

## ALBERTA SECURITIES COMMISSION

## BLANKET ORDER 91-505

Citation: Blanket Order 91-505, Re, 2012 ABASC 536

Date: 20121219

## Over-the-Counter Derivatives Transactions

## Definitions

1. Terms defined in the *Securities Act* (Alberta) (the **Act**) or in National Instrument 14-101 *Definitions* have the same meaning in this Order. In addition:
  - (a) “**agency**” means a person or company that is established for the purpose of receiving, assembling, and publishing information concerning the details of over-the-counter trades in futures contracts;
  - (b) “**over-the-counter trade**” includes any trade in futures contracts other than trades in exchange contracts which are traded pursuant to the by-laws, rules, or regulations of an exchange;
  - (c) “**physical commodity contract**” means a futures contract that
    - (i) is not an exchange contract,
    - (ii) contains an obligation to make or take future delivery of a commodity other than cash or a currency, and
    - (iii) is intended by the counterparties to be physically settled; and
  - (d) “**qualified party**” means any of the entities listed in the Appendix to this Order, where each is acting as principal, or as an agent or trustee for accounts that are fully managed by it. For the purposes of this Order, a party is a qualified party for the purpose of an over-the-counter trade in a futures contract if that party is a qualified party at the time the party enters into the contract.

## Background

2. The Act prohibits a person or company from acting as a dealer in securities or exchange contracts, unless exempted from the dealer registration requirement.
3. The Act prohibits the distribution of securities unless a preliminary and final prospectus have been filed with the Commission and the Executive Director has issued receipts therefor, without an exemption from the prospectus requirement.
4. The Act defines a “security” to include a “futures contract” that is not an exchange contract. As defined in the Act, a “futures contract” includes the substance of an instrument commonly referred to as a derivative such as an obligation to exchange cash flows based on reference to an underlying benchmark. As a result, absent an available

exemption, dealings in, or distributions of, futures contracts are subject to the dealer registration requirement, the prospectus requirement, or both.

**Order**

5. The Commission, considering it would not be prejudicial to the public interest, orders under section 213 of the Act as follows:

- (a) the prospectus requirement does not apply to a distribution of a futures contract to a qualified party; and
- (b) the dealer registration requirement does not apply in respect of an over-the-counter trade in
  - (i) a futures contract where each party to the trade is a qualified party; or
  - (ii) a physical commodity contract;

provided that a person or company relying on this paragraph 5(b) complies with such requirements, among the following, as the Executive Director of the Commission may impose on such person or company, or in respect of such trade or class of trades:

- (iii) to report the trade to an agency recognized by the Commission;
- (iv) to effect the trade, or class of trades, on or through the facilities of an exchange recognized by the Commission or exempted by the Commission from the requirement to be recognized as an exchange;
- (v) to clear the trade, or class of trades, on or through the facilities of a clearing agency specified, or a clearing agency within a class of clearing agencies specified, by the Executive Director of the Commission; or
- (vi) to maintain at least a prescribed minimum excess working capital in respect of a trade, or class of trades, not cleared on or through the facilities of a clearing agency specified, or a clearing agency within a class of clearing agencies specified, by the Executive Director of the Commission.

6. This Order comes into force on 31 December 2012.

**For the Commission:**

*“original signed by”*

Glenda Campbell, QC  
Vice-Chair

#4321674

*“original signed by”*

Stephen Murison  
Vice-Chair

#4321674

**APPENDIX**  
**QUALIFIED PARTIES**

*Banks*

- (A) a bank to which the *Bank Act* (Canada) applies;
- (B) Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
- (C) a bank subject to the regulatory regime of a country that is a member of the Basle Accord (the "Accord") or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the bank has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

*Commercial User*

- (D) a person or company that sells, buys, trades, produces, markets, brokers or otherwise uses in its business a commodity and as a consequence enters into an over-the-counter trade in a futures contract;

*Credit Unions and Caisses Populaires*

- (E) a credit union central or a federation of caisses populaires or any credit union or regional caisse populaire located, in each case, in Canada;

