

B.5 Rules and Policies

B.5.1 Ontario Securities Commission Rule 32-506 (Under the Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers

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;

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 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;

“**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) 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 U.K., and the U.S.;

“**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 where 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) 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 or company acting as sub-adviser 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; and
 - (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.

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*:

 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.

B.5: Rules and Policies

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.ca>