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Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Exemption from requirements dealing with Self Regulatory Bodies, Exchanges, Quotation and Trade Reporting Systems and Clearing Agencies - An ATS wants to carry on business in BC without being recognized as an exchange. - Except as permitted under the terms of the order, the filer will comply with, and be subject to essentially the same rules as an ATS. Once certain trading thresholds are met, the filer will submit reports to regulators within 30 days after the end of each relevant month.

Applicable British Columbia Provisions

Securities Act, ss. 25 and 33(1)

October 16, 2008

In the Matter of

The Securities Legislation of
Ontario, British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New
Brunswick, Prince Edward Island, And Newfoundland And Labrador
(The Jurisdictions)

and

In the Matter of

The Process for Exemptive Relief Applications In Multiple Jurisdictions

and

In the Matter of

Alpha ATS L.P.
(The Filer)

Decision

Background

The regulator in Ontario has received an application from the Filer for a decision under section 15.1 of National Instrument 21-101 Marketplace Operation (NI 21-101) for exemptive relief from the application of paragraph 6.6 (b) of NI 21-101 in relation to the Odd Lot Facility (as defined below) which is the requirement for

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an ATS to notify the securities regulatory authority in writing at least six months before it first provides, directly, or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis (Passport Exemptive Relief).

and

The securities regulatory authority or regulator in each of Ontario, British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (Coordinated Exemptive Relief Decision Makers) has received an application from the Filer for a decision under the securities legislation of the Coordinated Exemptive Relief Decision Makers (the Legislation) (as set out in Appendix A) for an exemption from the requirement to be recognized as a “stock exchange” or “exchange” (Coordinated Exemptive Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

- (a) the Ontario Securities Commission is the principal regulator for this application,
- (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 British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador for relief regarding NI 21-101,
- (c) the decision is the decision of the principal regulator for the exemptive relief regarding paragraph 6.6 (b) of NI 21-101, and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 Definitions and MI 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions (NP 11-203) and NI 21-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

The decision is based on the following facts represented by the Filer:

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1. The Filer is a limited partnership registered in Manitoba and consists of one general partner, Alpha ATS Inc., and one limited partner, Alpha Trading Systems Limited Partnership. Its head office is located in Toronto, Ontario.
2. The Filer is registered as an investment dealer in Ontario and is a member of the Investment Industry Regulatory Organization of Canada (IIROC).
3. The Filer has applied to each of the provinces of Québec, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland & Labrador via the Passport Exemptive Relief Application Process with Québec as the principal regulator for exemptive relief from being registered as a dealer in these jurisdictions so the Filer may operate as an alternative trading system (ATS) without being registered.
4. The Filer is not in default of any securities legislation in any jurisdiction in Canada.
5. The Filer will operate as an ATS that provides a transparent, continuous, electronic matching platform where trading occurs through the central limit order book (CLOB) and a contingent order book, and will support trading in listed TSX and TSXV securities on its system.
6. Only members of IIROC, who are in good standing, may be eligible to be a subscriber of Alpha ATS L.P.
7. The Filer is offering a facility (Odd Lot Facility), that provides for the execution of orders with a quantity of less than a standard trading unit (Odd Lot Orders) and orders that have a combination of a standard trading unit plus a non-standard trading quantity (Mixed Lot Orders). This facility is described below:
 - (a) A subscriber will qualify to become an “Alpha Odd Lot Dealer” if it has met all applicable Alpha ATS L.P. requirements as set out in section 5 Odd Lot Dealer Trading Policies of Alpha ATS L.P.’s Trading Policies, as amended.
 - (b) Each Alpha Odd Lot Dealer will be randomly assigned a list of securities based on the number of Alpha Odd Lot Dealers. Each Alpha Odd Lot Dealer will also be assigned the underlying family of securities associated with a primary security.

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- (c) Incoming Odd Lot Orders with a limit price that is equal to or better than the best bid and the best offer on Alpha ATS L.P. (ABBO), will auto-execute at the time of the order entry at the ABBO price. All other Odd Lot Orders with a limit price will execute at their limit price when either the last sale price of a standard trading unit traded on Alpha is executed at a sale price equal to or better than the Odd Lot Order's price limit, or when the ABBO crosses the price of the Odd Lot Order.
 - (d) For Mixed Lot Orders, the round lot portion will trade in the CLOB and the Odd Lot portion will auto-execute at the price of execution of the last board lot of the mixed lot order.
- 8 Because the Filer is offering the Odd Lot Facility described in paragraph 7 and as a result may be providing directly or through its subscribers, a guarantee of a two-sided market on a continuous or reasonably continuous basis, the Filer may not fall within the definition of "alternative trading system" under NI 21-101.

Decision

1. The decision of the principal regulator under NI 21-101 is that the Passport Exemptive Relief is granted.
2. The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted.
3. The decisions in paragraphs 1 and 2 are subject to the following terms and conditions:
 - (a) The Filer complies with and is subject to the ATS Rules as if it is an ATS except that the Filer is not required to comply with paragraph 6.6(b) of NI 21-101 in relation to the Odd Lot Facility relating to advance notice of providing guarantees of a two-sided market;
 - (b) If the Filer intends to carry on stock exchange or exchange activities listed in paragraphs 6.6(a), (c) and (d) in NI 21-101 it will notify the securities regulatory authorities in accordance with the timeframe provided in the subsections;
 - (c) If trading on Alpha ATS L.P. meets the following thresholds, Alpha ATS L.P. shall notify the securities regulatory authorities in writing within 30 calendar days after the end of the relevant month:

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- i) during either the first or second month of operation, the average daily dollar value, the total trading volume, or the number of trades on Alpha ATS L.P. of any type of security is equal to or greater than 10% of the average daily dollar value, the total trading volume, or the number of trades respectively, for the month in that type of security on all marketplaces in Canada; and
 - ii) during at least two of the preceding three months of operation, the average daily dollar value, the total trading volume, or the number of trades on Alpha ATS L.P. of any type of security is equal to or greater than 10% of the average daily dollar value, the total trading volume, or the number of trades respectively, for the month in that type of security on all marketplaces in Canada; and
- (d) The Filer meets its obligations under the registration granted by the Ontario Securities Commission on August 26, 2008 and the Exemption Order granted by the other Jurisdictions on September 16, 2008.

As to the Passport Relief:

“B J. Geisler”

Director, Market Regulation Branch
Ontario Securities Commission

As to the Coordinated Relief:

“Margot C. Howard”

Commissioner
Ontario Securities Commission
Commission

“Paulette Kennedy”

Commissioner
Ontario Securities

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Appendix A:

Sections in the Provincial Securities Acts Relevant to the Recognition of an Exchange & Exemption By the Commission

Jurisdiction	Sections in Provincial Securities Act Relevant to: (a) Recognition of an Exchange and; (b) Exemption by the Commission
British Columbia	(a) S. 25 (b) S. 33(1)
Alberta	(a) S. 62 (b) S. 213
Saskatchewan	(a) S. 25 (b) S. 147.41
Manitoba	(a) S. 139(1) (b) S. 167
Ontario	(a) S.. 21(1) (b) S. 147
Québec	(a) S. 169 (b) S. 263
New Brunswick	(a) S. 36 (b) S. 195.4
Prince Edward Island	(a) S. 70 (a) S. 16.1
Newfoundland & Labrador	(a) S. 24(1) (b) Ss. 138.19 and 142.1