

# ALBERTA SECURITIES COMMISSION

## ORDER

Citation: Re BofAML Securities, Inc., 2018 ABASC 107

Date: 20180706

### BofAML Securities, Inc.

#### Background

1. BofAML Securities, Inc. (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) 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 exchange contracts to clients in Alberta, each of which is a "qualified party" as defined in Commission Blanket Order 91-507 *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 order unless otherwise defined herein.

#### Representations

3. This order is based on the following representations made by the Filer to the Commission:
  - (a) The Filer is:
    - (i) formed under the laws of Delaware with its head office in New York, New York;
    - (ii) an indirect wholly-owned subsidiary of Bank of America Corporation;
    - (iii) registered as a broker-dealer with the United States (**US**) Securities and Exchange Commission (**SEC**) and as a futures commission merchant (**FCM**) with the US Commodity Futures Trading Commission (**CFTC**);
    - (iv) a member of the US Financial Industry Regulatory Authority (**FINRA**) and of the US National Futures Association (**NFA**); and
    - (v) in the process of establishing memberships with a number of major US securities and equity options exchanges, including the New York Stock Exchange, NASDAQ Stock Market, Chicago Board Options Exchange, Miami International Securities Exchange, International Securities Exchange and the BOX Options Exchange. The Filer is also in the process of establishing memberships with many major US commodity exchanges, including the Chicago Mercantile Exchange, Chicago Board of Trade, New York Mercantile Exchange, Commodity Exchange, Inc., CBOE Futures

Exchange, Eris Exchange, ICE Futures U.S. and Nodal Exchange, and trades through affiliated or unaffiliated member firms on other exchanges, including exchanges in Canada.

- (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 of Canada.
- (d) The Filer proposes to trade in exchange contracts only on behalf of Alberta clients that are 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 Alberta clients only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
- (h) All exchange contracts traded by the Filer on behalf of Alberta clients will be subject to regulation by the CFTC or other similar regulatory authority. For exchange contracts 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 exchange contracts.
- (i) The Filer will perform execution functions for trades in exchange contracts. The Filer will also perform clearing functions for such trades 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 trade, the clearing broker will represent to the Filer that the clearing broker is also required to comply with the rules of 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.

**Order**

4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 144(1) of the Act that the Exemption Sought is granted provided that and for so long as:
- (a) any trade in exchange contracts by the Filer 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 SEC as a broker-dealer, its registration with the CFTC as an FCM and its memberships with FINRA and 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 their assets are situated outside of 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 statement providing risk disclosure substantially similar to that required under the Act for registered dealers trading in exchange contracts;
  - (d) the Filer notifies the Commission promptly of:
    - (i) any restrictions or conditions placed on its registration with the CFTC as an FCM; and
    - (ii) any sanctions imposed on the Filer in connection with its activities as an FCM;

under a settlement agreement entered into with the CFTC or an order issued by the CFTC; 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 order.

5. This order will expire on the earlier of:
- (a) five years from the date of this order; 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”*

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Stan Magidson  
Chair and CEO

*“original signed by”*

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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 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)