

6.1.2 Proposed OSC Rule 32-506 (Under the Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers – Proposed Amendment to OSC Rule 91-502 Trades in Recognized Options under the Securities Act

OSC Notice and Request for Comment

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

Proposed amendment to OSC Rule 91-502 *Trades in Recognized Options under the Securities Act*

December 1, 2020

Introduction

The Ontario Securities Commission (the **OSC**) is publishing the following for a 90-day comment period, expiring on March 1, 2021:

- Proposed OSC Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers* (**Proposed OSC Rule 32-506**), and
- Proposed amendment to OSC Rule 91-502 *Trades in Recognized Options* (**OSC Rule 91-502**) (the **Proposed 91-502 Amendment** and, together with Proposed OSC Rule 32-506, the **Proposed Instrument**).

Proposed OSC Rule 32-506 is a proposed rule made under the *Commodity Futures Act* (Ontario) (the **CFA**). The Proposed 91-502 Amendment is a proposed amendment to an existing rule made under the *Securities Act* (Ontario) (the **OSA**).

The Proposed Instrument is a regulatory burden reduction initiative and is intended to codify relief that is routinely granted by the Commission under both the CFA and OSC Rule 91-502 to international dealers, international advisers and international sub-advisers (collectively, **international firms**).

The Proposed Instrument is intended to be an interim measure until such time as the CFA may be repealed and replaced with new legislation, such as the proposed *Capital Markets Act* as part of the Co-operative Capital Markets Regulatory Authority (**CMRA**) initiative.

We are issuing this Notice to solicit comments on the Proposed Instrument. We welcome all comments on this publication.

Substance and Purpose

The substance and purpose of the Proposed Instrument is to codify in a rule certain exemptions from the registration requirements in the CFA that are routinely granted by the Commission to international firms on an application basis. These applications also sometimes include a request for an exemption from the options proficiency requirements in OSC Rule 91-502 that may otherwise be applicable to international firms and their representatives.

The Proposed Instrument codifies relief that is now granted on a routine basis in order to

- enhance institutional investor access to international options and futures markets and thereby reduce regulatory costs for such investors, and
- reduce regulatory burden by eliminating the need for international firms to file applications for exemptive relief.

The exemptions in the Proposed Instrument are generally consistent with the exemptions contained in recent decisions but have been streamlined slightly to remove certain terms and conditions that we have concluded are no longer justified on cost-benefit grounds. (The changes from recent decisions and the reasons for the changes are summarized below.)

OSC staff will continue to consider on a case-by-case basis applications for exemptive relief by international firms and other market participants that raise novel issues or that indicate that the standard set of terms and conditions set out in the Proposed Instrument are not appropriate for the applicant's business model or institutional client base.

The Proposed Instrument is one of the burden reduction initiatives identified in the OSC Report entitled *Reducing Regulatory Burden in the Capital Markets* and published on November 19, 2019 (the **OSC Burden Reduction Report**). Specifically, this matter relates to the following Decisions and Recommendations discussed in the OSC Burden Reduction Report:

- R-27 Develop a rule that exempts international dealers, advisers and sub-advisers from registration under the CFA (Page 67 of the Report)
- D-18 Review the application of proficiency requirements, relating to registered and exempt advising representatives when advising in recognized options, and consider providing clarification (Page 81 of the

Report)

Please see below for a discussion of the anticipated costs and benefits of the Proposed Instrument.

Background

Overview of regulatory regime in Ontario

Generally, under the CFA, no person may trade¹ in a commodity futures contract or a commodity futures option (collectively, a **contract**)² unless the person is registered as a dealer [*Futures Commission Merchant*], or as a representative or as a partner or officer of the dealer and is acting on behalf of such dealer, or an exemption from the registration requirement is available.

Similarly, under the CFA, no person may act as an adviser³ unless such person is registered as an adviser or is registered as a representative or as a partner or officer of the adviser and is acting on behalf of such adviser, or an exemption from the registration requirement is available.

The CFA contains certain exemptions from the adviser registration requirement in s. 31 of the CFA and certain exemptions from the dealer registration requirement in s. 32 of the CFA. Additional registration exemptions can be found in the General Regulation under the CFA and under certain rules made under the CFA including the following:

- Section 44 of the CFA General Regulation⁴
- OSC Rule 32-504 *Advisory Registration Exemption (Commodity Futures Act)*

Absence of codified exemptions for international firms under the CFA

In contrast to the regulatory regime for securities, the regulatory regime for contracts that trade on exchanges does not include a standardized set of exemptions for international firms that deal only with institutional clients.

Specifically, there is no set of exemptions under the CFA comparable to the following exemptions in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* for international firms that deal with institutional clients in relation to securities (collectively, the **NI 31-103 international firm exemptions**):

- section 8.18 [*international dealer*]
- section 8.26 [*international adviser*]
- section 8.26.1 [*international sub-adviser*]

Consequently, international firms that wish to provide trading or advisory services to institutional clients in relation to contracts that trade on foreign exchanges (**foreign contracts**) are generally required to file applications for relief with the OSC by analogy to these exemptions in NI 31-103. These applications also sometimes include a request for an exemption from the options proficiency requirements in OSC Rule 91-502 that may otherwise be applicable to the international firms and their representatives.

The exemptions in the Proposed Instrument are intended to eliminate the need for international firms to file these applications for relief.

¹ See s. 22(1)(a) of the CFA.

² These terms are defined in the CFA as follows:

“contract” means any commodity futures contract and any commodity futures option;

“commodity futures contract” means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange’s by-laws, rules or regulations;

“commodity futures option” means a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract;

³ See s. 22(1)(b) of the CFA. An “adviser” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in contracts.

⁴ R.R.O. 1990, Reg. 90: GENERAL under *Commodity Futures Act*, R.S.O. 1990, c. C.20.

Minor differences between the NI 31-103 exemptions and CFA exemptive relief decisions

There are a number of minor differences in the terms and conditions of the NI 31-103 international firm exemptions and the terms and conditions of exemptive relief orders that are granted under the CFA. In part, this is because there are a number of differences between the registration regime and the scheme of exemptions under the OSA and the CFA.

In addition, over the last few years, OSC staff together with staff in the other Canadian Securities Administrators (**CSA**) jurisdictions have been examining more closely the trading and advising activities of international firms vis-à-vis Canadian investors in connection with exchange-traded and over-the-counter (**OTC**) derivatives. The enhanced focus on these products and markets reflects both ongoing work by the OSC and CSA in developing a modernised and harmonised regime for derivatives as well as the identification by OSC staff of certain market practices and interpretations of requirements and exemptions under the CFA by international firms that staff believe are contrary to the public interest (including improper use of the “unsolicited trade” exemption and the “hedger” exemption in the CFA).⁵

For these reasons, staff have typically requested certain representations and conditions in exemptive relief decisions granted under the CFA that are not present in the corresponding exemptions in NI 31-103. In addition, these decisions have also included sunset clauses in these decisions as the form and content of these decisions have continued to evolve.

