

2009 BCSECCOM 622

August 27, 2009

Headnote

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 trades are DAP/ RAP trades subject to, or matched in accordance with, NI 24-101; the clients are institutional investors within the meaning of IIROC Rule 2700; clients have been provided with notice that they will not receive trade confirmations for the DAP/ RAP trades; clients have access to trade details similar to those required in trade confirmations

Applicable British Columbia Provisions

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

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

and

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

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 requirements (the Requirements) that registered dealers promptly send confirmations of trades (trade confirmations) to customers that are institutional investors in connection with trades in any equity securities that are either (i)

2009 BCSECCOM 622

subject to National Instrument 24-101 – Institutional Trade Matching and Settlement (NI24-101) or (ii) matched in accordance with NI24-101 but are not subject to NI24-101 (e.g., US and foreign exchange-traded equity securities) (the Requested Exemptive Relief).

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

- (a) the Ontario Securities Commission (the OSC) 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. Filer is an unlimited liability company formed under the laws of the Province of Nova Scotia.
2. Filer's head office is located in Toronto, Ontario.
3. Filer is not in default of securities legislation in any jurisdiction.
4. Filer is a member of the Investment Industry Regulatory Organization of Canada (IIROC). Filer is registered as an investment dealer in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, and as a dealer (unrestricted practice) in Québec. Filer is a participating organization or member of the Toronto Stock Exchange, TSX Venture Exchange and CNSX.
5. Filer is a specialized agency brokerage and financial technology firm.
6. Filer provides customers with unique hybrid agency brokerage and technology solutions which includes various specialized electronic trading tools relating to decision support, order generation, execution, performance measurement, clearing, and settlement. These trading tools permit customers to leverage change, mitigate risk, improve

2009 BCSECCOM 622

efficiencies, and boost performance at each stage of the investment process.

7. Among other activities, Filer currently acts as executing broker as principal or agent for customers with respect to trades in equity securities executed on Canadian marketplaces. Filer has established an introducing broker/carrying broker relationship with TD Waterhouse Investor Services (Canada) Inc.
8. Filer only provides trading services to “institutional customer” as defined by IIROC Rule 2700.
9. The Legislation requires the prompt delivery trade confirmations containing certain prescribed information.
10. Filer is in compliance with the audit trail information requirements of NI23-101 – *Trading Rules* (NI23-101).
11. Filer is in compliance with industry best practices and standards with respect to minimum trade data elements for the purposes of trade matching, clearing and settlement
12. The Legislation requires that Filer include, among other things, the following information on trade confirmations: (i) whether or not the registered dealer on a trade is acting as principal or agent, (ii) the name of the person or company from or to or through whom a security was bought or sold, if acting as agent in a trade, (iii) the date and name of the stock exchange, if any, upon which a transaction took place, and (iv) the name of the salesperson, if any, in a transaction. This required information is not included as part of the industry best practices and standards, and this information is already available to customers, as described in paragraphs 14, 15 and 16.
13. Additionally, the Legislation requires the Filer to state the commission, if any, charged in respect of a trade. Filer is unable to comply with this requirement because Filer’s commission pricing models are formula based and affirmed through the matching process. Customers request significant customization of commission pricing models that are agreed to in writing prior to or at trade execution.
14. Filer provides various electronic tools that permit customers to have real-time access to trade details through proprietary Execution Management System or FIX trade reports.

2009 BCSECCOM 622

15. At the customer's request, Filer can provide any or all of the information required to be maintained for audit trail purposes pursuant to NI23-101 through reports or graphical charts of where the customer's orders were executed by marketplace for one or many orders or for a time period of executions.
16. Filer will continue to provide each customer with a month-end statement with all activity for reporting and reconciliation.
17. Filer is seeking a decision from the Decision Maker that it be exempt from the Requirements to provide trade confirmations to institutional investors in connection with DAP/RAP trades within the meaning of NI24-101.
18. DAP/RAP trades are trades that are executed for a client trading account that permits settlement on a delivery against payment or receipt against payment basis through the facilities of a clearing agency, and for which settlement is made on behalf of the client by a custodian other than the dealer that executed the trade.
19. Providing trade confirmations to institutional investors in connection with DAP/RAP trades is redundant because each of the trade data elements has already been affirmed by the customer and/or its custodian and the trade has been allocated with instructions for delivery. The provision of a trade confirmation with the full trade details after the trade has been affirmed by the customer is not necessary and creates needless correspondence which is not relevant for the customer. Accordingly, granting the exemptive relief sought would not be prejudicial to the public interest.

Decision

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

The decision of the Decision Makers under the Legislation is that the Requested Exemptive Relief is granted provided that:

- (i) The Requested Exemptive Relief only applies
 - a. to DAP/RAP trades that are executed by Filer on Canadian marketplaces that provide trade reporting transparency and for

2009 BCSECCOM 622

institutional investors in connection with trades in any equity securities that are either (i) subject to NI24-101 or (ii) matched in accordance with NI24-101 but are not subject to NI24-101 (e.g., US and foreign exchange-traded equity securities);

- b. in respect of customers of Filer that are “institutional customers” within the meaning of IIROC Rule 2700;
- c. where such customers
 - i. have consented in writing not to receive from Filer trade confirmations of such DAP/RAP trades;
 - ii. are using the services of a matching service utility (MSU) within the meaning of NI24-101 to process such DAP/RAP trades or trade matching technology that performs the same functions as a MSU; and
 - iii. have real-time access to, and can download into their own systems from the Filer’s or MSU’s systems, trade details of such DAP/RAP trades required for the NI24-101 matching process that are similar to the prescribed information required in a trade confirmation (except as otherwise described above in this decision under the Representations); and

- (ii) The Requested Exemptive Relief will expire at midnight on the day after National Instrument 31-103 – *Registration Requirements and Exemptions* comes into effect.

“James E. A. Turner”
Commissioner
Ontario Securities Commission

“Paulette Kennedy”
Commissioner
Ontario Securities Commission