

2.1.11 MarketAxess Canada Company

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement to engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards – relief subject to updated management reviews of systems and controls similar in scope to that which would have applied to an independent systems review – National Instrument 21-101 Marketplace Operation.

Applicable Legislative Provisions

National Instrument 21-101 Marketplace Operation, ss. 12.2 and 15.1.

February 9, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO,
QUEBEC,
BRITISH COLUMBIA AND
ALBERTA
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
MARKETAXESS CANADA COMPANY
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirements in the Legislation that the Filer annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices (collectively, an **ISR**) for each year from 2021 through 2023, inclusive (the **Exemptive Relief Sought**).

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

- (a) the Ontario Securities Commission (**OSC**) is the principal regulator for this application, and

- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) 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 formed under the laws of the Province of Nova Scotia and is an indirect wholly owned subsidiary of MarketAxess Holdings Inc., a corporation formed under the laws of the State of Delaware, listed and publicly traded on NASDAQ;
2. The head office of the Filer is located in New York, New York;
3. The Filer is an alternative trading system (**ATS**), as that term is defined in NI 21-101, that is registered as an investment dealer (or equivalent) in Ontario, Quebec, British Columbia, and Alberta and is a member of the Investment Industry Regulatory Organization of Canada;
4. The Filer has chosen the OSC as its principal regulator pursuant to the guidance set out in subsection 3.6(10) of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* because the OSC is the regulator of the jurisdiction with which the Filer has the most significant connection and where it has carried on business as an ATS under NI 21-101 for the longest period of time;
5. The Filer is an affiliate of MarketAxess Corporation. MarketAxess Corporation operates a platform for the trading of fixed income securities in the United States, is registered as a broker-dealer under the United States Securities Exchange Act of 1934 and is a member of the Financial Industry Regulatory Authority. The Filer is also an affiliate of MarketAxess Europe Limited (together with MarketAxess Corporation, the **Affiliate Platforms**), which has received regulatory approval from the Financial Conduct Authority in the United Kingdom to operate as a multilateral trading facility. The Filer and the Affiliate Platforms are all wholly owned subsidiaries of MarketAxess Holdings Inc.;
6. The Filer, as an ATS, facilitates the execution of orders on the Affiliate Platforms by its subscribers, as defined in NI 21-101 and described in its Form 21-101F2 *Information Statement Alternative Trading System* (**Form F2**), as amended from time to time, (**Subscribers**), through the use of routing

- and execution agreements between the Filer and the Affiliate Platforms;
7. The Filer, as an ATS, offers access to its Subscribers based in Ontario, Quebec, British Columbia, and Alberta to a fixed income system (the **Fixed Income System**) operated by the Affiliate Platforms that facilitates trading in the fixed income securities described in the Filer's Form F2, as amended from time to time;
8. The Affiliate Platforms are subject to robust regulation in their respective home jurisdictions;
9. For each of its systems that support order entry, order execution, trade reporting, trade comparison, data feeds, market surveillance, and trade clearing, the Filer has developed and maintains:
- reasonable business continuity and disaster recovery plans;
 - adequate internal controls over those systems; and
 - adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support, and system software support;
10. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, the Filer:
- makes reasonable current and future capacity estimates;
 - conducts capacity stress tests to determine the processing capability of those systems to perform in an accurate, timely, and efficient manner;
 - tests its business continuity and disaster recovery plans; and
 - reviews the vulnerability of the Fixed Income System and data centre operations to internal and external threats including physical hazards and natural disasters;
11. The Filer's current trading and order entry volumes in the Fixed Income System are less than 55 percent of the current design and peak capacity of the Fixed Income System and the Filer has not experienced any failure of the Fixed Income System;
12. The estimated cost to the Filer of an annual independent systems review by a qualified external auditor would represent a material impairment to the Filer's business on an annual basis;

13. The Filer's Fixed Income System is monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;
14. There are no auxiliary systems on shared networks with the Fixed Income System;
15. The Filer must promptly notify the OSC of any failure to comply with the representations set out herein;
16. The cost of an ISR is prejudicial to the Filer and represents a disproportionate impact on the Filer's revenue; and
17. The Filer is not in default of the Legislation.

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 Exemptive Relief Sought is granted provided that:

1. The Filer must promptly notify the OSC of any material changes to the representations set out herein, including any material changes to the Filer's annual net income or to the market share or daily transaction volume of the Fixed Income System; and
2. The Filer must, in each year from 2021 through 2023, inclusive, require the MarketAxess Independent Audit and Risk Department to complete a review of the Fixed Income System and of its controls, similar in scope to that which would have applied had the Filer undergone an independent systems review, for ensuring it continues to comply with the representations set out herein and must prepare written reports of the MarketAxess Independent Audit and Risk Department's reviews which must be submitted to staff of the OSC no later than (i) 30 days after such reports are provided to the Filer's board of directors or audit committee, or (ii) the 60th day after reports' completion.

"Susan Greenglass"
Director, Market Regulation
Ontario Securities Commission