

ALBERTA SECURITIES COMMISSION

Citation: Re EOX Holdings LLC, 2017 ABASC 150

Date: 20170915

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
EOX Holdings LLC
(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) of the Act (the **Exemption Sought**) in respect of its provision of trading services for exchange contracts 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 Nova Scotia who are "qualified parties" as defined in Nova Scotia Securities Commission Blanket Order 91-501 *Over the Counter Trades in Derivatives* (in Alberta and Nova Scotia, **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 Nova Scotia.

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 the state of Delaware with its head office located in Houston, Texas;
 - (ii) a wholly-owned subsidiary of OTC Global Holdings LP;
 - (iii) registered as an introducing broker with the United States (US) Commodity Futures Trading Commission (CFTC);
 - (iv) a member of the US National Futures Association (NFA); and
 - (v) a member or registered broker of all major US commodity futures exchanges.
 - (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 other than in respect of the subject matter to which this decision relates.
 - (d) The Filer proposes to trade in exchange contracts 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) Exchange contracts will be traded by the Filer on behalf of clients only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
 - (h) All exchange contracts 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 registration and memberships, the Filer is authorized to handle customer orders and introduce them to an executing broker registered as a futures commission merchant (FCM), and otherwise act as an introducing broker. Rules of the CFTC and NFA require the Filer to maintain adequate capital levels,

maintain specified types of records relating to customer transactions, and comply with other customer protection rules.

- (j) The Filer will perform only an execution function for trades in exchange contracts on behalf of Qualified Parties and will direct that trades 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) The Carrying Broker may opt to perform only an execution function in relation to a trade giving up the trade for clearing to a clearing broker (**Clearing Broker**).
- (l) Each Carrying Broker and Clearing 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 and each Clearing Broker will be required to adhere to regulations relating to a CFTC-registered FCM and an NFA member, as applicable, which require, among other things, 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 and Nova Scotia clients of the Filer in respect of trades in exchange contracts.
- (m) Each Carrying Broker will represent to the Filer, in an industry-standard give-up agreement, that it will perform its obligations in relation to the execution and clearing of trades 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 exchange contract 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

- 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 in respect of clients in Alberta and Nova Scotia provided that, and for so long as:
 - (a) any trade in exchange contracts by the Filer is conducted only on behalf of a Qualified Party;
 - (b) such exchange contracts are traded only on a Non-Canadian Exchange;
 - (c) the Filer maintains in good standing its registration with the CFTC as an introducing broker and its membership with the 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 or Nova Scotia, as the case may be, and all or substantially all of their assets are situated outside Alberta or Nova Scotia, 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 Nova Scotia, 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 Nova Scotia, as applicable; 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 and Nova Scotia securities legislation in the case of clients in Nova Scotia;
- (e) the Filer notifies the Commission promptly of:
- (i) any restrictions or conditions placed on its registration with the CFTC as an introducing broker; or
 - (ii) any sanctions imposed on the Filer in connection with its activities as an introducing broker;
- under a settlement agreement entered into with the CFTC or an order issued by the CFTC; and
- (f) the Filer has provided to the Commission and the Nova Scotia Securities Commission 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 Nova Scotia, as the case may be, 180 days after the coming into force of any change to Alberta or Nova Scotia 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 Nova Scotia 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

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)