

2.1.11 Carta Capital Markets, LLC

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application from U.S. SEC FINRA broker-dealer for relief from the dealer registration requirement to facilitate sales of foreign private issuers' securities held by Canadian residents on an alternative trading system – Relief from the application of all provisions of NI 21-101, NI 23-101 and NI 23-103 that apply to a person or company carrying on business as an alternative trading system – Securities are those of foreign non-reporting issuers with limited connection to Canada – Relief granted subject to terms and conditions.

January 21, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(for a passport application),
BRITISH COLUMBIA,
ALBERTA,
SASKATCHEWAN,
MANITOBA,
QUEBEC,
NEW BRUNSWICK,
NOVA SCOTIA,
NEWFOUNDLAND AND LABRADOR,
PRINCE EDWARD ISLAND,
YUKON,
NORTHWEST TERRITORIES AND
NUNAVUT
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CARTA CAPITAL MARKETS, LLC
(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 from the dealer registration requirement in the Legislation to permit the Filer to provide Canadian residents who hold securities of private issuers domiciled in the United States and other jurisdictions outside of Canada (**foreign private issuers**) with brokerage services to allow them to sell such securities in transactions offered on the Alternative Trading System (**ATS**) operated by the Filer (collectively, the **Passport Exemption** or the **Dealer Registration Relief**).

The securities regulatory authority or regulator in each of the Jurisdictions (the **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 exemptions under:

- (a) section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from NI 21-101 in whole;
- (b) section 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**) from NI 23-101 in whole; and
- (c) section 10 of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) from NI 23-103 in whole

(the **Coordinated Exemptive Relief** or the **Marketplace Relief**, and together with the Dealer Registration Relief, the **Requested Relief**).

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) in respect of the Dealer Registration Relief, 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, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut,
- (c) in respect of the Marketplace Relief, the decision is the decision of the principal regulator, and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

Terms defined in MI 11-102, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) or National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

- 1. The Filer is a corporation incorporated in the State of Delaware. The head office of the Filer is in New York, New York.
- 2. The Filer operates under the business name “**CCMX**”.
- 3. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) (SEC#8-70396), is a member of the Financial Industry Regulatory Authority (**FINRA**) (CRD#: 304751) and is the operator of the ATS known as “**CartaX**”.
- 4. The Filer is a wholly-owned subsidiary of eShares, Inc., doing business as Carta, Inc. (**CINC**). CINC is a corporation incorporated in the State of Delaware. The head office of CINC is in San Francisco, California.
- 5. CINC is a transfer agent registered with the SEC. CINC provides capitalization table management services to private companies, including registrar and transfer agency, equity compensation plan administration and related services.
- 6. CINC provides services to over 20,000 companies and over 1.2 million securityholders globally, including over 250 companies in Canada.
- 7. The Filer has taken steps to rely on the International Dealer Exemption set out in Section 8.18 of NI 31-103 (the **International Dealer Exemption**) in certain Jurisdictions to trade in foreign securities with permitted clients in such Jurisdictions. However, the Filer is unable to rely on the international dealer exemption until such time as the Marketplace relief is granted as a consequence of section 6.2 of NI 21-101, which section provides that, “[e]xcept as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS.”
- 8. If the Marketplace Relief is granted, the Filer will be able to rely on the International Dealer Exemption to trade securities of foreign private issuers to, with or on behalf of permitted clients, since section 6.2 of NI 21-101 will not apply to the Filer.
- 9. The Filer is not in default of securities legislation in any jurisdiction of Canada, other than as a consequence of section 6.2 of NI 21-101. The Filer is in compliance in all material respects with U.S. securities laws.

CartaX

- 10. CartaX is an ATS which offers secondary market transactions in securities (**Eligible Securities**) of Eligible Issuers.
- 11. Two types of transactions are offered on CartaX:
 - (a) secondary purchases and sales of Eligible Securities which facilitate price discovery through a single-price auction-based mechanism (**Carta Cross**); and
 - (b) offerings by an Eligible Issuer or one or more third parties (**Offerors** and each an **Offeror**) to the current holders of Eligible Securities of the Eligible Issuer to buy the Eligible Securities at a set price (**Tender Offers** or **TOs**, and together with Carta Cross, **CartaX Transactions**).
- 12. All Eligible Issuers are customers of CINC’s transfer agency services.