However, based on our experience with recent applications for relief, we are now satisfied that we can codify this relief on the basis of a “standard” set of terms and conditions in order to eliminate frequently occurring applications for relief. We also propose to eliminate certain terms and conditions that are currently found in the exemptive relief orders. Based on our experience with these applications and discussions with counsel in relation to the international firms’ experience in complying with these terms and conditions, we recommend removing these conditions on cost-benefit grounds. These changes are explained below.

Minor changes to current standard form of exemptive relief decisions

As noted above, the exemptions in the Proposed Instrument generally reflect the standard terms and conditions of such decisions but have been streamlined to remove certain terms and conditions.

The changes from the recent standard form of exemptive relief decisions are as follows:

- Recent decisions have generally included a condition that the international firm only trade with or advise clients that are “permitted clients” as defined in NI 31-103. The Proposed Instrument includes a definition of “CFA permitted client” that includes any person or company that is a “permitted client” as defined NI 31-103 but also includes certain additional categories, including the following:
 - a person or company registered under the commodity futures or derivatives legislation of a jurisdiction of Canada as an adviser or dealer; (clause (d.1)),
 - a family trust established by a permitted client that meets certain criteria (clause (o.1)), and
 - an individual who, together with a spouse and/or a family trust that meets the criteria in clause (o.1), beneficially owns net financial assets that exceed \$5 million (clause (o.2)).⁶
- Certain references to “securities legislation” in the definition of “permitted client” in NI 31-103 have been replaced with “securities, commodity futures or derivatives legislation” in the definition of “CFA permitted client” in the Proposed Instrument.
- Recent decisions have generally included a condition that the international firm notify the Commission of any regulatory action in respect of the applicant firm or predecessors or specified affiliates of the applicant firm by completing and filing a notice set out in an appendix to the decision. The required disclosure is generally similar to the disclosure required of registered firms by Part 7 of Form 33-109F6 *Registration Information (Form 33-109F6)*. The condition may allow the applicant firm to satisfy this disclosure requirement by filing a notice that incorporates by reference certain disclosure made by the firm in its home jurisdiction.
- Based on our experience with these applications and discussions with counsel in relation to the international firms’ experience in complying with these terms and conditions, we have decided not to include this condition as a condition of the exemptions in the Proposed Instrument since
 - there is no corresponding notification requirement in the exemptions for international firms in NI 31-103; and

⁵ For an example of some of these concerns, please see OSC Staff Notice 33-744 – *Availability of registration exemptions to foreign dealers in connection with trades in options and futures contracts under the Commodity Futures Act* (Ontario), available at https://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20140918_33-744_availability-registration-exemptions-foreign.htm

⁶ The additional categories of CFA permitted clients as described in clauses (o.1) and (o.2) are consistent with exemptive relief granted by the Commission in *Re J.P. Morgan Securities LLC* dated November 18, 2019, at http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20191121_214_jp-morgan-securities.htm

- we have been advised by applicant firms that compliance with this condition may result in significant additional regulatory burden, since it may require substantial amounts of regulatory disclosure that is already publicly available being reformatted and restated to comply with the form requirements of NI 33-109 and the appendix to the decision.

Even if staff were not receiving such notifications from international firms, staff would still be able to obtain the necessary information. International firms that rely on these exemptions are “market participants” under the CFA. They are therefore required by sections 14 and 14.1 of the CFA to keep, and to produce when requested, relevant books and records. In addition, in many cases the relevant information is readily available to staff through regulatory disclosure websites such as the FINRA BrokerCheck system or the NFA Background Affiliation Status Information Center (BASIC) disclosure system.

Accordingly, after further consideration, OSC staff accept that the costs of requiring this notification outweigh the benefits and that these costs may deter international firms providing trading or advising services to institutional clients in Canada.

- Certain drafting changes have been made to the international dealer, international adviser and international sub-adviser exemptions in the Proposed Instrument to make them more consistent with the drafting of the corresponding exemptions in NI 31-103.

Summary of Proposed OSC Rule 32-506

The Proposed Instrument includes the following exemptions:

- PART 2 DEALER REGISTRATION EXEMPTIONS
 - Section 3 [*Dealer registration exemption – International dealer*]
 - Section 4 [*Dealer registration exemption – CFA permitted client of an international dealer*]
 - Section 5 [*Exemption from the trading restrictions in the CFA*]
- PART 3 ADVISER REGISTRATION EXEMPTIONS
 - Section 7 [*Adviser registration exemption – International adviser*]
 - Section 8 [*Adviser registration exemption – International sub-adviser*]
- FORM 32-506F1 SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

Proposed OSC Rule 32-506 is set out in Annex A.

Summary of the Proposed 91-502 Amendment

Proficiency requirements in OSC Rule 91-502

Section 3.1 of OSC Rule 91-502 generally requires a person or company that wishes to trade a recognized option (as defined in OSC Rule 91-502) as agent for a client or give advice to a client in respect of a recognized option to have successfully completed the Derivatives Fundamentals and Options Licensing Course.⁷

The proficiency requirements in OSC Rule 91-502 are in addition to the proficiency requirements applicable to registered individuals in Part 3 [*Registration Requirements – Individuals*] of NI 31-103. For example, an individual who applies for registration as an advising representative (portfolio manager) and who is proposing to advise a fund that will focus on options trading strategies is generally required to meet the specific options proficiency requirements of OSC Rule 91-502 in addition to the general proficiency requirements in NI 31-103. The options proficiency requirements of OSC Rule 91-502 are generally similar to the options proficiency requirements applicable to registered representatives of investment dealers who deal with customers in options.⁸

Historically, there has been some uncertainty as to whether the options proficiency requirements in OSC Rule 91-502 also apply to representatives of international firms when trading with or advising permitted clients in reliance on registration exemptions under NI 31-103 or exemptive relief orders under the CFA and it is relatively common for applicants to seek exemptive relief from this requirement in exemptive relief decisions.

The Proposed Amendment to OSC Rule 91-502 is intended to provide an exemption from the proficiency requirement in section 3.1 of OSC Rule 91-502 in connection with advice relating to options that trade on foreign exchanges to permitted clients or trades

⁷ Section 3.1 of OSC Rule 91-502 provides as follows:

3.1 Proficiency Requirements - No person shall trade as agent in, or give advice in respect of, a recognized option unless he or she has successfully completed the Canadian Options Course.

