

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re R.J. O'Brien & Associates LLC, 2017 ABASC 46

Date: 20170316

R.J. O'Brien & Associates LLC

Background

1. R.J. O'Brien & Associates LLC (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 commodity futures contracts, commodity futures options and foreign exchange contracts (collectively, **Derivatives**) to qualified parties (**Qualified Parties**) as defined in Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives*.

Interpretation

2. Terms defined in National Instrument 14-101 *Definitions* or in the Act have the same meaning 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 privately-held corporation 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**); and
 - (iv) a clearing member of the Chicago Mercantile Exchange Group, ICE Futures U.S., ICE Futures Europe, Dubai Mercantile Exchange, CBOE Futures Exchange and Eurex AG.
 - (b) The Filer is relying on an exemption from section 75(1)(a) of the Act granted by the Commission in an order cited as *Re R.J. O'Brien & Associates LLC*, 2013 ABASC 115 which expires on March 19, 2017 (the **2013 Exemption Order**).
 - (c) The Filer is not registered under the securities legislation of any province or territory of Canada.
 - (d) The Filer is not in default of securities legislation in any jurisdiction.

- (e) The Filer proposes to trade in Derivatives on behalf of Qualified Parties.
- (f) 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.
- (g) The Filer will not maintain an office, sales force or place of business in Canada.
- (h) Derivatives will be traded by the Filer on behalf of Alberta clients only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
- (i) All Derivatives traded by the Filer on behalf of Qualified Parties will be subject to regulation by the CFTC or other similar regulatory authority. For Derivatives under the jurisdiction of the CFTC, the Filer 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 clients of the Filer in respect of trades in Derivatives.
- (j) In addition to performing execution functions for trades in Derivatives, the Filer will perform clearing functions 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 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 Derivatives trade, the clearing broker will represent to the Filer that the clearing broker is required to comply with the rules of the exchange and any applicable regulatory requirements. The clearing broker will also represent to the Filer that it is registered with the CFTC or other similar regulatory authority, as applicable.

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 by the Filer in Derivatives for Alberta clients is conducted on behalf of a Qualified Party and on a Non-Canadian Exchange;
 - (b) the Filer maintains in good standing its registration with the CFTC as an FCM and its membership with the NFA;
 - (c) 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 its assets are situated outside Alberta;

- (ii) a statement that the Filer is not a registrant 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 disclosure statement providing risk disclosure substantially similar to that required under the Act for registered dealers trading in Derivatives; and
- (d) the Filer notifies the Commission promptly of:
- (i) any restrictions or conditions placed on the Filer's registration with the CFTC as a DCM; and
 - (ii) any sanctions imposed on the Filer in connection with its activities as a DCM;
- under a settlement agreement entered into with the CFTC or an order issued by the CFTC.
- (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 order.
5. This order 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; 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) |