13. The Filer conducts comprehensive due diligence on each Eligible Issuer and obtains representations from each Eligible Issuer that all CartaX Transactions are conducted in compliance with U.S. securities laws and that all Eligible Securities traded on CartaX have been issued pursuant to private placement exemptions under the securities laws in the jurisdiction of the Eligible Issuer and the selling securityholder.
14. The Filer conducts due diligence on each Eligible Issuer and Offeror prior to approving the Eligible Issuer and/or Offeror to conduct a CartaX Transaction, including account registration and onboarding, review and approval of all offering documents and transaction documents and review of all potential buyers and sellers that an Eligible Issuer proposes to invite to participate in the CartaX Transaction.
15. An Eligible Issuer that has been approved to make its shares available for trading on CartaX (an **Approved Issuer**) determines the securities they want to permit to transact and designates existing shareholders and new investors as (**Permissioned Buyers**) for each Carta Cross. Eligible Issuers may also participate in a Carta Cross as Permissioned Buyers. Existing shareholders of an Approved Issuer (e.g., employees, former employees, affiliates/insiders, early-stage investors and others) may be allowed to sell (**Permissioned Sellers**).
16. The Filer works with Eligible Issuers to configure their Carta Cross to maximize orderly price discovery, liquidity and fairness for all participants, within parameters set out in the CartaX initial operating report (**Form ATS**), which has been filed with the SEC. Each Carta Cross is executed at a "Final Clearing Price", which is the single price determined by CartaX's proprietary algorithm at which the maximum number of Eligible Securities can transact between Permissioned Buyers and Permissioned Sellers while respecting order prioritization and minimum fill requirements.
17. CartaX operates on a private, invite-only, closed network. All orders submitted to a Carta Cross auction are submitted on a "sealed-bid" basis, meaning individualized price or volume order information is not revealed to any other participant or the Approved Issuer throughout or after the auction process.
18. Tender Offers feature a single price determined by the Offeror at which selling shareholders can choose whether to tender their Eligible Securities for sale. All Tender Offers are conducted in compliance with the tender offer rules of the *Securities Exchange Act of 1934* (the '**34 Act**'), as amended, including by ensuring that the Tender Offer is made to all shareholders of the Eligible Issuer (the **TO Issuer**). For the purpose of this Decision, **Permissioned Sellers** includes shareholders of TO Issuers that have opened brokerage accounts with the Filer.
19. The Filer represents the orders of Permissioned Buyers, Permissioned Sellers and Offerors to the ATS in an agency capacity only and does not trade on CartaX in a principal capacity. Orders are entered by Permissioned Buyers and Permissioned Sellers through their CCMX brokerage account (an electronic user interface offered by the Filer) and cleared and settled programmatically.
20. The Filer maintains risk controls for restricting or suspending access, disabling functionality or halting trading due to concerns regarding illegal activities, violation of contractual provisions with the Filer, or technical issues which could pose a risk to participants, Approved Issuers, Offerors, CartaX or the capital markets more generally.

Onboarding and KYC

21. Permissioned Sellers must open brokerage accounts with the Filer to enter sell orders for Eligible Securities under Carta Cross transactions and to tender Eligible Securities to Tender Offers. Such orders are directed by the Filer, as agent, to CartaX for execution. Permissioned Sellers do not have direct access to CartaX.
22. Similarly, Permissioned Buyers and Offerors must open brokerage accounts with the Filer to fund buy orders for purchases of Eligible Securities and Tender Offers. Such orders are directed by the Filer, as agent, to CartaX for execution. Permissioned Buyers and Offerors do not have direct access to CartaX.
23. The Filer's onboarding process complies with applicable securities laws, anti-money laundering, anti-terrorist financing and economic sanctions laws in the United States. The Filer has adopted processes for complying with anti-money laundering, anti-terrorist financing and economic sanctions laws in Canada when onboarding permitted clients in reliance on the International Dealer Exemption.
24. Under the Filer's brokerage account agreement, customers are required to acknowledge and agree that:
 - (a) the account is self-directed, and the customer alone is solely responsible for any and all orders placed in its account, and all orders entered by the customer or on the customer's behalf are unsolicited and based on its own investment decisions;