*Loans and Trust Companies*

- (F) a loan or trust corporation registered under the loan and trust corporations legislation of a province or territory of Canada or under the *Trust and Loan Companies Act* (Canada);
- (G) a loan or trust company subject to the regulatory regime of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the loan company or trust company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

*Insurance Companies*

- (H) an insurance company licensed to do business in Canada or a province or territory of Canada if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

(I) an insurance company subject to the regulatory regime of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

*Sophisticated Entities*

(J) a person or company that

(i) together with its affiliates has entered into one or more over-the-counter trades involving futures contracts with counterparties that are not its affiliates, if

(a) the trades had a total gross dollar value of or equivalent to at least \$1 billion in notional principal amount; and

(b) any of the contracts relating to one of these trades were outstanding on any day during the previous 15 month period, or

(ii) together with its affiliates had total gross marked-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, with counterparties that are not its affiliates in one or more over-the-counter trades involving futures contracts on any day during the previous 15 month period;

*Individuals and Their Holding Companies*

(K) an individual who has a net worth of at least \$5 million (or its equivalent in another currency) excluding the value of his or her principal residence, and any holding company of which such individual owns all of the shares;

*Governments/Agencies*

(L) Her Majesty in Right of Canada or any province or territory of Canada and all Crown corporations, instrumentalities and agencies of the Canadian federal or provincial or territorial governments or the Alberta Treasury Branch;

(M) a national government of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Basle Accord but has adopted the regulatory and supervisory rules set out in the Basle Accord and any instrumentality or agency of that government or corporation wholly-owned by that government;

(N) a Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;

*Corporations and other Entities*

(O) a company, partnership, unincorporated association, organization or trust, other than an entity referred to in (A), (B), (C), (D) (E), (F), (G), (H), (I) and (J) with total assets, as shown on the last audited balance sheet, in excess of \$25 million (or its equivalent in another currency);

*Pension Plan or Fund*

(P) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial or territorial pension commission, if the pension fund has total net assets, as shown on the last audited balance sheet, in excess of \$50 million, provided that, in determining net assets, the liability of a fund for future pension payments shall not be included;

*Mutual Funds and Investment Funds*

(Q) a mutual fund or non-redeemable investment fund if each investor in the fund is a Qualified Party;

(R) a mutual fund if the investments of the fund are managed by a company that is registered under the Act or securities legislation of another province or territory in Canada as a portfolio manager;

(S) a non-redeemable investment fund if the person responsible for providing investment advice to the fund is registered under the Act or securities legislation of another province or territory in Canada as an adviser, other than a securities adviser;

*Brokers/Investment Dealers*

(T) a person or company registered under the Act or securities legislation of another province or territory in Canada as a broker or an investment dealer or both;

(U) a person or company registered under the *Securities Act* (Ontario) as an international dealer if the person or company has total assets, as shown on its last audited balance sheet, in excess of \$100 million or its equivalent in another currency;

(V) a person or company whose account is fully managed by a registered portfolio manager or broker or investment dealer acting as a trustee or agent for such person or company;

(W) a direct or indirect wholly-owned subsidiary of any of the entities described in paragraphs (A), (B), (C),(D), (E), (F), (G), (H), (I), (J), (L), (M), (N), (O) , (P), (T) and (U);

(X) a holding body corporate of which any of the entities described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (L), (M), (N), (O), (T) and (U) is a direct or indirect wholly-owned subsidiary;

(Y) a direct or indirect wholly owned subsidiary of a holding body corporate described in paragraph (X);

(Z) a firm, partnership or joint venture or other form of unincorporated association in which one or more of the entities described in paragraphs (W), (X) or (Y) have a direct or indirect controlling interest;

(AA) a party whose obligations in respect of the over-the-counter trade in a futures contract for which the determination is made are fully guaranteed by another qualified party;

(BB) a portfolio manager or a financial intermediary referred to in paragraphs (A), (E), (F), (H), (L), (T) or (U) above, while acting as manager of accounts of a person, company, pension fund or pooled fund trust, which accounts are fully managed by such portfolio manager or financial intermediary; and

(CC) a broker or investment dealer acting as a trustee or agent for the person, company, pension fund or pooled fund trust under section 65 of Commission rules.

REVOKED PER 2014 ABASC 426