

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Jefferies Bache, LLC, 2014 ABASC 340

Date: 20140828

Jefferies Bache, LLC and Jefferies LLC

Background

1. Jefferies Bache, LLC (**Jefferies Bache**) and its affiliate Jefferies LLC (**Jefferies**), with which Jefferies Bache will amalgamate on or about September 1, 2014 (collectively, the **Filers**), have applied to the Alberta Securities Commission (the **Commission**) for an order under section 144 of the *Securities Act* (Alberta) (the **Act**) exempting the Filers from the dealer registration requirement of section 75(1)(a) of the Act (the **Exemption Sought**) in respect of their provision of trade and clearing services for exchange contracts, commodity futures contracts, commodity futures options, exchange-traded equity options and foreign exchange contracts (collectively, **Derivatives**) to clients, each of which is a “qualified party” as defined in Commission Blanket Order 91-505 *Over-the-Counter Derivatives Transactions* (**Qualified Parties**).

Interpretation

2. Terms defined in National Instrument 14-101 *Definitions* or in the Act have the same meaning if used in this decision unless otherwise defined herein.

Representations

3. This decision is based on the following representations made by the Filers to the Commission:
 - (a) Jefferies Bache is:
 - (i) a limited liability company formed under the laws of Delaware;
 - (ii) registered as a futures commission merchant (an **FCM**) with the United States (**US**) Commodity Futures Trading Commission (the **CFTC**);
 - (iii) a member of the US National Futures Association (the **NFA**);
 - (iv) a clearing member of ICE Futures US, ICE Futures Europe, ICE Clear US, ICE Clear Europe, Options Clearing Corporation, The Clearing Corporation, the CBOE Futures Exchange, the Minneapolis Grain Exchange, the Dubai Mercantile Exchange, the Nodal Exchange, LCH. Clearnet Ltd. and all CME Group exchanges;

- (v) a non-clearing member of Eurex, ICE Futures Canada and the Montréal Exchange; and
 - (vi) registered under the Act as a Restricted Dealer and Portfolio Manager. Jefferies Bache is not registered under the securities legislation of any other jurisdiction.
- (b) Jefferies is:
- (i) a limited liability company formed under the laws of Delaware;
 - (ii) registered as a broker-dealer with the US Securities and Exchange Commission (**SEC**);
 - (iii) registered as an Introducing Broker with the CFTC and will become registered as an FCM with the CFTC before the amalgamation with Jefferies Bache;
 - (iv) a member of BATS Y-Exchange, Inc., BATS Z-Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, EDGA Exchange, Inc., EDGX Exchange, Inc., ISE Gemini, LLC, International Securities Exchange, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NASDAQ Stock Market, NASDAQ Options Market, National Stock Exchange, New York Stock Exchange, NYSE Arca, Inc., NYSE MKT LLC and Topaz Exchange;
 - (v) a member of the US Financial Industry Regulatory Authority (**FINRA**);
 - (vi) a member of the NFA;
 - (vii) a clearing member of the Options Clearing Corporation and the Depository Trust and Clearing Corporation; and
 - (viii) relying on the international dealer exemption in each of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Quebec. Jefferies is not registered under the securities legislation of any jurisdiction.
- (c) The Filers are not in default of securities legislation in any jurisdiction.
- (d) The Filers propose to trade in Derivatives on behalf of Qualified Parties.
- (e) The Filers will not advertise their services by television, radio, newspaper, internet or other media of general circulation originating in Canada, other than financial-industry publications.
- (f) The Filers will not maintain an office, sales force or place of business in Canada.

- (g) Derivatives will be traded by the Filers for Alberta clients only on exchanges identified in Commission Blanket Order 91-501 *Recognition of Exchanges Located Outside Alberta for the Purposes of Trading in Exchange Contracts (Recognized Exchanges)*.
- (h) All Derivatives traded by the Filers on behalf of Qualified Parties will be subject to regulation by the CFTC or other similar regulatory authorities. The Filers are or will prior to their amalgamation become, and will after their amalgamation be, required to adhere to regulations relating to a CFTC-registered FCM and an NFA-registered member which, among other things, require the segregation and separate accounting of customer positions and money, to protect customers in the event of the insolvency or financial instability of an FCM. This protection will extend to all Alberta clients of the Filers in respect of trades in Derivatives.
- (i) The Filers will perform both execution and clearing functions for trades in Derivatives, unless the client directs Jefferies Bache or Jefferies, as the case may be, to clear the trade through a particular clearing broker, or through another carrying broker only if Jefferies Bache or Jefferies, as the case may be, is not a member of the Recognized Exchange on which the trade is executed. If Jefferies Bache or Jefferies, as the case may be, performs only the execution of a client's Derivative trade, the clearing broker will represent to Jefferies Bache or Jefferies, as the case may be, that it is also required to comply with the rules of exchanges and any applicable regulatory requirements, including requirements under the Act. The clearing broker will also represent to each of Jefferies Bache or Jefferies, as the case may be, that it is registered with the CFTC or the SEC (or both), as applicable.

Decision

4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders that the Exemption Sought is granted provided that and for so long as:
 - (a) any trade in Derivatives by the Filers for Alberta clients is conducted only on behalf of a Qualified Party;
 - (b) all Derivatives are traded on a Recognized Exchange;
 - (c) following the amalgamation of Jefferies Bache and Jefferies, the amalgamated entity maintains in good standing registration with the CFTC as an FCM, membership with the NFA and membership with FINRA;
 - (d) each Filer provides to each client when opening an account for the client:
 - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers, employees or agents because they are resident outside Alberta and all or substantially all of their assets are situated outside Alberta;

- (ii) a statement that the Filer is not registered under the Act and, accordingly, the protection available to clients of a dealer registered under the Act will not be available to clients of the Filer;
 - (iii) the name and address of the Filer’s agent for service in Alberta; and
 - (iv) a statement providing risk disclosure substantially similar to that required under the Act for registered dealers trading in exchange contracts; and
 - (e) the Commission is in receipt from each Filer of a completed Submission to Jurisdiction and Appointment of Agent for Service in the form attached as an Appendix to this decision.
5. This decision will expire on the earlier of:
- (a) four years from the date of this decision; and
 - (b) 90 days after the coming into force of any change to Alberta securities laws regarding over-the-counter derivatives transactions.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Stephen Murison
Vice-Chair

APPENDIX
Submission to Jurisdiction and Appointment of Agent for Service

Name of person or company (“International Firm”):
If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number for the firm:
Jurisdiction of Incorporation for the International Firm:
Head office address of the International Firm:

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:

The International Firm is relying on an exemption order under section 144 of the Securities Act (Alberta) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (the Relief):

- Section 8.18 [international dealer]
- Section 8.26 [international advisor]
- Other [specify]:

Name of agent for service of process (the “Agent for Service”):
Address for service of process on the Agent for Service:

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.

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.

Until 6 years after the International Firm ceases to rely on the Relief, the International Firm must submit to the regulator

- 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; and
- 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

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)

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)