- (b) the customer has not received and does not expect to receive any investment, legal, tax or accounting advice from the Filer; and
 - (c) the customer alone is responsible for determining the suitability of customer's investments in light of customer's particular circumstances and the Filer assumes no responsibility for such determination.
25. The Filer provides customers with relationship disclosure as required under FINRA rules, including disclosure of the risk related to the use of services and the risks involved with opening a brokerage account with the Filer.
26. Permitted Sellers that open brokerage accounts with the Filer are not required to sell their Eligible Securities in the relevant Carta Cross or Tender Offer. Rather, Permitted Sellers may simply use the online interface provided by the Filer to view relevant information about the Eligible Securities.

Canadian Participation in Carta Crosses and Tender Offers

27. Numerous Eligible Issuers have Canadian securityholders. Many Canadian securityholders have acquired their Eligible Securities as equity-based compensation in their capacities as employees, consultants or advisors to an Eligible Issuer or a Canadian affiliate of an Eligible Issuer. Some Canadian securityholders have acquired eligible securities as early stage investors in Eligible Issuers.
28. Canadian permitted clients resident in Jurisdictions where the Filer intends to rely on the International Dealer Exemption may open brokerage accounts with the Filer through which the permitted client may enter buy and sell orders for Eligible Securities through the Filer.
29. Because the Filer, in its capacity as executing broker, routes the orders of Permitted Buyers and Permitted Sellers directly to the ATS which is also operated by the Filer, if the Filer were to provide brokerage services to Canadian securityholders, the Filer would be operating an ATS in the Jurisdictions of residence of such Canadian securityholders.
30. As a result of operating an ATS in the Jurisdictions, the Filer is unable to rely on the International Dealer Exemption in NI 31-103 as a consequence of section 6.2 of NI 21-101, which section provides that, "[e]xcept as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS."
31. Accordingly, the Filer is seeking the Dealer Registration Relief to provide Permitted Sellers that are not permitted clients with brokerage services to allow them to sell such securities in transactions offered on the ATS operated by the Filer. If the Marketplace Relief is granted, the Filer will rely on the International Dealer Exemption in NI 31-103 to provide permitted clients with brokerage services to allow them to buy and sell such securities in transactions offered on the ATS operated by the Filer.
32. Canadian securityholders of Eligible Issuers who do not qualify as permitted clients cannot open brokerage accounts with the Filer and, therefore, cannot sell their Eligible Securities in Carta Crosses or Tender Offers.
33. It would be beneficial to Canadian securityholders who are not permitted clients but who are holders of Eligible Securities to be able to sell their Eligible Securities in CartaX Transactions, as these transactions provide Canadian securityholders with unique opportunities for liquidity and fair price discovery for their Eligible Securities prior to a public offering.
34. It would be beneficial to Canadian institutional investors who are permitted clients to be able to participate as a Permitted Buyer, Permitted Seller or Offeror in CartaX Transactions, as these transactions provide unique opportunities to invest in private issuers.
35. Section 3.1 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada* (**OSC Rule 72-503**) and Section 13 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta* (**ASC Rule 72-501**) (the **Outside Canada Dealer Registration Exemptions**) reflect the policy position of the securities regulators in these Jurisdictions that Canadian residents holding securities of foreign issuers with minimal connections to Canada should be permitted to trade such securities on markets outside of Canada without going through a Canadian registered dealer. Many of the CartaX Transactions would satisfy the conditions set out in the Outside Canada Dealer Registration Exemptions. However, the Requested Relief is necessary because:
- (a) the Outside Canada Dealer Registration Exemptions in Ontario and Alberta generally require the distribution to be made to a person or company outside of Canada; in the context of Carta Crosses, it is not possible for the Filer to ensure with certainty that the purchaser of an Eligible Security from a Canadian Permitted Seller is not also a Canadian resident, since orders interact programmatically and matched orders cannot be manually changed by the Filer;
 - (b) it is possible that a permitted client in Canada could be an offeror in a Tender Offer or a Permitted Buyer in a Carta Cross, in which case the Outside Canada Dealer Registration Exemptions would not be available;

