

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Section 144(1) of the *Securities Act* (Alberta) – Filers seek 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 their provision of trading services for commodity futures contracts, commodity futures options, exchange traded equity options and foreign exchange contracts to Qualified Parties as defined in Alberta Securities Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives* 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(1).

ALBERTA SECURITIES COMMISSION

Citation: Re HSBC Securities (USA) Inc., 2017 ABASC 33

Date: 20170302

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
HSBC Securities (USA) Inc. (**HSBC USA**) and
HSBC Bank plc (**HSBC UK**)
(the **Filers**)

Decision

Background

1. The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an order under section 144(1) 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

trading services for commodity futures contracts, commodity futures options, exchange traded equity options and foreign exchange contracts (collectively, **Derivatives**) to clients in Alberta who are “qualified parties” as defined in Alberta Securities Commission Blanket Order 91-507 *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* (respectively 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 Filers have 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 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 Filers to the Commission:
 - (a) HSBC USA is:
 - (i) a corporation incorporated under the laws of the state of Delaware with its head office located in New York, New York;
 - (ii) registered as a broker-dealer with the United States (**US**) Securities and Exchange Commission (the **SEC**);
 - (iii) registered as a futures commission merchant (an **FCM**) with the US Commodity Futures Trading Commission (the **CFTC**);
 - (iv) a member of the US National Futures Association (the **NFA**);
 - (v) a member of the US Financial Industry Regulatory Authority (**FINRA**);
 - (vi) a clearing member of the Chicago Board of Trade, Chicago Mercantile Exchange, the New York Mercantile Exchange, and other exchanges; and

- (vii) relying on the international dealer exemption under section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in Alberta, British Columbia, Ontario and Québec.
- (b) HSBC UK is:
 - (i) a public limited company incorporated in England with its head office located in London, England;
 - (ii) authorized as a bank in the United Kingdom (**UK**) by the Prudential Regulation Authority (the **PRA**) and regulated by the Financial Conduct Authority (the **FCA**) (together, the **UK Regulatory Authorities**); and
 - (iii) a member of LCH.Clearnet Ltd. and a clearing member of EUREX AG, NYSE Euronext, and other exchanges.
- (c) The Filers are relying on an exemption from section 75(1)(a) of the Act granted by the Commission in an order cited as *Re HSBC Securities (USA) Inc.*, 2013 ABASC 82, which expires on 4 March 2017 (the **2013 Exemption Order**).
- (d) The Filers are not registered under the securities legislation of any province or territory of Canada.
- (e) The Filers are not in default of securities legislation in Alberta or British Columbia.
- (f) The Filers propose to trade in Derivatives only on behalf of Qualified Parties.
- (g) The Filers will not advertise their services by television, radio, newspaper, internet or other media of general circulation that originate in Canada.
- (h) The Filers will not maintain an office, sales force, or place of business in Canada.
- (i) Derivatives will be traded by the Filers on behalf of (i) Alberta clients only on exchanges located outside Canada (each a **Non-Canadian Exchange**), and (ii) British Columbia clients only on exchanges located outside Canada and that are listed in British Columbia Blanket Order 21-501 *Recognition of exchanges, self regulatory bodies, and jurisdictions* (each a **Recognized Exchange**).
- (j) For Derivatives cleared at a clearing house under the jurisdiction of the SEC, HSBC USA is required to adhere to regulations relating to an SEC-

registered broker-dealer and a FINRA-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 a broker-dealer. This protection will extend to Alberta and British Columbia clients of HSBC USA unless the SEC permits commingling, in which event HSBC USA will nonetheless segregate such Derivatives in a manner consistent with that contemplated by CFTC regulations relating to a CFTC-registered FCM. Similarly, for Derivatives under the jurisdiction of the CFTC, HSBC USA is 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 Alberta and British Columbia clients of HSBC USA.

- (k) HSBC UK is bound by applicable FCA rules, including client asset rules which require a firm to arrange adequate protection for clients' assets for which the firm is responsible, and rules respecting the proper accounting and handling of client money. This protection will extend to Alberta and British Columbia clients of HSBC UK.

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 or British Columbia:
 - (a) any trade in Derivatives by the Filers is conducted only on behalf of Qualified Parties;
 - (b) Derivatives are traded, for Alberta clients, only on a Non-Canadian Exchange and, for British Columbia clients, only on a Recognized Exchange;
 - (c) HSBC USA maintains in good standing its registration with the SEC as a broker-dealer, its registration with the CFTC as an FCM, and its memberships and registrations with FINRA and the NFA;
 - (d) HSBC UK maintains in good standing its authorizations with the UK Regulatory Authorities;
 - (e) when opening an account for a client the relevant Filer provides to 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 its 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 for registered dealers trading in Derivatives, in the case of clients in Alberta, or by British Columbia Form 91-903F *Risk Disclosure Statement (Exchange Contracts)* for registered dealers trading in exchange contracts, in the case of clients in British Columbia; and
- (f) each Filer has provided to each of the Commission and the British Columbia Securities Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as an Appendix.
7. This decision will take effect upon the expiry of the 2013 Exemption Order and will expire on the earlier of:
- (a) five years from the date of this decision; or
 - (b) in Alberta or in 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”

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)