

ALBERTA SECURITIES COMMISSION

BLANKET ORDER 91-506

Citation: Re Blanket Order 91-506, 2014 ABASC 426

Date: 20141031

Over-the-Counter Trades in Derivatives

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.

2. In this Order:

"**derivative-like security**" means a security as defined in the Act that also falls within one or more of the categories of contract or instrument listed in subparagraph 1(n.01)(i) of the Act;

"**exchange contract**" means either of the following where its performance is guaranteed by a clearing agency and it is traded on an exchange pursuant to standardized terms and conditions set out in the bylaws, rules or regulations of that exchange at a price agreed on when the contract or option is entered into on the exchange:

- (a) an option;
- (b) an obligation to make or take future delivery of any of the following:
 - (i) a commodity;
 - (ii) a security;
 - (iii) cash if the amount of cash is derived from, or by reference to, a variable, including any of the following:
 - (A) a price or quote for a commodity or security;
 - (B) an interest rate;
 - (C) a currency exchange rate;
 - (D) an index or benchmark;

"managed account" means an account of a client for which a person or company

- (a) makes the investment decisions if that person or company has discretion to trade in securities or derivatives for the account without requiring the client's express content to a transaction, and
- (b) if required by law, the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or of a foreign jurisdiction;

"over-the-counter trade" means a trade in a derivative or a derivative-like security, other than a trade in an exchange contract traded pursuant to the bylaws, rules or regulations of a securities or futures exchange;

"physical commodity contract" means a derivative or derivative-like security that is not an exchange contract and that both

- (a) contains an obligation to make or take future delivery of a commodity, other than cash or a currency, and
- (b) at the time it is traded, is intended by the counterparties to be settled by physical delivery of the commodity or by delivery of evidence of legal title to the commodity;

"qualified party" means any of the following, if acting as principal or as an agent or trustee on behalf of a managed account:

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that statute;
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;
- (c) an authorized foreign bank in Schedule III of the *Bank Act* (Canada);
- (d) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
- (e) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or investment dealer;

- (f) a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada), or by a pension commission or similar regulatory authority of a jurisdiction of Canada;
- (g) a wholly-owned subsidiary of a pension fund referred to in paragraph (f);
- (h) a person or company organized in a foreign jurisdiction that is analogous to a person or company referred to in any of paragraphs (a) to (g);
- (i) the government of Canada or of a jurisdiction of Canada;
- (j) a Crown corporation, agency or wholly-owned entity of the government of Canada or of a jurisdiction of Canada whether acting as principal or as agent or trustee on behalf of such government or another entity or fund on whose behalf it is authorized to act;
- (k) a national, federal, state, provincial, territorial or municipal government of or in a foreign jurisdiction, or an agency of that government;
- (l) a municipality in Canada;
- (m) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation of a jurisdiction of Canada or of a foreign jurisdiction, acting on behalf of a managed account;
- (n) a person or company acting on behalf of a managed account;
- (o) an investment fund if one or more of the following apply:
 - (i) each investor in the fund is a qualified party;
 - (ii) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
 - (iii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;
- (p) a person or company that buys, sells, trades, produces, markets, brokers or otherwise uses a commodity in its business and that executes an over-the-counter trade in a derivative or a derivative-like security provided that a material component of the underlying interest of the derivative or derivative-like security is any of the following:
 - (i) a commodity that the person or company buys, sells, trades, produces, markets, brokers or otherwise uses in the ordinary course of its business;

- (ii) a commodity, security or variable that directly or indirectly affects the commodity that the person or company buys, sells, trades, produces, markets, brokers or otherwise uses in the ordinary course of its business;
 - (iii) a commodity, security or variable for which there is a high degree of correlation between the movement in its value and the movement in the value of the commodity that the person or company buys, sells, trades, produces, markets, brokers or otherwise uses in the ordinary course of its business;
 - (iv) another derivative or derivative-like security which is not listed for trading on an exchange, where a material component of the underlying interest of that other derivative or derivative-like security is a commodity, security or variable referred to in any of subparagraphs (i) to (iii);
- (q) a person or company to which, with its affiliates, either of the following applies:
- (i) the person or company has executed one or more over-the-counter trades in derivatives or derivative-like securities with counterparties that are not its affiliates, provided that each of the following applies:
 - (A) the trades had a total gross value of at least \$1 billion (or its equivalent in another currency) in notional principal amount;
 - (B) any of the derivatives or derivative-like securities relating to one of these trades was outstanding on any day within the 15 months prior to the trade;
 - (ii) the person or company had on any day since the date that is 15 months prior to the trade total gross marked-to-market positions of at least \$100 million (or its equivalent in another currency) aggregated across counterparties, in one or more over-the-counter trades in derivatives or derivative-like securities;
- (r) an individual who, either alone or with their spouse, has net assets of at least \$5 million;
- (s) a person or company, other than an individual or an investment fund, that has total assets of at least \$25 million as shown on their most recently prepared annual financial statements or interim report;
- (t) a person or company that is directly or indirectly wholly owned (not taking into account securities required by law to be held by directors) by one or more qualified parties;

- (u) a person or company that directly or indirectly wholly owns (not taking into account securities required by law to be held by directors) a qualified party;
- (v) a person or company that is directly or indirectly wholly owned (not taking into account securities required by law to be held by directors) by a person or company referred to in paragraph (u);
- (w) a person or company directly or indirectly controlled by one or more qualified parties that are not individuals or investment funds;
- (x) a person or company whose obligations under the derivative or derivative-like security that is being traded are fully guaranteed by one or more qualified parties.

Background

3. The dealer registration requirement of Alberta securities laws prohibits a person or company from acting as a dealer unless registered, absent an available exemption.
4. The prospectus requirement of Alberta securities laws prohibits a person or company from trading in a security if the trade would be a distribution without a receipted prospectus, absent an available exemption.
5. The Alberta Securities Commission (the **Commission**) has determined to substantially preserve the scope of the exemptions from the dealer registration requirement and the prospectus requirement available under Blanket Order 91-505 *Over-the-Counter Derivatives Transactions (BO 91-505)* following the introduction, effective 31 October 2014, of a new framework and terminology for the regulation of derivatives through the *Securities Amendment Act, 2014*.

Order

6. Subject to section 7, 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 derivative-like security to a qualified party;
 - (b) the dealer registration requirement does not apply to an over-the-counter trade in a derivative or a derivative-like security if either of the following applies:
 - (i) each counterparty is a qualified party;
 - (ii) the trade is in a physical commodity contract.
7. A person or company relying on either or both of paragraphs 6(a) and (b) must comply with the requirements that the Executive Director of the Commission may impose on such person or company in respect of a trade or class of trades, including one or more of the following:

- (a) that the trade or class of trades be reported to a trade repository recognized or exempted from recognition by the Commission;
 - (b) that the trade or class of trades be made on an exchange recognized or exempted from recognition by the Commission;
 - (c) that the trade or class of trades be cleared, or cleared and settled, through a clearing agency that is recognized or exempted from recognition by the Commission;
 - (d) that in respect of a trade or class of trades not cleared, or cleared and settled, through a clearing agency, the person or company have at least a prescribed minimum excess working capital.
8. The Commission, considering it would not be prejudicial to the public interest, orders under section 214 of the Act that BO 91-505 is revoked.

This Order comes into force on 31 October 2014.

For the Commission:

"original signed by"

Stephen Murison
Vice-Chair

"original signed by"

Tom Cotter
Vice-Chair