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Headnote

Mutual Reliance Review System for Exemptive Relief Application - exemption pursuant to section 15.1 of National Instrument 21-101 Marketplace Operation and section 12.1 of National Instrument 23-101 Trading Rules from the requirement to comply with National Instrument 21-101 and National Instrument 23-101 until the earlier of July 1, 2002 and the date on which Archipelago Canada is in a position to comply with the requirements of the ATS Rules.

Applicable British Columbia Provisions

National Instrument 21-101

National Instrument 23-101

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 L.L.C.

MRRS DECISION DOCUMENT

WHEREAS the securities regulatory authority or regulator in each of the Provinces of Ontario and British Columbia (the "Decision Maker") has received an application (the "Application") from Archipelago L.L.C. ("Archipelago") for a decision under section 15.1 of National Instrument 21-101 Marketplace Operation and section 12.1 of National Instrument 23-101 Trading Rules that the requirement to comply with National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (together, the "ATS Rules") does not apply to Archipelago until the earlier of July 1, 2002 and the date on which Archipelago Canada is in a position to comply with the requirements of the ATS Rules;

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;

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AND WHEREAS Archipelago has represented to the Decision Makers that:

1. Archipelago is a limited liability company organized under the laws of the State of Delaware with its registered office in Chicago.
2. Archipelago is a registered broker-dealer under the United States Securities Exchange Act of 1934, and is also registered as an “alternative trading system” (“ATS”) pursuant to Regulation ATS in the United States.
3. Archipelago is a member in good standing of the National Association of Securities Dealers in the United States and a participant in the Securities Investor Protection Corporation.
4. Archipelago owns and operates an ATS that matches electronic bids and offers for publicly traded equity securities of U.S. registered companies (the “ARCA System”). Archipelago has effectively created a national limit order book for national markets, including securities listed or quoted on the Nasdaq Stock Market, the New York Stock Exchange and the American Stock Exchange. Subscribers to the ARCA System are broker-dealers and institutional investors.
5. On July 19, 2000, Archipelago became registered with the Ontario Securities Commission as an International Dealer and has been providing access to the ARCA System to Ontario residents pursuant to the terms of such registration.
6. In connection with its International Dealer registration, Archipelago is required to comply with certain terms and conditions of registration (the “Terms and Conditions”), which are attached hereto as Schedule A.
7. Outside of Ontario, in Canada Archipelago currently provides access to its ATS solely to registered investment dealers in British Columbia in reliance on the exemption set out in subsection 45(2)(7) of the Securities Act (British Columbia).
8. In March 2000, Archipelago signed an agreement with the Pacific Exchange, Inc. (“PCX”) pursuant to which the ARCA System is being transformed into a new market, which is called the Archipelago Exchange (“ArcaEx”). ArcaEx is being operated by Archipelago Exchange L.L.C., a wholly-owned subsidiary of Archipelago Holdings, L.L.C. (the parent entity of Archipelago), as a trading ‘facility’ (as such term is defined in Section 3(a)(2) of the United States Securities Exchange Act of 1934) of PCX Equities Inc. (“PCXE”), a wholly owned subsidiary of PCX, and will replace the equity marketplace currently offered by PCX (options trading will continue on the PCX). ArcaEx will provide automatic order execution capabilities for NYSE, Amex, Nasdaq and PCX-traded equity securities.

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9. PCX and PCXE will be responsible for regulating the trading activity on the facility, and Archipelago Exchange, L.L.C. will be responsible for the business of the facility.
10. In connection with these plans, new exchange rules were filed with the SEC in June 2000 and SEC approval was granted on October 25, 2001.
11. The transformation of the ARCA System into ArcaEx is being carried by a migration process that began on March 22, 2002, with the migration of 28 stocks to ArcaEx and will continue throughout 2002 with the migration of additional stocks from the ARCA System to ArcaEx.
12. On March 18, 2002, Archipelago and REDIBook ECN, LLC., (“RediBook”), closed a business combination announced on November 29, 2001. As a result of the business combination, Archipelago is now affiliated with the operator of the RediBook ATS (the “Acquired System”). The Acquired System is an ATS that matches electronic bids and offers for publicly traded equity securities of U.S. registered companies, including securities listed or quoted on the Nasdaq Stock Market, the New York Stock Exchange and the American Stock Exchange. RediBook is a registered broker-dealer under the United States Securities Exchange Act of 1934 and is also registered as an ATS pursuant to Regulation ATS in the United States. RediBook is not registered as a dealer in any Canadian jurisdiction.
13. The current intention is for listed securities that trade on the ARCA System and the Acquired System to migrate to the ArcaEx, while the Nasdaq quoted securities that trade on the ARCA System and the Acquired System are to be integrated onto the Acquired System. The current intention is for the Acquired System to be transferred to and operated by Archipelago as part of the integration of the RediBook and Archipelago businesses during 2002. Ultimately, the current intention is that the Nasdaq quoted securities will also migrate to the ArcaEx from the Acquired System.
14. Archipelago undertakes to comply with the Terms and Conditions until July 1, 2002.
15. Archipelago proposes to establish a wholly-owned subsidiary under the laws of Canada (“Archipelago Canada”) and to cause Archipelago Canada to diligently pursue satisfaction of Investment Dealers Association membership requirements and to proceed expeditiously to become registered as an investment dealer or its equivalent in each of the jurisdictions where Archipelago Canada will carry on its business of an ATS by providing and maintaining the ARCA System and the Acquired System in Canada during such time as these systems trade securities until completion of the migration of securities trading to ArcaEx has been completed.