The Canadian Options Course no longer exists. However, OSC Rule 91-502 defines the term as follows:

“Canadian Options Course” means the course prepared and conducted by The Canadian Securities Institute and so named by that Institute on the date that this Rule comes into force and every predecessor to that course and every successor to that course that does not significantly narrow a subject matter.”.

The Derivatives Fundamentals and Options Licensing Course is the successor course to this course. The Proposed Amendment includes an amendment to reflect this course name change.

⁸ See Section 8 of IIROC Rule 2900.

in such foreign options to, with or on behalf of permitted clients if the person or company is in compliance with the terms of the exemption from the dealer or adviser registration requirement.

The Proposed Amendment to OSC Rule 91-502 is set out in Annex B.

Anticipated Costs and Benefits of Proposed OSC Rule 32-506

We believe the Proposed Instrument, if adopted, will have the following benefits to international firms and to institutional investors that rely upon the trading and advisory services of such firms:

- it will have the effect of enhancing institutional investor choice and thereby reduce costs for institutional investors, since institutional investors will now be able to receive services from any international firm that is appropriately registered in its home jurisdiction and meets the other conditions of the exemptions in the rule, and will not be limited to those international firms that have taken the additional step of applying for and obtaining discretionary relief orders;
- it will eliminate the need for international dealers, advisers and sub-advisers to have to make individual applications for exemptive relief under the CFA in order to be able to benefit from the exemptions, thereby eliminating the need to pay application fees and associated legal counsel fees (which in some cases may otherwise be passed on to the firm's Canadian institutional clients);
- it will respond to stakeholder comments that the OSC and the CSA should propose amendments to their legislation to introduce an international dealer, international adviser and international sub-adviser exemption for international firms similar to the exemptions for international firms in Sections 8.18, 8.26 and 8.26.1 of NI 31-103;⁹ and
- it should help standardize the terms and conditions of the international firm exemptions and eliminate certain terms and conditions that are currently found in discretionary relief orders.

Please refer to the separate Cost-Benefit Analysis set out as Annex C for additional information about the anticipated benefits from this initiative.

Unpublished Materials

In developing the Proposed Instrument, we have not relied on any significant unpublished study, report or other written materials.

Impact on Investors of Proposed OSC Rule 32-506

We anticipate that the Proposed Instrument will have the effect of enhancing institutional investor choice and thereby reduce costs for institutional investors, since institutional investors will now be able to receive services from any international firm that is appropriately registered in its home jurisdiction and meets the other conditions of the exemptions in the rule, and will not be limited to those international firms that have applied for and obtained discretionary relief orders.

Impact on existing decisions granted by the Commission

As noted above, the current standard form of exemptive relief decision typically includes a sunset clause of up to five years. An example of the current standard form of sunset clause is as follows:¹⁰

This Decision will terminate on the earliest of:

- (a) such transition period as provided by operation of law, after the effective date of the repeal of the CFA;

⁹ See letter dated March 8, 2013 from the Investment Industry Association of Canada (IIAC) to the CSA Derivatives Committee. A copy of this letter can be found at the following link under the date March 8, 2013: <http://iiac.ca/resources/submissions/> OSC staff published OSC Staff Notice 33-744 *Availability of registration exemptions to foreign dealers in connection with trades in options and futures contracts under the Commodity Futures Act (Ontario)* (OSC Staff Notice 33-744) in September 2014 in response to this letter.

¹⁰ See *Re HSBC Securities (USA) Inc.* dated January 24, 2020.

- (b) such transition period as provided by operation of law, after the coming into force of any amendments to Ontario commodity futures law or Ontario securities law (as defined in the OSA) that affect the dealer registration requirements in the CFA; and
- (c) five years after the date hereof.

The Proposed Instrument, if made as a rule by the Commission and approved by the Minister in accordance with Part XV of the CFA, will represent an “amendment ... to Ontario commodity futures law ... that affects the dealer registration requirements in the CFA”. Consequently, any existing decisions that contain a sunset clause substantially consistent with the above will expire on the coming into force of the Proposed Instrument.

We have not included a transition period in the Proposed Instrument as we believe the exemptions in the Proposed Instrument are generally more permissive than the exemptions that are contained in the existing decisions. However, if an international firm or other market participant is concerned that they may be prejudiced by the coming into force of the Proposed Instrument and the consequent expiry of their existing decision, they are requested to contact staff at the address below.

Alternatives Considered

An alternative to proceeding with the Proposed Instrument would be to maintain the *status quo*, which would mean staff would continue to process applications for exemptive relief. However, based on our experience with recent applications for relief, we are now satisfied that we can codify relief on the basis of a “standard” set of terms and conditions in order to eliminate frequently occurring applications for relief. We also propose to eliminate certain terms and conditions that are currently found in the discretionary relief orders but that we have determined are unnecessary.

The Proposed Instrument is intended to be an interim measure until such time as the CFA may be repealed and replaced with new legislation, such as the proposed *Capital Markets Act* as part of the CMRA initiative. Accordingly, another alternative to proceeding with the Proposed Instrument would be to wait until the CFA is repealed and replaced with new legislation.

However, repealing the CFA would likely require extensive amendments to the OSA and to current and proposed rules (including the proposed derivatives registration and business conduct rules). Accordingly, we believe it makes sense to proceed with the Proposed Instrument as an interim measure.

Authority for Proposed OSC Rule 32-506 and the Proposed Consequential Amendment

The rule-making authority for Proposed OSC Rule 32-506 is provided in paragraphs 8 to 11 and 16 of subsection 65(1) of the CFA.

The rule-making authority for the Proposed 91-502 Amendment is provided in paragraphs 8 to 11 and 16 of subsection 65(1) of the CFA and paragraphs (1), (2), (8.1) and 35 of subsection 143(1) of the *Securities Act* (Ontario).

Request for Comments

We welcome your comments on the Proposed Instrument.

How to Provide Comments

Please submit your comments in writing on or before **March 1, 2021**. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (in Microsoft Word format).

Deliver your comments **only** to the address below.

