

## Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Section 144 of the *Securities Act* (Alberta) – Filer seeks relief from the requirement in Section 75(1)(a) of the *Securities Act* (Alberta) and its equivalent in the *Securities Act* (British Columbia) to register as a dealer in respect of the provision of trading services to Alberta and British Columbia clients. The filer provide trading services for exchange-traded derivatives to Qualified Parties as defined in Alberta Securities Commission Blanket Order 91-505 *Over-the-Counter Derivatives Transactions* and in British Columbia Securities Commission Blanket Order 91-501 *Over-the-Counter Derivatives*.

## Applicable Legislative Provisions

*Securities Act* (Alberta) sections 75(1)(a) and 144.

## ALBERTA SECURITIES COMMISSION

**Citation: Re ICBC Standard Bank Plc, 2016 ABASC 292**

**Date: 20161202**

In the Matter of  
the Securities Legislation of Alberta  
(the **Jurisdiction**)

and

In the Matter of the Process  
For Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
ICBC Standard Bank Plc  
(the **Filer**)

## Decision

## Background

1. The principal regulator in the Jurisdiction has received an application from the Filer for a decision under securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an order under section 144 of the *Securities Act* (Alberta) (the **Act**) exempting the Filer from the dealer registration requirement (the **Exemption Sought**) in respect of its provision of trading services for futures contracts, options on futures contracts and options with respect to equity index, interest rate, energy, agricultural, foreign exchange (including foreign exchange indices), metals, weather and real estate

products (collectively, **Derivatives**) to clients in Alberta who are “qualified parties” as defined in Alberta Securities Commission Blanket Order 91-506 *Over-the-Counter Trades in Derivatives* or to clients in British Columbia who are “qualified parties” as defined in British Columbia Securities Commission Blanket Order 91-501 *Over-the-Counter Derivatives* (collectively in Alberta and British Columbia, **Qualified Parties**).

2. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):
  - (a) the Alberta Securities Commission (the Commission) is the principal regulator for this application; and
  - (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in British Columbia.

### **Interpretation**

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

### **Representations**

4. This decision is based on the following representations made by the Filer to the Commission:
  - (a) The Filer is:
    - (i) a public limited company registered in England and Wales, with its head office located in London, England;
    - (ii) owned 60% by the Industrial and Commercial Bank of China Limited and 40% by Standard Bank London Holdings Limited, a wholly-owned subsidiary of Standard Bank Group;
    - (iii) authorized and regulated as a bank in the United Kingdom (the **UK**) by the Prudential Regulation Authority and the Financial Conduct Authority (together, the **UK Regulatory Authorities**) in relation to specified permitted activities including advising on investments and arranging deals in investments;
    - (iv) a member of major international securities and commodity futures exchanges and clearing houses including, but not limited to, the London Stock Exchange, the London Bullion Market Association, the London Metal Exchange, the London Platinum and Palladium Market, the Tokyo Commodity Exchange, the Shanghai Gold Exchange and LCH Clearnet Ltd.;
    - (v) a member of the United States National Futures Association (**NFA**);

- (vi) approved by the NFA as an exempt foreign firm;
  - (vii) provisionally registered by the NFA as a swap dealer; and
  - (viii) relying on the international dealer exemption under section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in British Columbia, Alberta, Ontario and Québec.
- (b) The Filer is not registered under the securities legislation of any jurisdiction of Canada.
  - (c) The Filer is not in default of securities legislation in any jurisdiction.
  - (d) The Filer proposes to trade in Derivatives on behalf of Qualified Parties.
  - (e) The Filer will not advertise its services by television, radio, newspaper, internet or other media of general circulation originating in Canada, other than financial-industry publications.
  - (f) The Filer will not maintain an office, sales force or place of business in Canada.
  - (g) Derivatives will be traded by the Filer on behalf of (i) Alberta clients only on exchanges located outside Canada (**Non-Canadian Exchanges**), and (ii) British Columbia clients only on exchanges identified in British Columbia Instrument 21-501 *Recognition of Exchanges, Self-Regulatory Bodies, and Jurisdictions (Recognized Exchanges)*.
  - (h) All Derivatives traded by the Filer on behalf of Qualified Parties will be subject to regulation by the UK Regulatory Authorities or other similar regulatory authorities. The Filer is required to adhere to rules of the UK Regulatory Authorities and NFA that are designed to protect customers including requirements to maintain adequate capital levels and to make and keep specified types of records relating to customer accounts and transactions. To protect customers in the event of insolvency or financial instability of the Filer, the Filer must ensure that customer securities and monies are separately accounted for and segregated from the securities and monies of the Filer. This protection will extend to Alberta and British Columbia clients of the Filer.
  - (i) The Filer will perform execution functions for trades in Derivatives. The Filer will also perform clearing functions for such trades unless (i) the Filer's client directs the Filer to clear the trade through a particular clearing broker, or (ii) the Filer is not a member of the Non-Canadian Exchange or Recognized Exchange, as applicable, on which the trade is executed, in which case the trade will be cleared through another clearing broker. If the Filer performs only the execution of a

client's Derivative trade, the clearing broker will represent to the Filer that it also is 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 the Filer that it is registered with one or more of the UK Regulatory Authorities or other similar regulatory authorities, as applicable.

### **Decision**

5. The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.
6. The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that, and for so long as, in respect of clients in Alberta and British Columbia:
  - (a) any trade in Derivatives by the Filer is conducted only on behalf of a Qualified Party;
  - (b) Derivatives are traded, for Alberta clients, only on a Non-Canadian Exchange and, for British Columbia clients, only on a Recognized Exchange;
  - (c) the Filer maintains in good standing its authorizations with the UK Regulatory Authorities and its membership and registration with the NFA;
  - (d) the 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 or British Columbia, as the case may be, and all or substantially all of their assets are situated outside Alberta or British Columbia, as the case may be;
    - (ii) a statement that the Filer is not a registrant and, accordingly, the protection available to clients of a dealer registered under the securities legislation of Alberta or British Columbia, as applicable, will not be available to clients of the Filer;
    - (iii) the name and address of the Filer's agent for service in Alberta or British Columbia, as the case may be; and
    - (iv) a statement providing risk disclosure substantially similar to that required under the Act, in the case of Alberta clients, or under British Columbia Form 91-903F *Risk Disclosure Statement (Exchange Contracts)*, in the case of British Columbia clients; and

- (e) each of the Commission and the British Columbia Securities Commission is in receipt from the Filer of a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as an Appendix to this decision.

7. This decision will expire on the earlier of:

- (a) five years from the date of this decision; and
- (b) in Alberta or British Columbia, as the case may be, 180 days after the coming into force in that province of any change to securities legislation regarding over-the-counter derivatives transactions and registration of derivatives dealers.

**For the Commission:**

*“original signed by”*

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Tom Cotter  
Vice-Chair

*“original signed by”*

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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 adviser]  
 \_\_\_\_\_ 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)