

THE COMMODITY FUTURES ACT)
)
Section 66(1))

Order No. 6755

June 26, 2013

**BMO NESBITT BURNS INC., CIBC WORLD MARKETS INC. RBC DOMINION
SECURITIES INC., SCOTIA CAPITAL INC., AND TD SECURITIES INC.**

WHEREAS:

(A) BMO Nesbitt Burns Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., Scotia Capital Inc. and TD Securities Inc. (individually, an "Applicant" and collectively, the "Applicants") have applied to The Manitoba Securities Commission (the "Commission") for an order pursuant to section 66 (1) of *The Commodity Futures Act* (the "CFA") exempting each Applicant from the requirements of sections 44 and 45 of the CFA to deliver certain confirmation and statements of trades to customers (the "Delivery Requirements") in connection with acting as an executing broker for Give-Up Transactions;

(B) The Applicants have represented to the Commission that:

- (1) Each Applicant is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, as a futures commission merchant under the CFA and *the Commodity Futures Act* (Ontario) and as a dealing representative under the *Derivatives Act* (Quebec).
- (2) Each Applicant is a member of the Investment Industry Regulatory Organization of Canada ("IIROC") and the TSX Venture Exchange, an approved participant of the Montreal Exchange and a participating organization of the Toronto Stock Exchange.
- (3) The head office of each Applicant is located in Toronto, Ontario.
- (4) Each Applicant acts as an executing and clearing broker for Give-Up Transactions (as defined below) that involve the purchase and sale of commodity futures contracts and commodity futures options (collectively, "Futures Contracts").
- (5) A Give-Up Transaction is a purchase or sale of Futures Contracts by an Institutional Customer (as defined below) that has an existing relationship as a client with a clearing broker but wishes to use the trade execution services of one or more other executing brokers for the purpose of executing such purchases or sales ("Subject Transactions") on one or more markets, whether domestic or global. Under these circumstances, the executing broker will execute the Subject Transactions as

directed by the Institutional Customer and give-up such trades to the clearing broker for clearing, settlement and custody.

- (6) The service provided by the executing broker will be limited to trade execution only. "Institutional Customers" are "Institutional Clients" as defined in IIROC Dealer Member Rule 1.1.
- (7) The clearing broker will remain subject to the applicable Delivery Requirements in respect of its Institutional Customers in Give-Up Transactions. The clearing broker will maintain 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 will not sign account documentation with the executing broker nor will the executing broker receive any monies, securities, margin or collateral from the Institutional Customer. The Institutional Customer, however, will enter into an agreement with the executing broker and the clearing broker that governs their "give-up" relationship (a "Give-Up Agreement").
- (8) Although each Applicant is responsible for its own record keeping, bookkeeping, custody and other administrative functions ("Account Services") in respect of its own Institutional Customers, it does not provide Account Services for an execution only Institutional Customer. Such Account Services remain the responsibility of those Institutional Customers' clearing broker.
- (9) Each Applicant does, however, record in its own books and records and accounting system all Give-Up Transactions that it executes, which generally comprise those Futures Contracts positions held by it that are not allocated to any of its own accounts. The Applicant 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 Applicant contacts the person who executed the trade to obtain clarifying instructions and then allocates the position in accordance with the instructions so received.
- (10) Each Applicant prepares a monthly or transaction by transaction invoice detailing all Give-Up Transactions (including the amount of any commission to the Applicant for execution thereof) that the Applicant conducted during the month for each Institutional Customer under a Give-Up Agreement. The Applicant delivers

such invoice to the clearing broker who then reconciles the Give-Up Transactions with its own records.

- (11) 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.
- (12) Each Applicant is 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.
- (13) Section 44 (1) of the CFA requires that a registered dealer that has acted as an agent in respect of a trade in a commodity futures contract or commodity futures option, including a trade upon the exercise of a commodity futures option, shall, without delay, provide a written confirmation of the transaction to, among others, the customer.
- (14) Section 45 (1) of the CFA requires that a registered dealer that has acted as agent in respect of a liquidating trade in a commodity futures contract or commodity futures option shall, without delay, provide, in addition to a written trade confirmation, a prescribed form of written statement of the purchase and sale to, among others, the customer.
- (15) Section 45 (2) of the CFA provides that where a commodity futures contract or commodity futures option transaction has been effected during a month, or there remains outstanding an unexpired and unexercised commodity futures option, or an open commodity futures contract, in a customer's account, the dealer must send a prescribed form of written monthly statement to, among others, the customer.
- (16) Application of the Delivery Requirements to each Applicant when it provides only trade execution services in respect of Give-Up Transactions would:
 - (a) be duplicative and confusing because delivery of the required confirmations and statements of accounts to execution only Institutional Customers would capture only some, not all, of the information that would be captured by the confirmations and contained in statements of account that are delivered to the same Institutional Customers by their clearing brokers; and

- (b) not be required to establish an audit trail or to facilitate reconciliation of Give-Up Transactions as between the Applicant and a clearing broker.

(C) Based on the foregoing, the Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

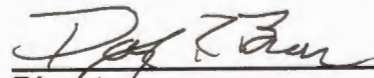
IT IS ORDERED:

1. **THAT** pursuant to section 66 (1) of the CFA each Applicant is exempt from the requirements of sections 44(1) and 45(1)(2) of the CFA for the purposes of acting as executing broker for Give-Up Transactions provided that:

- (a) the Applicant provides trade execution services in respect of Give-Up Transactions only for Institutional Customers;
- (b) the Applicant 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 Subject Transactions.

2. **THAT** the fee for this order is \$650.

BY ORDER OF THE COMMISSION



Director