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

We cannot keep submissions confidential because applicable legislation requires publication of the written comments received during the comment period. All comments received will be posted on the website of the OSC at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

This Notice includes the following annexes:

- Annex A Proposed OSC Rule 32-506 (Commodity Futures Act) *Registration Exemptions for International Dealers, Advisers and Sub-Advisers*
- Annex B Proposed Amendment to OSC Rule 91-502 *Trades in Recognized Options*
- Annex C Cost-Benefit Analysis

Questions

Please refer your questions to any of the following:

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ANNEX A

ONTARIO SECURITIES COMMISSION RULE 32-506 (Under the *Commodity Futures Act*)

EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS

PART 1 DEFINITIONS

1. Definitions

(1) In this Rule,

“**Act**” means the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended from time to time;

“**Canadian financial institution**” has the meaning ascribed to that term in section 1.1 [*definitions*] of NI 45-106 under the *Securities Act*;

“**CFA adviser registration requirement**” means the provisions of section 22 of the Act that prohibit a person or company from acting as an adviser as to trading in a contract unless the person or company is registered in the appropriate category of registration under the Act;

“**CFA dealer registration requirement**” means the provisions of section 22 of the Act that prohibit a person or company from trading in a contract unless the person or company is registered in the appropriate category of registration under the Act;

Note: The following definition of “CFA permitted client” includes any person or company that is a “permitted client” as that term is defined in section 1.1 of NI 31-103 but also includes certain additional categories, including the following:

a person or company registered under the commodity futures or derivatives legislation of a jurisdiction of Canada as an adviser or dealer; (clause (d.1))

a family trust established by a permitted client that meets certain criteria (clause (o.1))

an individual who, together with a spouse and/or a family trust that meets the criteria in clause (o.1), beneficially owns net financial assets that exceed \$5 million (clause (o.2))

In addition, certain references to “securities legislation” in the definition of “permitted client” in NI 31-103 have been replaced with “securities, commodity futures or derivatives legislation”.

“**CFA permitted client**” means any of the following:

- (a) a Canadian financial institution or a Schedule III bank;
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- (c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;
- (d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser, investment dealer, mutual fund dealer or exempt market dealer;
- (d.1) a person or company registered under the commodity futures or derivatives legislation of a jurisdiction of Canada as an adviser or dealer;
- (e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;
- (f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);
- (g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

- (i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (j) 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 in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;
- (k) a person or company acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada or a foreign jurisdiction;
- (l) an investment fund if one or both of the following apply:
 - i. the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
 - ii. the fund is advised by a person or company authorized to act as an adviser under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada;
- (m) in respect of a dealer, a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1[*definitions*] of NI 45-106, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;
- (n) in respect of an adviser, a registered charity under the *Income Tax Act* (Canada) that is advised by an eligibility adviser, as defined in section 1.1[*definitions*] of NI 45-106, or an adviser registered under the securities, commodity futures or derivatives legislation of the jurisdiction of the registered charity;
- (o) an individual who beneficially owns financial assets, as defined in section 1.1[*definitions*] of NI 45-106, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million;
- (o.1) in the case of a CFA permitted client that is an individual, a trust established by the individual for the benefit of the individual's family members of which a majority of the trustees are CFA permitted clients and all of the beneficiaries are the individual's spouse, a former spouse or a parent, grandparent, brother, sister, child or grandchild of that individual, of that individual's spouse or of that individual's former spouse;
- (o.2) an individual who is not a CFA permitted client under clause (o) of the definition of CFA permitted client but who, together with a spouse and/or a family trust as described in clause (o.1) above established by the individual or the individual's spouse, beneficially own financial assets, as defined in section 1.1 of NI 45-106, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million;
- (p) a person or company that is entirely owned by an individual or individuals referred to in paragraph (o), who holds the beneficial ownership interest in the person or company directly or through a trust, the trustee of which is 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 in a jurisdiction of Canada or a foreign jurisdiction;
- (q) a person or company, other than an individual or an investment fund, that has net assets of at least \$25 million as shown on its most recently prepared financial statements;
- (r) a person or company that distributes securities of its own issue in Canada only to persons or companies referred to in paragraphs (a) to (q);

"commodity trading manager" means an adviser that is registered under the Act in the category of "commodity trading manager" as provided for in section 8[*categories of registration*] of Regulation 90 under the Act;

"foreign contract" means a contract that is primarily traded on one or more non-Canadian exchanges and primarily cleared through one or more clearing corporations that are located outside of Canada;

“**individual**” means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his or her capacity as trustee, executor, administrator or other legal personal representative;

“**investment fund**” has the meaning ascribed to that term in subsection 1(1) of the *Securities Act*;

“**jurisdiction of Canada**” means a province or territory of Canada;

“**managed account**” means an account of a client for which a person or company makes the investment decisions if that person or company has discretion to trade in securities, contracts or derivatives for the account without requiring the client’s express consent to a transaction;

“**NI 14-101**” means National Instrument 14-101 *Definitions* under the *Securities Act*;

“**NI 31-103**” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* under the *Securities Act*;

“**NI 45-106**” means National Instrument 45-106 *Prospectus Exemptions* under the *Securities Act*;

“**non-Canadian exchange**” means a commodity futures exchange that is located outside of Canada;

“**non-registrant CFA permitted client**” means a person or company that is a CFA permitted client other than a person or company that is registered as an adviser or dealer under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada;

“**OSA adviser registration requirement**” means the provisions of section 25 of the *Securities Act* that prohibit a person or company from engaging in the business of, or holding himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in securities or buying or selling securities unless the person or company satisfies the applicable provisions of section 25 of the *Securities Act*;

“**OSA dealer registration requirement**” means the provisions of section 25 of the *Securities Act* that prohibit a person or company from engaging in the business of, or holding himself, herself or itself out as engaging in the business of, trading in securities unless the person or company satisfies the applicable provisions of section 25 of the *Securities Act*;

“**OSA international adviser exemption**” means the exemption from the OSA adviser registration requirement set out in section 8.26 [*international adviser*] of NI 31-103 under the *Securities Act*;

“**OSA international dealer exemption**” means the exemption from the OSA dealer registration requirement set out in section 8.18 [*international dealer*] of NI 31-103 under the *Securities Act*;

“**OSA international sub-adviser exemption**” means the exemption from the OSA adviser registration requirement set out in section 8.26.1 [*international sub-adviser*] of NI 31-103 under the *Securities Act*;

“**permitted client**” has the meaning ascribed to that term in section 1.1[*definitions*] of NI 31-103 under the *Securities Act*;

“**principal adviser**” means an adviser registered under the Act in the category of commodity trading manager for which a sub-adviser provides sub-advisory services;

“**Schedule III bank**” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“**Securities Act**” means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

“**securities legislation**” means, for a local jurisdiction of Canada, the statute and other instruments listed in Appendix B of NI 14-101, opposite the name of the local jurisdiction;

“**specified foreign jurisdiction**” means any of Australia, Brazil, any member country of the European Union, Hong Kong, India, Japan, Korea, Mexico, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America;

“**sub-adviser**” means an adviser to

- (a) a registered adviser, or
- (b) a registered dealer acting as a commodity trading manager as permitted by subsection 44(2)[*exemptions from registration requirements*] of Ontario Regulation 90

“**sub-advisory services**” means services provided by a sub-adviser to a principal adviser for purposes of providing, on a discretionary basis, adviser services in respect of contracts to the principal adviser’s sub-advisory clients;

“**sub-advisory client**” means a client of a principal adviser for whom a sub-adviser to the principal adviser provides sub-advisory services;

“**trading restrictions in the CFA**” means the provisions of section 33 of the Act that prohibit a person or company from trading in contracts unless the person or company satisfies the applicable provisions of section 33 of the Act;

“**U.K.**” means the United Kingdom of Great Britain and Northern Ireland; and

“**U.S.**” means the United States of America.