- (c) the Outside Canada Dealer Registration Exemptions are not available in Jurisdictions other than Ontario and Alberta; and
 - (d) Under section 6.2 of NI 21-101, the registration exemptions applicable to dealers under securities legislation (including the Outside Canada Dealer Registration Exemptions) are not available to an ATS such as the Filer.
36. It is expected that all sales of Eligible Securities by Canadian Permitted Sellers made through the Filer would qualify for one or more exemptions from the prospectus requirement, including Sections 2.14 or 2.15 of National Instrument 45-102 *Resale of Securities*, Section 10 or 11 of ASC Rule 72-501 or Sections 2.7 and 2.8 of OSC Rule 72-503. These prospectus exemptions demonstrate the policy position of the CSA that Canadian residents should be permitted to sell their securities of foreign issuers acquired pursuant to prospectus exemptions without compliance with the prospectus requirement provided that there are minimal connections to Canada associated with the transaction.
37. It would be beneficial to Approved Issuers to offer the same opportunities for liquidity and fair price discovery to their Canadian employees, consultants and advisors that have earned equity-based compensation as they offer to their employees in the United States and other jurisdictions where the Filer is authorized to conduct business.

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 regulator or securities regulatory authority to make the decision.

The decision of the principal regulator under the Legislation is that the Dealer Registration Relief is granted, provided that:

- (a) The Filer continues to be registered as a broker-dealer with the SEC and continues to be a member of FINRA.
- (b) The Filer continues to be regulated as an ATS by the SEC and FINRA.
- (c) The Filer materially complies with all applicable conduct and other regulatory requirements of U.S. federal securities law, state securities law of the United States of America and FINRA rules in connection with its customers in Canada.
- (d) Canadian customers of the Filer receive disclosure at the time of account-opening that the Filer operates a self-directed platform and the Filer does not provide advice or recommendations regarding the sale of Eligible Securities in CartaX Transactions.
- (e) The Filer has submitted to the securities regulatory authority or regulator in the jurisdiction of residence of each Canadian customer a completed Submission to Jurisdiction and Appointment of Agent for Service.
- (f) The Filer notifies each Canadian customer at the time of account opening that:
 - (i) the Filer is not registered under the securities laws of the jurisdiction of residence of the customer to make the trade;
 - (ii) that the head office of the Filer is located in New York, New York, USA;
 - (iii) all or substantially all of the assets of the Filer may be situated outside of Canada;
 - (iv) there may be difficulty enforcing legal rights against the Filer because of the above; and
 - (v) the name and address of the agent for service of process of the Filer in the jurisdiction of residence of the customer.
- (g) in the case of CartaX Transactions in which a Canadian customer sells Eligible Securities through the Filer, the Filer takes reasonable steps to ensure the sale is made
 - (i) to a person or company outside of Canada or
 - (ii) if to a person or Company in Canada, the purchaser is a permitted client that is an offeror in a Tender Offer or a Permitted Buyer in a Carta Cross.

For the purposes of this condition, a sale made on or through the facilities of the ATS operated by the Filer is a distribution to a person or company outside Canada if neither the Filer nor any person acting on its behalf has reason to believe that the distribution has been pre-arranged with a buyer in Canada.

- (h) In the case of CartaX Transactions to, with or on behalf of permitted clients, complies
- (i) the Filer is not registered in any jurisdiction of Canada in the category of dealer.

In respect of the Dealer Registration Relief

Date: January 10, 2022

"Cecilia Williams"
Commissioner
Ontario Securities Commission

"Mary Anne De Monte-Whelan"
Commissioner
Ontario Securities Commission

The decision of the principal regulator and the Coordinated Review Decision Makers is that the Marketplace Relief is granted provided that the Filer complies with the terms and conditions attached hereto as Schedule A.

In respect of the Marketplace Relief

Date: January 21, 2022

"Susan Greenglass"
Director, Market Regulation
Ontario Securities Commission

Schedule A

Terms and Conditions

Regulation and Oversight

1. The Filer will continue to be registered as a broker-dealer with the SEC and will continue to be a member of FINRA.
2. The Filer will continue to be regulated as an ATS by the SEC and FINRA.
3. The Filer will promptly notify the Decision Makers if its status in its home jurisdiction has been revoked, suspended, or amended, or the basis on which its status has significantly changed.

Access

4. The Filer will not open an account for a Canadian client unless the client is:
 - (a) a permitted client resident in a Jurisdiction in which the Filer relies on the International Dealer Exemption; or
 - (b) a Permitted Seller that has been designated by an Approved Issuer.

