

In the Matter of  
the Securities Legislation of  
Alberta and Saskatchewan (the **Jurisdictions**)

and

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

and

In the Matter of  
**Newedge Canada Inc. (the Filer)**

Decision

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) 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 (as defined below), 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 or an exchange contract must promptly send to the client a written confirmation of the transaction (the **Exemption Sought**).

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

- (a) the Alberta Securities Commission is the principal regulator for this application, and
- (b) the decision evidences the decision of each Decision Maker.

**Interpretation**

Terms defined in 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 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). The Filer has already obtained

relief from the Trade Confirmation Requirement arising under the securities legislation of Ontario (*Newedge Canada Inc., Re* (2009), 32 OSCB 7563).

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 Bourse de Montréal and a participating organization of the Toronto Stock Exchange. The Filer is also a futures commission merchant and clearing participant of ICE Futures Canada, Inc., a dealer with Canadian Trading Quotation System Inc. and Pure Trading, a member of Canadian Derivatives Clearing Corporation and Alpha Exchange, and a participant of Clearing and Depository Services Inc.
3. The head office of the Filer is located in Montréal, Québec.
4. The Filer acts as executing and clearing broker for Give-up Transactions (as defined below) that involve the purchase or sale of futures contracts or options on equities, indices or futures contracts that are listed or traded on one or more marketplaces (**Securities**).
5. **Give-up Transactions** are 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 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 and settlement (and custody, as applicable). The service provided by the executing broker is limited to trade execution only.
6. The clearing broker remains subject to the Trade Confirmation Requirement in respect of its Institutional Customer 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 Institutional Customers in Give-up Transactions. Such Account Services remain the responsibility of the clearing brokers for those Institutional Customers.

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 positions held by it that are not allocated to any of its own Institutional Customer 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. Generally, 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. The Filer is not in default of securities, futures or derivatives legislation in any jurisdiction.
12. Application of the Trade Confirmation 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 to execution-only Institutional Customers would capture only some, not all, of the information that would be contained in the trade confirmations 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**

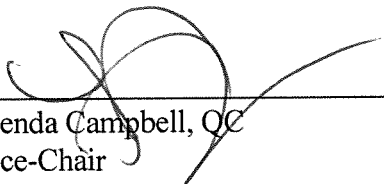
Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer provides trade execution services in respect of Give-up Transactions only for Institutional Customers;

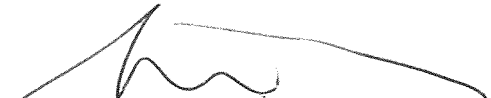
- (b) the Filer enters into a Give-Up Agreement with the clearing broker and the Institutional Customer; and
- (c) the clearing broker has agreed to provide each Institutional Customer with written trade confirmations that include information for any Give-up Transaction.

**For the Commission:**



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Glenda Campbell, QC  
Vice-Chair



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Stephen Murison  
Vice-Chair