

2002 BCSECCOM 849

Headnote

Temporary relief granted from the requirement in National Instrument 21-101 *Marketplace Operation* to be registered as a dealer in order to carry on business as an ATS

Exemption Order

Archipelago Canada Inc.

National Instrument 21-101 *Marketplace Operation*

Background

- ¶ 1 Archipelago Canada Inc. applied for an exemption under section 15.1 of National Instrument 21-101 *Marketplace Operation* (“NI 21-101”) from the requirement in subsection 6.1(a) of NI 21-101 to be registered as a dealer in the Province of British Columbia for a temporary period;

Representations

- ¶ 2 Archipelago Canada represents that:
1. it is a private corporation formed under the laws of New Brunswick;
 2. it 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;
 3. it is a marketplace and alternative trading system (“ATS”) as defined in NI 21-101;
 4. it is registered as an investment dealer in the Province of Ontario and is a member of the Investment Dealers Association (the “IDA”);

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5. it 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;
6. 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;
7. Archipelago Securities is not registered as a dealer in any Canadian jurisdiction;
8. Archipelago Canada provides subscribers in Canada with access to the Archipelago ECN;
9. the Archipelago ECN executes trades of Nasdaq National Market Securities and Nasdaq SmallCap securities or routes orders to Nasdaq or other ATSs;
10. the Archipelago ECN currently accepts as subscribers in Canada only entities that are registered as investment dealers in Ontario, Québec and British Columbia (“Canadian Dealers”);
11. 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”);
12. under NI 21-101, in order to carry on business as an ATS, Archipelago Canada must be registered as a dealer, be a member of a self-regulatory entity and comply with the provisions of NI 21-101 and National Instrument 23-101 *Trading Rules* (“NI 23-101”);
13. Archipelago Canada has filed an Initial Operation Report on Form 21-101F2 with the Ontario, British Columbia and Québec Securities Commissions and is otherwise diligently working towards complying with NI 21-101 and NI 23-101;
14. Archipelago Canada filed an application for registration as an investment dealer in the Province of British Columbia on July 16, 2002;

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that Archipelago Canada is exempt from the requirement in subsection 6.1(a) of

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NI 21-101 to be registered as a dealer in British Columbia until the earlier of January 31, 2003 and the date on which Archipelago Canada becomes registered as a dealer in British Columbia, provided that

- (a) it is registered as an investment dealer in the Province of Ontario,
- (b) it proceeds as expeditiously as possible with its application for registration in British Columbia, and
- (c) until it is registered, Archipelago Canada only provides access to the Archipelago ECN to registered dealers in British Columbia.

¶ 4 October 1, 2002.

L.E. Evans, C.A.
Director