

# ALBERTA SECURITIES COMMISSION

## ORDER

**Citation: Re New Frontier Capital Markets, LLC, 2020 ABASC 101**

**Date: 20200624**

### **New Frontier Capital Markets, LLC**

#### **Background**

1. New Frontier Capital Markets, LLC (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 trades in exchange contracts to clients in Alberta who are "qualified parties" 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) incorporated under the laws of the State of Illinois with its head office located in Chicago, Illinois;
    - (ii) a privately-held business owned by Benjamin Johnson, Cory Brandt, Daniel Bluntzer and Kurt Johnson, the principals of the Filer;
    - (iii) registered as an introducing broker (**IB**) with the United States (**US**) Commodity Futures Trading Commission (**CFTC**); and
    - (iv) a member of the US National Futures Association (**NFA**).
  - (b) The Filer is not registered under the securities legislation of any jurisdiction of Canada.
  - (c) The Filer admits that absent the Exemption Sought, it is engaged in registrable activities in Alberta, including trading in, or holding itself out as being in the business of trading in, exchange contracts, without registration or an exemptive relief order, and in this way is non-compliant with section 75(1)(a) of the Act (the **Filer's Non-Compliance**).

- (d) The Filer has paid to the Commission the amount of \$1,500 as a monetary settlement for the Filer's Non-Compliance.
- (e) The Filer proposes to trade in exchange contracts only 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) The Filer shall file with the Executive Director of the Commission any information the Executive Director may require in a form that is acceptable to the Executive Director.
- (i) Exchange contracts will be traded by the Filer on behalf of Qualified Parties only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
- (j) 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.
- (k) 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 IB. The Filer is a guaranteed IB of R.J. O'Brien & Associates LLC, a registered FCM with the CFTC and a member of the NFA, and is therefore exempt from the requirements under CFTC and NFA rules requiring the Filer to maintain specified adequate capital. Rules of the CFTC and NFA require the Filer to maintain specified types of records relating to customer transactions, and comply with other customer protection rules.
- (l) The Filer will perform only an introducing broker and 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 (**Carrying Broker**) on the Non-Canadian Exchange on which the trade is executed.
- (m) The Carrying Broker may opt to perform only an execution function in relation to a trade by giving up the trade for clearing to a clearing broker (**Clearing Broker**).
- (n) 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 applicable 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 clients of the Filer in respect of trades in exchange contracts.

- (o) The Filer will only deal with Carrying Brokers who enter into an industry-standard give-up agreement, with a Qualified Party that requires the Carrying Broker to 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.

### **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 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 as an IB with the CFTC and its membership with the NFA;
  - (d) when opening an account for a Qualified Party, the Filer provides to the Qualified Party:
    - (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 Alberta;
    - (ii) a statement that the Filer is not a registrant and, accordingly, the protection available to clients of a dealer registered under the Act will not be available to the Qualified Party;
    - (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;

- (e) the Filer notifies the Commission promptly of:
  - (i) any restrictions or conditions placed on its registration with the CFTC as an IB; or
  - (ii) any sanctions imposed on the Filer in connection with its activities as an IB under a settlement agreement entered into with the CFTC, pursuant to an order issued by the CFTC, or as otherwise required by the CFTC; and
- (f) the Filer has provided to the Commission 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 that affects registration of derivatives dealers.

**For the Commission:**

“original signed by”  
Tom Cotter  
Vice-Chair

“original signed by”  
Kari Horn  
Vice-Chair

## Appendix

### Submission to Jurisdiction and Appointment of Agent for Service

Name of person or company (the <b>International Firm</b> ):
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 <b>Agent for Service</b> ):
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)