

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Section 144(1) 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) and *The Securities Act, 1988* (Saskatchewan) to register as a dealer in respect of the 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 to Qualified Parties as defined in Alberta Securities Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives*, British Columbia Securities Commission Blanket Order 91-501 *Over-the-Counter Derivatives* and Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*.

Applicable Legislative Provisions

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

ALBERTA SECURITIES COMMISSION

Citation: Re RBS Securities Inc., 2017 ABASC 97

Date: 20170602

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
RBS Securities Inc.
(the **Filer**)

Decision

Background

1. The principal regulator in the Jurisdiction has received an application from the Filer 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 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, 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 91-507 *Over-the-Counter Trades in Derivatives*, to clients in British Columbia who are “qualified parties” as defined in British Columbia Securities Commission Blanket Order 91-501 *Over-the-Counter Derivatives* and to clients in Saskatchewan who are “qualified parties” as defined in Saskatchewan General Order 91-908 *Over-the-Counter-Derivatives* (respectively in Alberta, British Columbia and Saskatchewan, **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 and Saskatchewan.

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) incorporated under the laws of Delaware with its head office located in Stamford, Connecticut;
 - (ii) a wholly-owned subsidiary of RBS Holdings USA Inc., an indirect subsidiary of The Royal Bank of Scotland Group plc (**RBS**);
 - (iii) registered as a futures commission merchant (**FCM**) with the United States (**US**) Commodity Futures Trading Commission (the **CFTC**);
 - (iv) registered as a broker-dealer with the US Securities and Exchange Commission (the **SEC**);
 - (v) a member of the US Financial Industry Regulatory Authority (**FINRA**);
 - (vi) a member of the US National Futures Association (**NFA**);
 - (vii) a member of all major US commodity futures exchanges; and

- (viii) relying on the international dealer exemption in section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in Alberta, British Columbia, Manitoba, Ontario and Québec.
- (b) The Filer is not registered under the securities legislation of any jurisdiction in Canada.
- (c) The Filer is not in default of securities legislation of any jurisdiction in Canada.
- (d) The Filer proposes to trade in Derivatives only 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 and Saskatchewan 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 Instrument 21-501 *Recognition of exchanges, self regulatory bodies, and jurisdictions* (each a **Recognized Exchange**).
- (h) For Derivatives cleared at a clearing house under the jurisdiction of the SEC, the Filer is required to adhere to regulations relating to an SEC-registered broker-dealer and a FINRA 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, British Columbia and Saskatchewan clients of the Filer unless the SEC permits commingling, in which event the Filer 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, the Filer is required to adhere to regulations relating to a CFTC-registered FCM and an NFA 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, British Columbia and Saskatchewan clients of the Filer.

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, British Columbia and Saskatchewan:
- (a) any trade in Derivatives by the Filer is conducted only on behalf of a Qualified Party;
 - (b) Derivatives are traded for Alberta and Saskatchewan 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 registration with the CFTC as an FCM, its registration with the SEC as a broker-dealer and its memberships with FINRA and NFA;
 - (d) when opening an account for a client the 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, British Columbia or Saskatchewan, as the case may be, and all or substantially all of their assets are situated outside of Alberta, British Columbia or Saskatchewan, 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, British Columbia or Saskatchewan, 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, British Columbia or Saskatchewan, as the case may be; and
 - (iv) a statement providing risk disclosure substantially similar to any required:
 - (A) under the Act for registered dealers trading in derivatives in the case of clients in Alberta;
 - (B) under 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; or
 - (C) under the *Securities Act* (Saskatchewan) for registered dealers trading in derivatives in the case of clients in Saskatchewan.

- (e) the Filer notifies the Commission promptly of:
 - (i) any restrictions or conditions placed on its registration with the SEC or CFTC; or
 - (ii) any sanctions imposed on it in connection with its activities as a broker-dealer or an FCM;under a settlement agreement entered into with the SEC or CFTC or an order issued by the SEC or CFTC; and
- (f) the Filer has provided to each of the Commission, the British Columbia Securities Commission and the Saskatchewan Financial and Consumer Affairs Authority 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, British Columbia or Saskatchewan, as the case may be, 180 days after the coming into force of any change to Alberta, British Columbia or Saskatchewan securities laws, as the case may be, regarding over-the-counter derivatives transactions and registration of derivatives dealers.

For the Commission:

“Original signed by”

Stan Magidson
Chair & CEO

“Original signed by”

Tom Cotter
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 also applicable in British Columbia and Saskatchewan under Multilateral Instrument 11-102 *Passport System* and 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 jurisdiction in which this Submission to Jurisdiction and Appointment of Agent for Service is filed (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)