- (2) Terms used in this Rule that are defined in the Act have the meaning ascribed to them in the Act, unless otherwise defined in this Rule or the context otherwise requires.
- (3) Terms used in this Rule that are not defined in the Act but are defined in subsection 1(1) of the *Securities Act* have the same meaning as in the *Securities Act* unless the context otherwise requires.
- (4) In this Rule, a person or company is deemed to be an affiliate of another person or company if one of them is the subsidiary of the other or if both are subsidiaries of the same person or company or if each of them is controlled by the same person or company.
- (5) A person or company is deemed to be controlled by another person or company or by two or more persons and companies if,
 - (a) voting securities of the first-mentioned person or company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other persons and companies; and
 - (b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned person or company.
- (6) A person or company shall be deemed to be a subsidiary of another person or company if,
 - (a) it is controlled by,
 - (i) that other, or
 - (ii) that other and one or more persons and companies each of which is controlled by that other, or
 - (iii) two or more persons and companies each of which is controlled by that other; or
 - (b) it is a subsidiary of a person or company that is that other’s subsidiary.

PART 2 DEALER REGISTRATION EXEMPTIONS

2. General condition to exemptions from the CFA dealer registration requirement

The exemptions in this Part are not available to a person or company if the person or company is registered under the Act and if their category of registration permits the person or company to act as a dealer or trade in the contract for which the exemption is provided.

3. Dealer registration exemption – International dealer

- (1) The CFA dealer registration requirement does not apply to a person or company in respect of a trade in a contract to, with or on behalf of a CFA permitted client, where the person or company is acting as principal or agent in such trade to, with or on behalf of the CFA permitted client, if at the time of the trade all of the following apply:
 - (a) the trade is in respect of a foreign contract on a non-Canadian exchange;
 - (b) the person or company:
 - (i) has its head office or principal place of business in a specified foreign jurisdiction and does not have an office or place of business in Ontario;
 - (ii) engages in the business of trading in contracts in the specified foreign jurisdiction; and
 - (iii) is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of the specified foreign jurisdiction in which its head office or principal place of business is located in a category of registration, licensing or authorization that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Ontario;
 - (c) the person or company has provided to the CFA permitted client, other than a CFA permitted client that is registered under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada, the following disclosure in writing:
 - (i) a statement that the person or company is not registered in Ontario to trade in contracts as principal

- or agent;
 - (ii) a statement specifying the location of the head office or principal place of business of the person or company;
 - (iii) a statement that all or substantially all of the assets of the person or company may be situated outside of Canada;
 - (iv) a statement that there may be difficulty enforcing legal rights against the person or company because of the above; and
 - (v) the name and address of the person or company's agent for service of process in Ontario; and
- (d) the person or company has submitted to the Commission a completed Form 32-506F1 *Submission to Jurisdiction and Appointment of Agent for Service*;
- (2) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the Commission of that fact by December 1 of that year.
- (3) Subsection (2) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.
- (4) If a person or company relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year and is not registered under the *Securities Act* and does not rely on the OSA international dealer exemption, the person or company must pay a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees*, as if the person or company relied on the OSA international dealer exemption.
- (5) The CFA adviser registration requirement does not apply to a person or company that is exempt from the CFA dealer registration requirement under this section if the person or company provides advice to a CFA permitted client and the advice is
- (a) in connection with an activity or trade described under subsection (1), and
 - (b) not in respect of a managed account of the CFA permitted client.

4. Dealer registration exemption – CFA permitted client of an international dealer

The CFA dealer registration requirement does not apply to a CFA permitted client in respect of a trade in a contract on a non-Canadian exchange to, with or on behalf of a person or company relying on the dealer registration exemption in section 3.

5. Exemption from the trading restrictions in the Act

The trading restrictions in the Act do not apply to a person or company in connection with a trade in a contract on a non-Canadian exchange if the person or company is exempt from the CFA dealer registration exemption under section 3 or section 4.

PART 3 ADVISER REGISTRATION EXEMPTIONS

6. General condition to exemptions from the CFA adviser registration requirement

The exemptions in this Part are not available to a person or company if the person or company is registered under the Act and if their category of registration permits the person or company to act as an adviser in respect of the activities for which the exemption is provided.

7. Adviser registration exemption – International adviser

- (1) The CFA adviser registration requirement does not apply to a person or company in respect of advice provided to a non-registrant CFA permitted client as to the trading of foreign contracts provided that at the time of providing the advice all of the following apply:
 - (a) the person or company provides advice to the non-registrant CFA permitted client only as to the trading of foreign contracts and does not provide advice as to the trading of contracts that are not foreign contracts, unless providing such advice is incidental to its providing advice on foreign contracts;
 - (b) the person or company:
 - (i) has its head office or principal place of business in a specified foreign jurisdiction;
 - (ii) engages in the business of advising others in relation to contracts in the specified foreign jurisdiction; and
 - (iii) is registered in a category of registration, or operates under an exemption from registration, or is otherwise licensed or authorized under the applicable securities, commodity futures or derivatives legislation of the specified foreign jurisdiction to carry on the activities in the specified foreign jurisdiction that registration under the Act as an adviser in the category of commodity trading manager would permit it to carry on in Ontario;
 - (c) as at the end of the person or company's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the person or company, its affiliates and its affiliated partnerships, excluding the gross revenue of an affiliate or affiliated partnership of the person or company if the affiliate or affiliated partnership is registered under securities legislation, commodity futures legislation or derivatives legislation of a jurisdiction of Canada, was derived from the portfolio management activities of the person or company, its affiliates and its affiliated partnerships in Canada (including for clarity both securities-related and commodity-futures-related activities);
 - (d) prior to advising a non-registrant CFA permitted client with respect to a foreign contract, the person or company provides the non-registrant CFA permitted client the following disclosure in writing:
 - (i) a statement that the person or company is not registered in Ontario to provide the advice described in paragraph (a) of this exemption;
 - (ii) a statement specifying the location of the head office or principal place of business of the person or company;
 - (iii) a statement that all or substantially all of the assets of the person or company may be situated outside of Canada;
 - (iv) a statement that there may be difficulty enforcing legal rights against the person or company because of the above;
 - (v) the name and address of the person or company's agent for service of process in Ontario;
 - (e) the person or company has submitted to the Commission a completed Form 32-506F1 *Submission to Jurisdiction and Appointment of Agent for Service*;
- (2) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the Commission of that fact by December 1 of that year.
- (3) Subsection (2) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.
- (4) If a person or company relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year and is not registered under the *Securities Act* and does not rely on the OSA international adviser exemption, the person or company must pay a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees*, as if the person or company relied on the OSA international adviser exemption.

