

ALBERTA SECURITIES COMMISSION

COORDINATED BLANKET ORDER 93-930

**Citation: Re Temporary Exemptions for Derivatives Firms from Certain Obligations When Transacting with Certain Investment Funds and for Senior Derivatives Managers from Certain Reporting Obligations, 2024 ABASC 127** **Date: 20240725**

**Definitions**

1. Terms defined in the *Securities Act* (Alberta) (the **Act**), National Instrument 14-101 *Definitions* and National Instrument 93-101 *Derivatives: Business Conduct*<sup>1</sup> (the **Business Conduct Rule**) have the same meaning in this Order.

**Background**

2. On September 28, 2023, the Alberta Securities Commission (the **Commission**) published the Business Conduct Rule, which comes into force on September 28, 2024.

**Uniform Treatment of Certain Investment Funds**

3. The Business Conduct Rule uses a two-tiered framework to regulate the conduct of derivatives firms:
  - (a) certain obligations in the Business Conduct Rule apply to all transactions, whether a derivatives firm is transacting with an eligible derivatives party (an **EDP**) or a non-eligible derivatives party (a **non-EDP**):
    - (i) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];
    - (ii) sections 24 [*Application and interaction with other instruments*] and 25 [*Segregating derivatives party assets*];
    - (iii) section 28(1) [*Content and delivery of transaction information*]; and
    - (iv) Part 5 [*Compliance and recordkeeping*] (collectively, the **Core Obligations**), and
  - (b) certain additional obligations (the **Additional Obligations**) in the Business Conduct Rule apply only when a derivatives firm is transacting with a non-EDP.
4. The EDP designation in this framework functions as a status test to distinguish between derivatives parties that have sufficient sophistication or financial resources (i.e., EDPs) and those that do not (i.e., non-EDPs). While transactions by derivatives firms with EDPs

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<sup>1</sup> As at the signing date of this Order, the Business Conduct Rule is Multilateral Instrument 93-101 *Derivatives: Business Conduct*. Subject to approval by British Columbia's Minister of Finance, the Business Conduct Rule would be National Instrument 93-101 *Derivatives: Business Conduct* by September 28, 2024, the effective date of this Order. Therefore, this Order refers to the document as a National Instrument.

require adherence to only the Core Obligations in the Business Conduct Rule, transactions with non-EDPs require adherence to both the Core Obligations and the Additional Obligations.

5. After publication on September 28, 2023 of the advance notice of adoption of the Business Conduct Rule, staff of the Commission (**Staff**) received submissions from certain derivatives market participants that the same derivatives party may be subject to inconsistent obligations under the Business Conduct Rule. Specifically, certain investment funds that would qualify as EDPs under paragraph (l) of the EDP definition where they are managed or advised by a registered investment fund manager or a registered adviser under the securities legislation of a jurisdiction of Canada, would be treated as non-EDPs where they are managed or advised by an investment fund manager or adviser that is registered or authorized to carry on business under the legislation of a foreign jurisdiction, including a foreign investment fund manager or adviser registered with or authorized by the United States Securities and Exchange Commission. This inconsistency does not align with paragraph (k) of the EDP definition in the context of managed accounts, which allows a derivatives party to be considered an EDP, regardless of it being managed by a registered or authorized adviser or derivatives adviser under the securities legislation of a jurisdiction of Canada or by a registered or authorized foreign equivalent adviser or derivatives adviser.
6. As a result Staff received a request to apply the Business Conduct Rule so that consistent treatment is provided to both domestic- and foreign-managed or foreign-advised investment funds seeking EDP status.

#### **Timing for Submission of Certain Reports**

7. The Business Conduct Rule requires a senior derivatives manager of a derivatives dealer to submit, in each calendar year, the report referred to in section 32(3)(a) (the **SDM Compliance Report**) to their board of directors (**Board**). Since the Business Conduct Rule comes into force on September 28, 2024, a senior derivatives manager is required to submit an SDM Compliance Report to their Board in 2024.
8. Derivatives firms subject to the derivatives legislation of foreign jurisdictions have reporting obligations in the foreign jurisdictions that are similar to the reporting obligations they have under the Business Conduct Rule (the **Foreign Compliance Report**).
9. Staff received submissions from certain derivatives market participants that derivatives firms obliged to submit both Foreign Compliance Reports and SDM Compliance Reports prefer to submit both reports concurrently, for the following reasons:
  - (a) the timeline for submitting an SDM Compliance Report within the 2024 calendar year does not align with established timelines and internal processes for submitting a Foreign Compliance Report in the same calendar year; and
  - (b) since an SDM Compliance Report submitted in 2024 would cover only the last quarter of 2024, requiring submission in 2024 would serve limited purposes and

introduce unnecessary operational burdens and complexities, considering the short timeframe.

10. As a result, Staff received a request to extend the 2024 deadline to submit an SDM Compliance Report.

### **Exemptive Relief**

11. The proposed exemptions will
- (a) ensure that investment funds managed by an investment fund manager or advised by an adviser regulated in a foreign jurisdiction have the same treatment as an investment fund managed by an investment fund manager or advised by an adviser regulated in Canada, and
  - (b) extend the deadline to the 2025 calendar year for a senior derivatives manager to submit an SDM Compliance Report for the required part of 2024.

### **Order**

12. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under section 213 of the Act that
- (a) a derivatives firm is exempt from the provisions of the Business Conduct Rule, other than the Core Obligations, in relation to a transaction with a derivatives party if the derivatives party is an investment fund that is:
    - (i) managed by the equivalent of a registered or authorized investment fund manager under the securities legislation or commodities futures legislation of a foreign jurisdiction; or
    - (ii) advised by the equivalent of a registered or authorized adviser under the securities legislation or commodities futures legislation of a foreign jurisdiction, and
  - (b) a senior derivatives manager is exempt from the obligation under section 32(3) of the Business Conduct Rule to submit to their Board an SDM Compliance Report for the calendar year ending December 31, 2024, subject to both of the following conditions:
    - (i) the derivatives firm is in compliance with all other applicable provisions of the Business Conduct Rule, including, for greater certainty, section 33, which sets out the obligation of a derivatives dealer to report instances of material non-compliance to the applicable regulator or securities regulatory authority;

- (ii) a senior derivatives manager relying on this exemption will submit an SDM Compliance Report in the 2025 calendar year that includes reporting on the period between September 28, 2024 and December 31, 2024.

**Effective Date**

13. This Order comes into effect on September 28, 2024.

**For the Commission:**

*"original signed by"*

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Tom Cotter  
Vice-Chair

*"original signed by"*

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Kari Horn, K.C.  
Vice-Chair