Trading by Canadian Participants

5. The filer will not provide access to a Canadian client to trading in securities of an issuer that is a reporting issuer as defined in applicable Canadian securities legislation or a reporting company under the United States Securities Exchange Act of 1934.
6. Trades on CartaX will be cleared and settled by the Filer as described in the Filer's Form ATS or through a clearing agency or arrangement that has been approved by the SEC.
7. The Filer will permit Canadian clients to trade only those securities which are permitted to be traded on CartaX in the United States and/or in the home jurisdiction of the Approved Issuer in the relevant CartaX Transaction.

Reporting

8. The Filer will comply with all applicable trade reporting requirements under the FINRA rules in respect of all trades conducted on CartaX.
9. The Filer will promptly notify staff of the Decision Makers of any of the following:
 - (a) any material change to its business or operations or the information provided in its application for exemptive relief, including, but not limited to:
 - (i) changes to its regulatory oversight;
 - (ii) the access model, including eligibility criteria, for Canadian clients;
 - (iii) systems and technology for CartaX as described in its current Form ATS on file with the SEC; and
 - (iv) its clearing and settlement arrangements;
 - (b) any material change in the regulations or the laws, rules, and regulations in the United States and/or in the home jurisdiction of the Approved Issuer relevant to the products offered to Canadian clients, provided however that any notice filed under Section 9(a) which describes a change in the Filer's business or operations as a result of such material change in regulations shall satisfy the Filer's obligations under this Section 9(b);
 - (c) any known investigations of, or regulatory action against, the Filer by the regulator in the home jurisdiction or any other regulatory authority to which it is subject, excluding voluntary information requests and routine compliance examinations that are conducted by the regulator in the ordinary course;
 - (d) any matters known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
 - (e) any default, insolvency, or bankruptcy of any participant known to the Filer or its representatives that may have a material, adverse impact upon the Filer or any Canadian client.

10. The Filer will maintain the following updated information and submit such information in a manner and form acceptable to staff of the Decision Makers on a semi-annual basis (within 30 days of the end of each six-month period), and at any time promptly upon the request of staff of the Decision Makers:
- (a) a current list of all Canadian clients, organized on a per provincial and territorial basis, identifying whether the Canadian client is a permitted client;
 - (b) for each CartaX Transaction in which Canadian clients participated during the period:
 - (i) the total trading volume and value originating from Canadian clients, presented on a per provincial and territorial basis, and
 - (ii) the proportion of worldwide trading volume and value on CartaX conducted by Canadian clients, presented in the aggregate for such Canadian clients on a per provincial and territorial basis; and
 - (c) a list of system outages that occurred for any system impacting Canadian clients' trading activity on CartaX which were reported to the regulator in the Filer's home jurisdiction.

Disclosure

11. The Filer will provide to its Canadian clients at the time of account opening disclosure that states that:
- (a) rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;
 - (b) the rules applicable to trading on CartaX may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and
 - (c) the Filer is regulated by the regulator in its home jurisdiction, rather than the Decision Makers.

Submission to Jurisdiction and Appointment of Agent for Service

12. With respect to a proceeding brought by the Decision Makers, staff of the Decision Makers or another applicable securities regulatory authority in Canada arising out of, related to, concerning, or in any other manner connected with that securities regulatory authority's regulation and oversight of the activities of the Filer in Canada, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of that securities regulatory authority's province or territory, and (ii) an administrative proceeding in that province or territory.
13. The Filer will submit to the Decision Makers a valid and binding appointment of an agent for service in those jurisdictions upon which the applicable securities regulatory authorities may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal or other proceedings arising out of or relating to or concerning the applicable securities regulatory authorities' regulation and oversight of the Filer's activities in Canada.

Information Sharing

14. The Filer shall promptly provide to the applicable securities regulatory authorities, on request, any and all data, information and analyses in the custody or control of the Filer that relates to the Filer's services provided to Canadian clients without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:
- (a) data, information and analyses relating to its businesses that is relevant to the Filer's services provided to Canadian clients; and
 - (b) unless prohibited under applicable privacy laws, data, information and analyses of third parties in its or their custody or control that is relevant to the Filer's services provided to Canadian client.