

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Fortrade Canada Limited, 2021 ABASC 103

Date: 20210706

Fortrade Canada Limited

Background

1. Fortrade Canada Limited (the **Filer**) has applied to the Executive Director of the Alberta Securities Commission (the **Commission**) for an order under section 7.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) exempting the Filer from the requirements of section 6.1 of NI 45-106 in connection with the distribution of contracts for difference and over-the-counter (**OTC**) foreign exchange contracts (collectively, **CFDs**) to Alberta residents (the **Exemption Sought**), provided that the Filer complies with the terms of this Order.

Interpretation

2. Terms defined in the *Securities Act* (Alberta) or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined.

Representations

3. This order is based on the following facts represented to the Commission by the Filer;
 - (a) The Filer is a corporation incorporated under the laws of British Columbia with its head office in Vancouver, British Columbia.
 - (b) The Filer is registered as a dealer in the category of investment dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan and Yukon, and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).
 - (c) The Filer is not in default of applicable securities legislation in any province or territory of Canada, or IIROC Rules or IIROC Acceptable Practices (as defined below).
 - (d) The Filer wishes to offer CFDs to investors in Alberta pursuant to applicable prospectus exemptions in NI 45-106 without having to file a Form 45-106F1 *Report of Exemption Distribution* (**Form 45-106F1**).
 - (e) As a member of IIROC, the Filer is only permitted to enter into CFDs pursuant to the rules and regulations of IIROC (the **IIROC Rules**).

- (f) In addition, IIROC has communicated to its members certain additional expectations as to acceptable business practices (**IIROC Acceptable Practices**) as articulated in IIROC's paper "Regulatory Analysis of Contracts for Differences (CFDs)" published by IIROC on June 6, 2007, as amended on September 12, 2007, for any IIROC member proposing to offer CFDs to investors. The Filer is in compliance with IIROC Acceptable Practices in offering CFDs. The Filer will offer CFDs in accordance with IIROC Acceptable Practices as may be established from time to time, and will not offer CFDs linked to bitcoin, cryptocurrencies or other novel or emerging asset classes to investors in Alberta without the prior written consent of IIROC.
- (g) A CFD is a derivative product that allows clients to obtain economic exposure to the price movement of an underlying instrument, such as a share, index, market sector, currency pair, treasury or commodity, without the need for ownership and physical settlement of the underlying instrument. Unlike certain OTC derivatives, such as forward contracts, CFDs do not require or oblige either the principal counterparty (being the Filer for the purposes of the Exemption Sought) nor any agent (also being the Filer for the purposes of the Exemption Sought) to deliver the underlying instrument.
- (h) CFDs to be offered by the Filer will not confer the right or obligation to acquire or deliver the underlying security or instrument itself, and will not confer any other rights of shareholders of the underlying security or instrument, such as voting rights. Rather, a CFD is a derivative instrument which is represented by an agreement between a counterparty and a client to exchange the difference between the opening price of a CFD position and the price of the CFD at the closing of the position. The value of the CFD is generally reflective of the movement in prices at which the underlying instrument is traded at the time of opening and closing the position in the CFD.
- (i) CFDs to be offered by the Filer allow clients to take a long or short position on an underlying instrument, but unlike futures contracts, they have no fixed expiry date, standard contract size or an obligation for physical delivery of the underlying instrument.
- (j) CFDs allow clients to obtain exposure to markets and instruments that may not be available directly, or may not be available in a cost-effective manner.
- (k) The Filer is the counterparty to its clients' CFD trades; it will not act as an intermediary, broker or trustee in respect of the CFD transactions. The Filer does not manage any discretionary accounts, nor does it provide any trading advice or recommendations regarding CFD transactions.
- (l) As securities, CFDs are subject to the prospectus requirement in securities legislation. As derivatives, CFDs are subject to securities legislation concerning derivatives. As a result, trading in a CFD to an accredited investor triggers both the requirement in NI 45-106 to file Form 45-106F1 and the requirement in Multilateral

Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (MI 96-101) to report the trade to a derivatives trade repository.

- (m) The requirement to file Form 45-106F1 in respect of a CFD trade does not result in jurisdictions of Canada in which the regulator or securities regulatory authority has exempted CFD trading from the prospectus requirement. The requirement to both file Form 45-106F1 in respect of a CFD trade and report the trade to a derivatives trade repository only results in Alberta.
- (n) The Filer submits that the derivatives trade reporting requirements in MI 96-101 are more ideally suited to active trading on an OTC derivative trading platform than are the exempt distribution reporting requirements under NI 45-106.
- (o) The Filer submits that the trade data reported pursuant to MI 96-101 is sufficient to satisfy the regulatory objectives of reporting pursuant to NI 45-106F1, in that it includes information sufficient to enable the regulator to audit trades for compliance with securities legislation (including the availability of a prospectus exemption), and to oversee the market generally.
- (p) The Filer wishes to avoid duplicative reporting, and submits that the costs of filing pursuant to both the MI 96-101 and NI 45-106F1 requirements are unduly onerous.

Decision

4. The Commission orders that the Exemption Sought is granted, provided that the Filer complies with both of the following conditions:
 - (a) the Filer complies with all trade reporting obligations under MI 96-101; and
 - (b) in addition to any other reporting required by securities legislation in Alberta, the Filer provides, on a timely basis, any report, data, document or information that may be requested by the Executive Director from time to time as reasonably necessary for the purpose of monitoring compliance with securities legislation in Alberta and the conditions of this order, in a format acceptable to the Executive Director.

“original signed by”

Timothy Robson
Manager, Legal
Corporate Finance
Alberta Securities Commission