8. Adviser registration exemption – International sub-adviser

- (1) The CFA adviser registration requirement does not apply to a person or company acting as a sub-adviser to a principal adviser in respect of the provision of sub-advisory services if at the time of providing the sub-advisory services all of the following apply:
- (a) the principal adviser is registered under the Act as an adviser in the category of commodity trading manager;
 - (b) the head office or principal place of business of the person or company acting as sub-adviser is in a specified foreign jurisdiction;
 - (c) the person or company acting as sub-adviser engages in the business of advising others in relation to contracts in the specified foreign jurisdiction;
 - (d) the person or company acting as sub-adviser is registered in a category of registration, or operates under an exemption from registration, or is otherwise licensed or authorized under the applicable securities, commodity futures or derivatives legislation of the specified foreign jurisdiction to carry on the activities in the specified foreign jurisdiction that registration under the Act as an adviser would permit it to carry on in Ontario;
 - (e) the obligations and duties of the person or company acting as sub-adviser are set out in a written agreement with the principal adviser;
 - (f) the principal adviser has entered into a written agreement with each sub-advisory client in respect of whom the person acting as sub-advisor is providing sub-advisory services, agreeing to be responsible for any loss that arises out of the failure of the person or company acting as sub-adviser:
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the principal adviser and the sub-advisory client; or
 - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**);
 - (g) if a sub-advisory client for whom sub-advisory services are being provided is an investment fund, the prospectus or other offering document (in either case, the **Offering Document**) of the investment fund includes, or will include, the following:
 - (i) a statement that the principal adviser is responsible for any loss that arises out of the failure of the person or company acting as sub-adviser in respect of the sub- advisory services to meet the Assumed Obligations; and
 - (ii) a statement that there may be difficulty in enforcing any legal rights against the person or company acting as sub-adviser in respect of the sub-advisory services (or any of its representatives) because that person or company is resident outside of Canada and all or substantially all of their assets are situated outside of Canada;
 - (h) the disclosure required by paragraph 8(1)(g) is provided in writing prior to purchasing any contracts for each sub-advisory client that is a managed account for which the principal adviser engages the person or company to provide the sub-advisory services.

9. Effective date

This Instrument comes into force on •.

FORM 32-506F1

SUBMISSION TO JURISDICTION
AND APPOINTMENT OF AGENT FOR SERVICE

ONTARIO SECURITIES COMMISSION RULE 32-506
(Under the *Commodity Futures Act*)

EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS

Sections 3 [*international dealer*] and 7 [*international adviser*]

1. Name of person or company ("**International Firm**"): _____
2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm: _____
3. Jurisdiction of incorporation of the International Firm: _____
4. Head office address of the International Firm: _____
5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.
Name: _____
E-mail address: _____
Phone: _____
Fax: _____
6. The International Firm is relying on an exemption under OSC Rule 32-506 and/or an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "**Relief Order**"): Section 8.18 [*international dealer*] Section 8.26 [*international adviser*] Other [specify]: _____
7. Name of agent for service of process (the "**Agent for Service**"): _____
8. Address for service of process on the Agent for Service: _____
9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "**Proceeding**") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.
11. Until 6 years after the International Firm ceases to rely on an exemption in section 3[*international dealer*] or section 7 [*international adviser*] of Ontario Securities Commission Rule 32-506 (*under the Commodity Futures Act*) *Exemptions for International Dealers, Advisers and Sub-Advisers*, the International Firm must submit to the regulator
 - (a) a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;
 - (b) an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service; and
 - (c) a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.
12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

(Signature of the International Firm or authorized signatory)

(Name of signatory)

(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

(Signature of the Agent for Service or authorized signatory)

(Name of signatory)

(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

<https://www.osc.gov.on.ca>

ANNEX B

PROPOSED AMENDMENT TO ONTARIO SECURITIES COMMISSION RULE 91-502 *TRADES IN RECOGNIZED OPTIONS*

1. **Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* is amended by this Instrument.**
2. **Section 1.1 is amended by deleting the definition of “Canadian Options Course” and by adding the following definitions:**

“Derivatives Fundamentals and Options Licensing Course” means the course prepared and conducted by The Canadian Securities Institute and so named by that Institute on the date that this Rule comes into force and every predecessor to that course and every successor to that course that does not significantly narrow a subject matter;
3. **Section 3.1 is amended by replacing “the Canadian Options Course” with “the Derivatives Fundamentals and Options Licensing Course”.**
4. **Part 3 is amended by adding the following section:**
 - 3.2 Section 3.1 does not apply to
 - (a) a person or company exempt from the dealer registration requirement or the adviser registration requirement if the person or company complies with the terms and conditions of the exemption from the registration requirement; and
 - (b) a person or company exempt from the CFA dealer registration requirement or the CFA adviser registration requirement (as those terms are defined in Ontario Securities Commission Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers*) if the person or company complies with the terms and conditions of the exemption from the registration requirement.
5. **This Instrument comes into force on •.**

ANNEX C

COST-BENEFIT ANALYSIS PROPOSED OSC RULE 32-506 (Commodity Futures Act) **EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS AND PROPOSED AMENDMENT TO OSC RULE 91-502 TRADES IN RECOGNIZED OPTIONS**

The Ontario Securities Commission (the **OSC**) is publishing the following for a 90-day comment period:

- Proposed OSC Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers* (**Proposed OSC Rule 32-506**), and
- Proposed amendment to OSC Rule 91-502 *Trades in Recognized Options* (**OSC Rule 91-502**) (the **Proposed 91-502 Amendment** and, together with Proposed OSC Rule 32-506, the **Proposed Instrument**).

The Proposed Instrument, if implemented, will codify exemptive relief that is granted by the OSC on a routine basis under both the *Commodity Futures Act* (the **CFA**) and OSC Rule 91-502 to international firms.

