

March 1, 2021

**Without Prejudice
By E-mail**

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Dear Sirs/Mesdames:

**Re: Proposed OSC Rule 32-506 (Commodity Futures Act) Registration Exemptions
for International Dealers, Advisers and Sub-Advisers**

We submit the following comments in response to the Proposed OSC Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers* (the “**Proposed Rule**”) published by the Ontario Securities Commission (the “**OSC**”) on December 1, 2020.

Thank you for the opportunity to comment on the Proposed Rule. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

1. General

As a preliminary comment, we are generally very supportive of the Proposed Rule as it would create exemptions under the *Commodity Futures Act* (Ontario) (the “**CFA**”) equivalent to the international dealer, international adviser and international sub-adviser exemptions under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”). We agree that the codification and standardization of these exemptions under the CFA will materially reduce the regulatory burden on international firms which have historically had to apply for discretionary exemption orders in order to service Ontario institutional investors seeking to trade on non-Canadian futures exchanges. We also note that the form, defined terms and terms and conditions of these exemption orders have varied over time and from one application to the next. This has created some uncertainty in the market as to the outcome of the application process and the permissible activities and requirements which may vary as between comparably situated international firms. We therefore support the standardization of the exemptions under the CFA and the streamlining of the requirements consistent with NI 31-103.

We are also supportive of the proposed amendment to OSC Rule 91-502 to address the historical uncertainty as to whether the options proficiency requirements apply to international firms under the CFA and whether exemptive relief is actually required.

2. Dealer Registration Exemption

If adopted, section 3(1)(b)(i) of the Proposed Rule would limit the availability of the dealer registration exemption for international dealers to firms that "... [do] not have an office or place of business in Ontario". This limitation is inconsistent with the terms and conditions of the "international dealer exemption" under section 8.18 of NI 31-103. Given the stated purpose of the Proposed Rule of codifying certain exemptions from registration requirements in the CFA that are routinely granted by the OSC to international firms, we respectfully submit that the new exemptions under the Proposed Rule should be consistent with the exemptions available to international firms under NI 31-103.

In particular, and based on our experience, limiting the availability of the international dealer exemption to only those firms that have zero presence in Ontario would have an unnecessary adverse impact on international market participants, especially in the current global environment. As an example, we are aware of firms which have (or are considering having) an employee (often a Canadian citizen or the spouse of a Canadian citizen) located in Ontario because the employee is requesting that option as a result of the COVID-19 pandemic and related travel restrictions, or for family reasons. Similarly, we are also aware of Canadian citizens employed by international firms who may move to Canada, either temporarily or permanently, due to political issues in various countries globally. Regardless of motivation, there is an increasing need to have the flexibility of having have a limited presence in Ontario, particularly for firms seeking to retain highly specialized professionals with deep subject matter expertise or to respond to the personal needs of members of their teams as responsible employers. The scope of that presence is typically inherently limited by the permitted activities restrictions under the exemptions and by cross-border operational and tax considerations, and is subject to the rules of the home country regulator on remote supervision and compliance.

As such, we submit that the conditions of the international dealer exemption under the Proposed Rule should be closely aligned with those under the international dealer exemption under NI 31-103. Material variations in restrictions of this type create compliance and operational complexities that may ultimately deter foreign market participants from servicing Ontario institutional investors, more often than not in response to their request for specialized trading services.

3. Notice of Regulatory Action

We are very supportive of eliminating the condition that an international firm submit regulatory action information in respect of the firm, its predecessors and specified affiliates (a "**notice of regulatory action**"). This information is available from other regulatory databases such as the FINRA BrokerCheck and the NFA BASIC, global compliance and risk management databases and, as appropriate, may be the subject of books and records production requests. In our experience, this requirement has created material compliance challenges for well intentioned firms with significant compliance systems and a global regulatory footprint. This burden has been disproportionate to the limited marginal benefits that result from populating a notice of regulatory action with information that is already submitted to other global regulators or may be otherwise obtained. Information on "specified affiliates" operating in different countries and time zones may also be difficult to collect, compile and update reliably within a short timeframe. In some cases, the information may be subject to foreign non-disclosure rules. As "market participants" under the CFA, the filers under the Proposed Rule would be subject to applicable regulatory books and records production requirements and, in certain cases, reciprocal exchange of information MOUs as between interested regulators. We also note that there is no corresponding notification requirement in the "international dealer exemption" or "international adviser exemption" under NI 31-103 and again support a close alignment of the terms and conditions.

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Thank you for the opportunity to comment on the Proposed Rule. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Alix d'Anglejan-Chatillon

Kenneth G. Ottenbreit