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16. As soon as Archipelago Canada obtains such registration and membership and is able to comply with the other requirements of the ATS rules, Archipelago will cease to carry on the business of an ATS in the jurisdiction.

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 the ATS Rules that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers is that:

1. Archipelago is exempt from the requirements of the ATS Rules until the earlier of July 1, 2002 and the date on which Archipelago Canada is in a position to comply with all of the requirements of the ATS Rules; and
2. the exemption provided in 1. above shall not apply to the Archipelago in respect of the operation of the Acquired System.

DATED April 10th, 2002.

Randee B. Pavalow

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SCHEDULE A

Registration of Archipelago L.L.C. as an International Dealer Terms and Conditions of Registration

Archipelago L.L.C. has been granted registration as an International Dealer which permits it to provide Ontario resident Designated Institutions (as defined in s. 204 of the Regulation to the *Securities Act*) terminals to trade foreign non-interlisted securities, provided it complies with certain Terms and Conditions set out below.

Part A: Trading Restrictions

In this Part A:

“Canadian issuer” means an issuer incorporated, formed or created under the laws of Canada or any province or territory of Canada.

“foreign security” means a security issued by an issuer that is not a Canadian issuer.

The registrant shall be permitted to execute orders on behalf of customers resident in Ontario but only in foreign securities that are not listed and posted on the Toronto Stock Exchange, The Montreal Exchange or the Canadian Venture Exchange (“CDNX”).

Part B: Information to be Supplied by the Registrant on a Confidential Basis

The registrant agrees to:

- (a) advise the Ontario Securities Commission (the “Commission”) of any substantial or material changes to its electronic trading system and business including, but not limited to, substantial or material changes in the criteria used to screen potential customers, changes in the algorithm regarding matching orders and complying with trading rules (but without prejudice to the registrant’s discretion to exercise its business judgement in accepting and evaluating customers), and whether securities listed only on any of The Toronto Stock Exchange, The Montreal Exchange or CDNX are proposed to be traded through the registrant’s electronic trading system;
- (b) furnish, upon the request of the Commission, access on a confidential basis to filings and/or copies of filings effected by the registrant with the Securities and Exchange Commission of the United States (“SEC”); the most recent No-Action Letter dated January 12, 2001, its Form BD and its Focus Report and notify the Commission if it discontinues the filing of any of these documents;

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- (c) furnish on a quarterly basis a report identifying Ontario resident customers by code and listing stocks traded on behalf of Ontario resident customers so that compliance with the trading restrictions set forth in Part A can be monitored. (Ontario resident customers may be identified on such quarterly reports by identification codes only);
- (d) make available on a quarterly basis a list of foreign securities and securities of Canadian issuers traded through the registrant's electronic trading system which cannot be traded on behalf of the registrant's customers resident in Ontario by virtue of the trading restrictions set forth in Part A;
- (e) furnish promptly upon a request of the Commission any of the following information:
 - (i) a complete list of names and addresses of Ontario-resident customers on the system and their identification codes ("IDs");
 - (ii) a complete list of customer IDs for Ontario resident customers whose access to certain securities traded through the registrant's electronic trading system has been blocked by a mechanism (the "Blocking Mechanism") implemented by virtue of the trading restrictions set forth in Part A;
 - (iii) a list of identification acronyms used for Ontario resident customers with Canadian addresses;
 - (iv) an exception report showing Ontario addresses with IDs out of range or with the Blocking Mechanism switched off;
 - (v) a complete description of the controls over and procedures for identifying Ontario resident customers on the system and implementing the Blocking Mechanism to prevent trading through the registrant's terminals in both interlisted and Canadian non-interlisted securities including specifically, who initially activates the switch, who has access to or the ability to change the setting, and how changes are authorized and logged;
 - (vi) records of all trades by Ontario-resident customers including a description of the securities traded;
 - (vii) identification from the trading records of those trades made directly through a terminal of the registrant and those trades which were made by other means;

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- (viii) the process and criteria used by the registrant to screen potential customers, the identification of parties that have not been accepted as customers and documentation of procedures and reasons for accepting or rejecting a specific customer application;
 - (ix) information regarding the system's algorithm for matching orders and compliance with trading rules; and
 - (x) confirmation of trades and settlement process including procedures for dealing with failed trades.
- (f) maintain books and records necessary to record properly the registrant's business transactions and financial affairs and make these available upon request to staff of the Commission for any valid regulatory purpose.
- (g) report all information to the Securities and Exchange Commission which shall include transactions involving Ontario resident customer investors and which can be segregated from other information and made available on that basis.

Part C: Expiration of Terms and Conditions

The Terms and Conditions set forth in Parts A and B shall cease to apply to the registrant upon the expiry of the sixty day period following the date that Proposed National Instrument 21-101 Marketplace Operation becomes effective.
