to whether the Affected Subscriber acted as principal or agent to those Affected Subscribers who are not able to access such information directly and request the information, within one hour upon receiving the request. The Affected Subscribers will also be provided by electronic mail with a daily report which will include the Principal/Agent Information for each trade executed by the Affected Subscriber on MATCH Now.

### Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted in favour of all Affected Subscribers provided that:

- (a) TCM and the Affected Subscribers are registered in the appropriate Jurisdictions as a dealer in the category of investment dealer and is a member of the IDA in good standing;
- (b) where a trade confirmation refers to an order that was executed on multiple marketplaces, in addition to indicating whether the order was executed as agent or principal on a marketplace other than the trading system, the Affected Subscriber will indicate on the confirmation that, if any part of the client order was executed on the trading system, information as to whether the Affected Subscriber was acting as principal or agent will be provided to the client by the Affected Subscriber upon request;
- (c) where a trade confirmation refers to an order that was executed entirely through the trading system, the Affected Subscriber will indicate on the confirmation that information as to whether the Affected Subscriber was acting as principal or agent will be provided to the client by the Affected Subscriber upon request;

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- (d) the Affected Subscribers comply with all requirements of the IDA from time to time for permitting the Requested Relief;
- (e) TCM will provide written notification to each of the Decision Makers when the deficiency in the trading system is resolved; and
- (f) this relief will expire on the earliest to occur of:
  - (i) the date on which TCM shall have resolved the technological issue; or
  - (ii) July 31, 2008.

"Carol S. Perry"

"Paul K. Bates"