This relief will allow international firms to provide trading or advisory services in relation to foreign contracts to institutional clients (referred to as **CFA permitted clients** in the Proposed Instrument) in Ontario on similar terms and conditions to the international firm exemptions set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

The exemptions in the Proposed Instrument generally reflect the standard terms and conditions of recent OSC exemptive relief decisions but have been streamlined to remove certain minor terms and conditions that we have concluded are no longer justified on cost-benefit grounds.

Stakeholders affected by the Proposed Instrument

The stakeholders who will be impacted by the Proposed Instrument are CFA permitted clients and international firms that provide trading or advisory services in relation to foreign contracts to CFA permitted clients.

The term “CFA permitted client” includes the following:

- registered firms under the *Securities Act* (Ontario) (the **OSA**) and the CFA
- pension funds
- investment funds
- registered charities
- certain high-net-worth individuals and their spouses and family trusts
- any other person or company who is a “permitted client” under NI 31-103.

Please refer to Proposed OSC Rule 32-506 for the complete definition of CFA permitted client.

The registration exemptions in Proposed OSC Rule 32-506 are generally available to the following international firms:

- an international dealer that has its head office or principal place of business in a specified foreign jurisdiction¹¹ and that is registered, licensed or otherwise authorized under the applicable legislation of the specified foreign jurisdiction to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Ontario;
- an international adviser that has its head office or principal place of business in a specified foreign jurisdiction and that is registered or is otherwise licensed or authorized under the applicable legislation of the specified foreign jurisdiction to carry on the activities in that jurisdiction that registration under the CFA as an adviser in the category of commodity trading manager would permit it to carry on in Ontario; and
- an international sub-adviser that has its head office or principal place of business in a specified foreign jurisdiction and that is registered or is otherwise licensed or authorized under the applicable legislation of the specified foreign jurisdiction to carry on the activities in the specified foreign jurisdiction as an adviser would permit it to carry on in Ontario and that has entered into an agreement with a principal adviser in Ontario.

¹¹ The term “**specified foreign jurisdiction**” means any of Australia, Brazil, any member country of the European Union, Hong Kong, India, Japan, Korea, Mexico, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. This list of foreign jurisdictions is based on the list of foreign specified foreign jurisdictions in OSC Rule 72-503 *Distributions Outside Canada*, the foreign jurisdictions under consideration for proposed NI 93-101 *Derivatives: Business Conduct* (**NI 93-101**) and NI 93-102 *Derivatives: Registration* (**NI 93-102**) and foreign jurisdictions in respect of which Commission has granted international firm relief. The fact that a foreign jurisdiction is not included in the definition of “specified foreign jurisdiction” is not intended to suggest any policy concern with the regulatory regime of that foreign jurisdiction. It simply means OSC staff have not had an opportunity to consider an application for relief from a firm in that foreign jurisdiction. We anticipate that this definition may be amended from time to time to include additional foreign jurisdictions once we have had a chance to consider the regulatory regimes in these additional foreign jurisdictions.

Please refer to the terms and conditions of the applicable exemptions in OSC Rule 32-506 as applicable.

The Proposed Amendment to OSC Rule 91-502 is intended to provide an exemption from the proficiency requirement in section 3.1 of OSC Rule 91-502 in connection with advice relating to options that trade on foreign exchanges to permitted clients or trades in such foreign options to, with or on behalf of permitted clients if the person or company is in compliance with the terms of the exemption from the dealer or adviser registration requirement.

Benefits of Proposed Instrument

In this section we present our qualitative and quantitative assessment of the anticipated benefits of the Proposed Instrument to CFA permitted clients and international firms that provide trading or advisory services in relation to foreign contracts to CFA permitted clients. The baseline underpinning our analysis is the current set of regulatory requirements applicable to international firms under the CFA and OSC Rule 91-502.

Qualitative and Quantitative Analysis of the Anticipated Costs and Benefits of the Proposed Amendments

Qualitative Analysis

The Proposed Instrument, if implemented, will have the following benefits to CFA permitted clients and international firms that provide trading or advisory services in relation to foreign contracts to CFA permitted clients:

- it will have the effect of enhancing institutional investor choice and thereby reduce costs for institutional investors, since institutional investors will now be able to receive services from any international firm that is appropriately registered in its home jurisdiction and that meets the other conditions of the exemptions in the rule, and will not be limited to those international firms that have taken the additional step of applying for and obtaining exemptive relief from the OSC;
- it will eliminate the need for international firms to have to make individual applications for relief with the OSC in order to be able to benefit from the exemptions, thereby eliminating the need to pay application fees and associated legal fees (which in some cases may be passed on to the firm's Canadian institutional clients); and
- it will respond to stakeholder comments that the OSC and the CSA should propose amendments to their legislation to introduce an international dealer, international adviser and international sub-adviser exemption for international firms similar to the exemptions for international firms in NI 31-103.¹²

We are of the view that there will be minimal compliance costs associated with the Proposed Instrument in the form of time spent by international firms and CFA permitted clients to review and familiarize themselves with new requirements.

Quantitative Analysis

The tables below set out the estimated cost reductions (subject to the assumptions below) that may arise as a result of the implementation of the Proposed Instrument.

The estimated cost reductions fall broadly into two categories:

- (i) estimated costs associated with filing an application for relief from the registration requirements applicable to international dealers, advisers and sub-advisers under the CFA (Table 1), and
- (ii) estimated costs associated with filing an application for relief from the options proficiency requirement in OSC Rule 91-502 (Table 2).

We have not attempted to quantify the reduced regulatory costs for institutional investors resulting from the enhanced institutional investor choice described above as we believe this initiative is justified on the above cost-reduction grounds alone. In addition, we have not attempted to quantify the reduced regulatory costs for international firms resulting from our streamlining the exemptions to remove certain minor terms and conditions that we have concluded are no longer justified on cost-benefit grounds. However, these reduced regulatory costs for institutional investors and international firms would be in addition to these cost savings.

As part of our research, we conducted analysis on the historical applications filed by international firms over the period January 1, 2017 to December 31, 2019.

Based upon a review of our records, the OSC received the following applications for relief under the CFA between January 1, 2017 and December 31, 2019:

- International dealer: 15
- International adviser: 20

¹² See letter dated March 8, 2013 from the Investment Industry Association of Canada (IIAC) to the CSA Derivatives Committee. A copy of this letter can be found at the following link under the date March 8, 2013: <http://iiac.ca/resources/submissions/> OSC staff published OSC Staff Notice 33-744 *Availability of registration exemptions to foreign dealers in connection with trades in options and futures contracts under the Commodity Futures Act (Ontario)* (OSC Staff Notice 33-744) in September 2014 in response to some of the concerns raised in this letter.

