

ALBERTA SECURITIES COMMISSION

ORDER

Citation: **Re Creditex Securities Corporation, 2016 ABASC 298**

Date: **20161216**

Creditex Securities Corporation

Background

1. Creditex Securities Corporation (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order under section 144 of the *Securities Act* (Alberta) (the **Act**) exempting the Filer from the dealer registration requirement of section 75(1)(a) of the Act (the **Exemption Sought**) in respect of its provision of trading services for futures contracts and options on futures contracts with respect to commodities and interest rates (collectively, **Derivatives**) to clients in Alberta, each of which is a “qualified party” as defined in Commission Blanket Order 91-506 *Over-the-Counter Trades in Derivatives* (**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 Filer to the Commission:
 - (a) The Filer is:
 - (i) a corporation incorporated under the laws of the state of Delaware with its head office located in New York, New York;
 - (ii) a wholly-owned indirect subsidiary of IntercontinentalExchange Inc. (**ICE**);
 - (iii) registered as a broker-dealer with the United States (**US**) Securities and Exchange Commission (the **SEC**);
 - (iv) registered as an introducing broker with the US Commodity Futures Trading Commission (the **CFTC**);
 - (v) a member of the US National Futures Association (the **NFA**);
 - (vi) a member of the Financial Industry Regulatory Authority (**FINRA**);
 - (vii) a member of all major US commodity futures exchanges;

- (viii) relying on the international dealer exemption under section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in Alberta, Manitoba and Ontario; and
 - (ix) relying on an exemption from section 75(1)(a) of the Act granted by the Commission in an order cited as *Creditex Securities Corporation, 2012 ABASC 543*, which expires on 21 December 2016.
- (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 offer Qualified Parties in Alberta the ability to trade in Derivatives through the Filer.
 - (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 for Alberta clients only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
 - (h) All Derivatives traded by the Filer on behalf of Qualified Parties will be subject to regulation by the CFTC or other similar regulatory authorities.
 - (i) Pursuant to its registrations and memberships, the Filer is authorized to handle customer orders and introduce them to a firm registered as a futures commission merchant (**FCM**) with the CFTC and otherwise act as a futures introducing broker in the US. Rules of the CFTC and NFA require the Filer to maintain adequate capital levels, make and keep specified types of records relating to customer transactions, and comply with other forms of customer protection rules, including know-your-customer obligations, as applicable, suitability requirements and anti-money-laundering checks.
 - (j) The Filer will perform only the execution function for trades in Derivatives and will direct that a trade executed by the Filer on behalf of a Qualified Party be delivered and cleared through the Qualified Party's carrying broker (a **Carrying Broker**) on the Non-Canadian Exchange on which the trade is executed.
 - (k) Each Carrying Broker is required to be registered as an FCM with the CFTC and will be a member of the NFA or exempt from NFA membership in accordance with US law. Each Carrying Broker will be required to adhere to regulations relating to a CFTC-registered FCM and an NFA member, as applicable, 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 Filer in respect of trades in Derivatives.

- (l) Each Carrying Broker will represent to the Filer, in an industry-standard give-up agreement, that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Qualified Party's Derivatives order will be executed and cleared and that the Carrying Broker is permitted to do business with the Qualified Party in accordance with applicable laws. The Qualified Party will also execute such give-up agreement.

Decision

- 4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 144 of the Act that the Exemption Sought is granted provided that and for so long as:
 - (a) any trade in Derivatives by the Filer for Alberta clients is conducted only on behalf of a Qualified Party;
 - (b) all Derivatives are traded on a Non-Canadian Exchange;
 - (c) the Filer maintains in good standing its registration as a broker-dealer with the SEC, its registration as an introducing broker with the CFTC and its memberships with the NFA and FINRA;
 - (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, 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 Derivatives; and
 - (e) the 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.

5. This order will become effective on 21 December 2016 and expire on the earlier of:
- (a) 21 December 2021; and
 - (b) 180 days after the coming into force of any change to Alberta securities laws regarding over-the-counter derivatives transactions and registration of derivatives dealers.

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 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)