

May 16, 2013

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan and Manitoba

and

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

and

In the Matter of
Deutsche Bank Securities Limited (the **Filer**)

DECISION

Background

The securities regulatory authority or regulator in Ontario has received an application from the Filer for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) 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 **Passport Exemption**).

The securities regulatory authority or regulator in each of Alberta, Saskatchewan and Ontario (the **Jurisdictions**) (**Coordinated Exemptive Relief Decision Makers**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) 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 **Coordinated Exemption**).

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

- (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 Alberta, British Columbia, Saskatchewan and Manitoba;
- (c) the decision with respect to the Passport Exemption evidences the decision of the principal regulator;
- (e) the decision with respect to the Coordinated Exemption evidences the decision of each Coordinated Exemptive Relief 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 Alberta, Ontario, British Columbia, Saskatchewan, Manitoba and Quebec. The Filer is applying for registration as a derivatives dealer in Quebec and is seeking corresponding relief under section 86 of the *Derivatives Act* (Quebec) from section 11.1 of the regulations to the *Derivatives Act* (Quebec) (*Regulation respecting derivatives*) in relation to the application of the Statement of Account Requirement.
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 Toronto, Ontario.
4. The Filer acts as an executing broker for Give-up Transactions (as defined below) that involve the purchase or sale of options on equities or indexes that are listed or traded on one or more marketplaces (**Securities**).
5. The following elements, when taken together, constitute give-up transactions (**Give-up Transactions**):
 - (i) purchases or sales of Securities 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 (none of which are their clearing broker) for the purpose of executing such purchases or sales (**Subject Transactions**);
 - (ii) the executing broker will execute the Subject Transactions in accordance with the Institutional Customer's instructions and then "give up" the Subject Transactions to the clearing broker for clearing and settlement (and custody, as applicable); and
 - (iii) 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 open an account 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 Institutional Customers in Give-up Transactions. Such Account Services remain the responsibility of those Institutional Customers' clearing brokers.
8. The Filer does, however, keep detailed records of all Give-up Transactions that it executes. A daily control performed by the Filer's back-office identifies Securities positions held by the Filer and not allocated to any of its clients' 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

Institutional Customers 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 IROC requirements relating to the maintenance of records of executed transactions. The Filer is not, to the best of its knowledge, in default of securities 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 principal regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant securities regulatory authority or regulator to make the decision.



The decision of the principal regulator under the Legislation is that the Passport Exemption is granted, and the decision of the Coordinated Exemptive Relief Decision Makers under the Legislation is that the Coordinated Exemption is granted, provided in each case 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.

In respect of Relief from the Trade Confirmation Requirement (The Coordinated Exemption)

	
Commissioner Ontario Securities Commission	Commissioner Ontario Securities Commission

And in respect of Relief from the Statement of Account Requirement (The Passport Exemption)


Deputy Director, Compliance and Registrant Regulation Ontario Securities Commission