- International sub-adviser: 22
 - Options proficiency: 18
-
- Total: 75
- Average per annum: 25

The filing fees for such applications are generally as follows (per Filer):

International dealer:	\$4800 ¹³
International adviser:	\$4800
International sub-adviser:	\$4800
Options proficiency relief:	\$4800 ¹⁴

Based on this analysis and using the estimated cost information in Tables 1 and 2 noted above, we have estimated the cost savings to international firms (which should result in reduced costs to their institutional clients) of our Proposed Amendments (Table 3).

TABLE 1			
Application for Registration Relief under the CFA			
Legal	<i>Time (# hours)¹⁵</i>	<i>Hourly costs (\$xx/hour)¹⁶</i>	Total
How many hours, on average, is required for legal counsel to prepare, file and engage with the OSC and the international firm on the application process?	10-15 hours	\$350	\$3,500-\$5,250
Regulatory Cost			
Cost of application	N/A	\$4,800 ¹⁷	\$4,800
Total estimated time and costs associated with each application for relief	10-15 hours		\$8,300-\$10,050

TABLE 2			
Application for Options Proficiency Relief under OSC Rule 91-502			
Legal	<i>Time (# hours)¹⁸</i>	<i>Hourly costs (\$xx/hour)</i>	
How many hours, on average, is required for legal counsel to prepare, file and engage with the OSC and the international firm on the application process?	5 hours	\$350	\$1,750

¹³ An application for international dealer relief under the CFA typically includes a request for relief from the dealer registration requirement in s. 22 of the CFA and the trading restrictions in s. 33 of the CFA. Technically the fee for two heads of relief under OSC Rule 13-503 (Commodity Futures Act) Fees is \$7,000. However, this fee is typically reduced to \$4800 for just s. 22 relief with a partial fee waiver by the Director.

¹⁴ An application for options proficiency relief under OSC Rule 91-502 is typically combined with an application for international dealer relief or international adviser relief under the CFA. However, there is an additional fee requirement of \$4800 under OSC Rule 13-502 Fees applicable to this relief.

¹⁵ In order to develop an estimate of the number of hours required for an international firm and its advisors to file an application for registration relief and options proficiency relief, we have relied on data derived from staff's consultations with a small number of advisors and/or consultants involved in the preparation of these applications. We have not included any time spent by representatives of the international firm in working with counsel to prepare, file and engage with OSC staff on the application.

¹⁶ We assume that an international firm applying for relief would engage external legal counsel to prepare the application. We further assume that a lawyer with approximately 6-10 years' experience would represent the international firm on the application and the average hourly rate for a lawyer with this level of experience in Ontario is \$350. (Canadian Lawyer's 2019 Legal Fees Survey)

¹⁷ Application fee paid to the OSC in accordance with OSC Rule 13-503 (Commodity Futures Act) Fees.

¹⁸ We have discounted the time estimates for the applications for options proficiency relief as these are typically combined with an application for dealer registration relief or adviser registration relief.

Regulatory Cost			
Cost of application	N/A	\$4,800 ¹⁹	\$4,800
Total estimated time and costs associated with each application for relief	5 hours		\$6,550

Estimated Cost Savings

Estimated cost savings to the international firm of filing an application for relief (based on historical research) (average/year):

TABLE 3			
Number of applications filed requesting relief from registration requirements under the CFA (average/year)	Number of applications filed requesting relief from options proficiency requirements (average/year)	Total reduction of time spent on preparing, filing and completing these applications with the OSC	Total cost reduction from eliminating the need to file an application for relief. (# of applications that would no longer be filed x average cost of preparing and completing an application – see Tables 1 & 2 above)
19	6	10-15 hours per application	\$157,700-\$190,950 (CFA relief) \$39,300 (91-502 relief)

Risks and Uncertainties

As noted above, the exemptions in the Proposed Instrument are generally consistent with the exemptions contained in recent exemptive relief decisions but have been modified and streamlined slightly to remove certain terms and conditions that we have concluded are no longer justified on cost-benefit grounds.

The principal change to the current standard form of decision is as follows:

Recent decisions have generally included a condition that the international firm notify the Commission of any regulatory action in respect of the applicant firm or predecessors or specified affiliates of the applicant firm by completing and filing a notice set out in an appendix to the decision. The required disclosure is generally similar to the disclosure required of registered firms by Part 7 of Form 33-109F6 *Registration Information (Form 33-109F6)*. The condition may allow the applicant firm to satisfy this disclosure requirement by filing a notice that incorporates by reference certain disclosure made by the firm in its home jurisdiction.

Based on our experience with these applications and discussions with counsel in relation to the international firms' experience in complying with these terms and conditions, we have decided not to include this condition as a condition of the exemptions in the Proposed Instrument since

- there is no corresponding notification requirement in the exemptions for international firms in NI 31-103; and

¹⁹ Application fee paid to the OSC in accordance with OSC Rule 13-502 *Fees*.

- we have been advised by applicant firms that compliance with this condition may result in significant additional regulatory burden, since it may require substantial amounts of regulatory disclosure that is already publicly available being reformatted and restated to comply with the form requirements of NI 33-109 and the appendix to the decision.

Even if staff were not receiving such notifications from international firms, staff would still be able to obtain the necessary information. International firms that rely on these exemptions are “market participants” under the CFA. They are therefore required by sections 14 and 14.1 of the CFA to keep, and to produce when requested, relevant books and records. In addition, in many cases the relevant information is readily available to staff through regulatory disclosure websites such as the FINRA BrokerCheck system or the NFA Background Affiliation Status Information Center (BASIC) disclosure system.

Accordingly, after further consideration, OSC staff accept that the costs of requiring this notification outweigh the benefits and that these costs may deter international firms providing trading or advising services to institutional clients in Canada.

Alternatives Considered

An alternative to proceeding with the Proposed Instrument would be to maintain the *status quo*, which would mean staff would continue to process applications for exemptive relief. However, based on our experience with recent applications for relief, we are now satisfied that we can codify relief on the basis of a “standard” set of terms and conditions in order to eliminate frequently occurring applications for relief. We also propose to eliminate certain terms and conditions that are currently found in the discretionary relief orders but that we have determined are unnecessary.

The Proposed Instrument is intended to be an interim measure until such time as the CFA may be repealed and replaced with new legislation, such as the proposed *Capital Markets Act* as part of the CMRA initiative. Accordingly, another alternative to proceeding with the Proposed Instrument would be to wait until the CFA is repealed and replaced with new legislation.

However, repealing the CFA would likely require extensive amendments to the OSA and to current and proposed rules (including the proposed derivatives registration and business conduct rules). Accordingly, we believe it makes sense to proceed with the Proposed Instrument as an interim measure.

