

Headnote

NP 11-203– *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Hybrid Application – Filer requested relief from the trade confirmation and statement of account requirements in securities laws where acting solely as execution-only broker in the context of “give-up” trades – Relief granted with respect to give-up trades for institutional customers, provided that a give-up trade agreement is executed with institutional customer and clearing broker and that clearing broker agrees to provide the customers with statements which include give-up trade details.

Applicable Legislative Provisions

Sections 90(1) and 213 of the Act; Sections 14.14 and 15.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Citation: National Bank Financial Inc., Re, 2012 ABASC 527

Date: 20121214

In the Matter of
the Securities Legislation of
Alberta, Saskatchewan, Ontario and Newfoundland and Labrador

and

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

and

In the Matter of
National Bank Financial Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of Alberta and Ontario (the **Dual Exemption Decision Makers**) has received an application from the Filer for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-up Transactions (as defined below), from the requirement (the **Statement of Account Requirement**) that a dealer must deliver a statement of account to each client at least once every three months, or at the end of a month if the client has requested statements on a monthly basis or if a transaction was effected in the client's account during the month (the **Dual Exemption**), and the securities regulatory authority or regulator in Newfoundland and Labrador has received an application for a decision under the securities legislation of that jurisdiction for an exemption, in the context of Give-Up Transactions, from the Statement of Account Requirement (the **First Coordinated Exemption**).

The securities regulatory authority or regulator in each of Alberta, Saskatchewan, Ontario and Newfoundland and Labrador (the **Coordinated Exemption Decision Makers**) has received an

application from the Filer for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-up Transactions, from the requirement (the **Trade Confirmation Requirement**) that every registered dealer that has acted as principal or agent in connection with any purchase or sale of a security must promptly send by pre-paid mail or deliver to the client a written confirmation of the transaction (the **Second Coordinated Exemption**).

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

- (a) the Alberta Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice under section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) that the Dual Exemption is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon Territory;
- (c) the decision with respect to the Dual Exemption evidences the decision of the principal regulator and the securities regulatory authority or regulator in Ontario;
- (d) the decision with respect to the First Coordinated Exemption from the Statement of Account Requirement evidences the decision of the securities regulatory authority or regulator in Newfoundland and Labrador; and
- (e) the decision with respect to the Second Coordinated Exemption from the Trade Confirmation Requirement evidences the decision of each Coordinated Exemption Decision Maker.

Interpretation

Terms defined in MI 11-102 or National Instrument 14-101 *Definitions* have the same meaning if used in this decision unless otherwise defined herein.

Representations

This decision is based upon the following facts represented by the Filer:

1. The Filer is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, as a futures commission merchant under the *Commodity Futures Act* (Ontario) and *The Commodity Futures Act* (Manitoba) and as a derivatives dealer under the *Derivatives Act* (Québec).
2. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the Montréal Exchange and a participating organization of the Toronto Stock Exchange.
3. The head office of the Filer is located in Montréal, Québec.
4. The Filer acts as an executing and clearing broker for Give-up Transactions (as defined

below) that involve the purchase or sale of options on equities or indexes (**Securities**) or of commodity futures contracts or commodity futures options (**Futures Contracts**) that are listed or traded on one or more marketplaces.

5. **Give-up Transactions** are purchases or sales of Securities or Futures Contracts by investors, each of whom is an "institutional customer" within the meaning of IIROC Dealer Member Rule 1.1 (each, an **Institutional Customer**), that have an existing relationship as a client with a clearing broker but wish to use the trade execution services of one or more executing brokers for the purpose of executing such purchases or sales. Under these circumstances, the executing broker will execute the Give-up Transactions in accordance with the Institutional Customer's instructions and then "give up" the Give-up Transactions to the clearing broker for clearing, settlement and/or custody. The service provided by the executing broker is limited to trade execution only.
6. The clearing broker remains subject to the Trade Confirmation Requirement and Statement of Account Requirement in respect of its Institutional Customers in Give-up Transactions. The clearing broker maintains an account for the Institutional Customer that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the Institutional Customer. For a Give-up Transaction, the Institutional Customer does not sign account documentation with the executing broker, and the executing broker does not receive any money, securities, margin or collateral from the Institutional Customer. The Institutional Customer does, however, enter into an agreement with the executing broker and the clearing broker that governs their Give-up Transaction relationship (a **Give-up Agreement**).
7. Although the Filer is responsible for record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not provide Account Services for execution-only customers in Give-up Transactions. Such Account Services remain the responsibility of those clients' clearing brokers.
8. The Filer does, however, record in its own books and records and accounting system all Give-up Transactions that it executes, which generally comprise those Securities and Futures Contract positions held by it that are not allocated to any of its own client accounts. The Filer communicates these unallocated positions to the relevant clearing brokers who either accept or reject the positions so allocated on behalf of their clients based on existing Give-Up Agreements. If a clearing broker rejects a proposed allocation, the Filer contacts the person who executed the trade to obtain clarifying instructions and then allocates the position in accordance with the instructions so received.
9. The Filer prepares a monthly or transaction-by-transaction invoice detailing all Give-up Transactions (including the amount of any commission to the Filer for execution thereof) that the Filer conducted during the month for each Institutional Customer under a Give-up Agreement. The Filer delivers such invoice to the clearing broker who then reconciles the Give-up Transactions with its own records.

10. The clearing broker will have the primary relationship with the Institutional Customers and is contractually responsible for risk monitoring, overall trade monitoring as well as reporting trade confirmations and sending out monthly statements.
11. The Filer is, to the best of its knowledge, in compliance with all IIROC requirements relating to the maintenance of records of executed transactions, and all applicable securities, futures or derivatives legislation in any jurisdiction.
12. Application of the Trade Confirmation Requirement and Statement of Account Requirement to the Filer when it provides only trade execution services in respect of Give-up Transactions:
 - (a) would be duplicative and confusing because delivery of the required trade confirmations and statements of account to execution-only Institutional Customers would capture only some, not all, of the information that would be contained in the trade confirmations and statements of account delivered to the same Institutional Customers by their clearing brokers; and
 - (b) would not be required to establish an audit trail or to facilitate reconciliation of Give-up Transactions as between the Filer and a clearing broker.

Decision

Each of the Dual Exemption Decision Makers and the Coordinated Exemption Decision Makers is satisfied that the decision meets the test set out in the legislation of the jurisdiction for the relevant securities regulatory authority or regulator to make the decision.

The decision of the Dual Exemption Decision Makers under the legislation of the Dual Exemption Decision Makers is that the Dual Exemption is granted, the decision of the securities regulatory authority or regulator in Newfoundland and Labrador under the legislation of that jurisdiction is that the First Coordinated Exemption is granted, and the decision of the Coordinated Exemption Decision Makers under the legislation of the Coordinated Exemption Decisions Makers is that the Second Coordinated Exemption is granted, provided that:

- (a) the Filer provides trade execution services in respect of Give-up Transactions only for Institutional Customers;
- (b) the Filer enters into a Give-Up Agreement with the clearing broker and the Institutional Customer; and
- (c) the clearing broker has agreed to provide each Institutional Customer with written trade confirmations and statements of account that include information for any Give-up Transaction.

For the Commission:

“original signed by”

Glenda Campbell, QC
Vice-Chair

“original signed by”

Stephen Murison
Vice-Chair