

January 2, 2014

The Legislative Assembly of Alberta is considering amendments to the *Securities Act* (Alberta) (the **Act**) to revise the statutory framework for the regulation of over-the-counter derivatives trading in Alberta and to harmonize all derivatives related provisions in the Act with other Canadian jurisdictions. Bill 42, the *Securities Amendment Act, 2013*, received second reading on 3 December 2013. The 1st session of the 28th Legislature ended on 4 December 2013 before Bill 42 could be a read a third time. Accordingly, the proposed amendments were not enacted and are not in force. The full text and current status of Bill 42 can be accessed at the Alberta Legislative Assembly website under *Bills and Amendments*:

http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=042&legl=28&session=1.

Until such time as the Act is revised and associated rules applicable to derivatives trading are implemented, the regulatory framework governing over-the-counter derivatives trades in Alberta can be summarized as follows.

The Commission regulates over-the-counter derivative transactions in Alberta under the existing provisions of the Act, section 8(2) of the *Alberta Securities Commission Rules* (General) (the **Rules**) and Blanket Order 91-505 *Over-the-Counter Derivatives Transactions* (the **Order**). An over-the-counter derivative falls within the legislated definition of a futures contract in the Act. As such, an over-the-counter derivative transaction is regulated as a trade in securities under the Act. This has two primary implications for an over-the-counter derivative transaction in Alberta, namely that the transaction is subject to both the dealer registration and prospectus requirements in the Act. These requirements would apply but for the effect of the Order.

The Order provides an exemption from the prospectus requirement for an over-the-counter derivative trade between sophisticated counterparties who meet the definition of a 'qualified party' in the Order. A 'qualified party' for the purposes of the Order includes 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. The Order provides an exemption from the dealer registration requirement for an over-the-counter derivative trade between sophisticated counterparties who meet the definition of a 'qualified party' in the Order and also provides an exemption from the dealer registration requirement for an over-the-counter trade in a commodity futures contract which is intended to be physically settled by the counterparties.

The Order provides the Executive Director with the power to require persons who rely on the exemption from the dealer registration requirement in the Order to comply with prescribed requirements respecting the trading, clearing and reporting of over-the-counter derivative transactions. Section 8(2) of the Rules provides the Executive Director with similar powers in

relation to the trading, clearing and reporting of over-the-counter derivative transactions by registrants. At this time, the Executive Director has not imposed any such requirements on over-the-counter derivative transactions in Alberta.

The Commission and the other CSA jurisdictions continue work to modernize the regulatory framework governing derivative trades in Canada. The CSA has published a series of consultation papers outlining issues to be addressed in this regulatory reform work, as well as a proposed model rule on trade repositories and derivatives data reporting. All existing and future consultation papers and proposed model rules governing derivatives trades are and will be posted on the Commission website at www.albertasecurities.com.

Questions

If you have questions or require further information in relation to the existing regulatory framework governing over-the-counter derivatives trades in Alberta, please contact:

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