

## B.5 Rules and Policies

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### B.5.1 Notice of Adoption – OSC Rule 32-506 (Commodity Futures Act) Exemptions for International Dealers, Advisers and Sub-Advisers; Amendment to OSC Rule 91-502 Trades in Recognized Options under the Securities Act

#### NOTICE OF ADOPTION

#### OSC RULE 32-506 (COMMODITY FUTURES ACT) EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS

#### AMENDMENT TO OSC RULE 91-502 TRADES IN RECOGNIZED OPTIONS UNDER THE SECURITIES ACT

August 4, 2022

#### Introduction

On April 26, 2022, the Ontario Securities Commission (the **Commission**) made Ontario Securities Commission Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers* (**OSC Rule 32-506**) as a rule pursuant to section 65 of the *Commodity Futures Act* (Ontario) (the **CFA**).

On the same date, the Commission made an amendment (the **91-502 Amendment**) to OSC Rule 91-502 *Trades in Recognized Options* (**OSC Rule 91-502**) pursuant to section 143 of the *Securities Act* (Ontario) (the **OSA**).

On August 4, 2022, the Commission delivered OSC Rule 32-506 and the 91-502 Amendment (collectively, the **Instruments**) to the Ontario Minister of Finance (the **Minister**) in accordance with section 68 of the CFA and section 143.3 of the OSA, respectively.

The Minister may approve or reject the Instruments or return them for further consideration. If the Minister approves the Instruments or does not take any further action by September 29, 2022, they will come into force on October 14, 2022.

#### Substance and Purpose

The Instruments are collectively a regulatory burden reduction initiative and codify relief that was, until recently, routinely granted by the Commission under both the CFA and OSC Rule 91-502 to international dealers, international advisers and international sub-advisers (collectively, **international firms**).

The Instruments codify exemptive relief for international firms in order to

- enhance institutional investor access to international options and futures markets and thereby reduce regulatory costs for such investors, and
- reduce regulatory burden by eliminating the need for international firms to file applications for exemptive relief.

As explained below, since April 15, 2021, international firms have been able to rely on certain interim class orders that provide substantially the same relief as the relief that will be provided by the Instruments once the Instruments come into force.

The interim class orders expire on the date that the Instruments come into force. An international firm relying on an exemption in the interim class orders is not required to take any action as a consequence of the coming into force of either or both of the Instruments.

#### Draft Capital Markets Act

On October 12, 2021, the Ontario government published the draft *Capital Markets Act* (**CMA**) for stakeholder consultation.<sup>1</sup> The deadline for stakeholder comments was February 18, 2022.

The CMA is new draft legislation intended to replace the OSA and the CFA in Ontario, if it comes into force. The CMA will not become law unless a bill is passed by the Legislative Assembly of Ontario in the future.

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<sup>1</sup> <https://www.ontariocanada.com/registry/view.do?postingId=38527&language=en>

If the CMA comes into force and the OSA and the CFA are repealed, it is expected that the Instruments would also be repealed and replaced by appropriate rules and regulations under the CMA.

### **Background to the Instruments**

On December 1, 2020, the Commission published a notice and request for comment (the **Notice**) in respect of proposed versions of the Instruments for a 90-day comment period (collectively, the **Proposed Instruments**).<sup>2</sup>

As explained in the Notice, the substance and purpose of the Proposed Instruments is to codify in a rule certain exemptions from the registration requirements in the CFA that are routinely granted by the Commission to international firms on an application basis. These applications also sometimes include a request for an exemption from the options proficiency requirements in OSC Rule 91-502 that may otherwise be applicable to international firms and their representatives.

The Proposed Instruments are part of the burden reduction initiatives identified in the OSC Report entitled *Reducing Regulatory Burden in the Capital Markets* and published on November 19, 2019 (the **OSC Burden Reduction Report**),<sup>3</sup> and are related to Recommendations R-27 and D-18 discussed in the OSC Burden Reduction Report. For more information about this, please refer to the Notice.

### **Comments received on the Proposed Instruments**

The comment period for the Proposed Instruments expired on March 1, 2021. The Commission received two comment letters on the Proposed Instruments.<sup>4</sup> Both comment letters were supportive of the Proposed Instruments. The names of the commenters and a summary of their comments, together with our responses, are contained in Annex A of this notice.

### **Summary of Changes**

After considering the comments received on the Proposed Instruments, we have made some minor revisions as reflected in the Instruments and as discussed in our responses to comments. As these changes are not material, we are not republishing the Instruments for a further comment period.

### **Interim Class Orders 32-507 and 91-505**

One of the commenters requested that the Commission consider issuing interim class orders (i.e., blanket orders) until such time as the Proposed Instruments come into force so as to avoid the cost and burden of renewing relief for those firms whose relief might expire prior to the Instruments coming into force.

On April 6, 2021, the Commission made Ontario Instrument 32-507 (*Commodity Futures Act*) Exemptions for International Dealers, Advisers and Sub-Advisers (Interim Class Order)<sup>5</sup> as an interim class order (**OI 32-507**) under subsection 75(2) of the CFA providing an exemption from the registration requirements in the CFA for certain international firms and their representatives that provide trading or advisory services to institutional clients in relation to commodity futures contracts and commodity futures options (collectively, **contracts**) that trade on foreign exchanges.

On the same date, the Commission made Ontario Instrument 91-505 Exemptions from the Options Proficiency Requirement for International Dealers, Advisers and Sub-Advisers (Interim Class Order)<sup>6</sup> as an interim class order (**OI 91-505**) under subsection 143.11(2) of the OSA providing an exemption from the options proficiency requirement in section 3.1 of OSC Rule 91-502 for certain international firms and their representatives who rely on an exemption from the dealer or adviser registration requirements in the OSA or the CFA.

The above interim class orders provide substantially the same relief as the relief that will be provided by the Instruments once the Instruments come into force and remain in effect until the earlier of the following:

- (a) the date that is 18 months after the date of the interim class order unless extended by the Commission, and
- (b) the effective date of the Instruments.

The Commission is proceeding with the Instruments to allow international firms to continue to be able to operate on the basis of the exemptions set out in the interim class orders and the Instruments beyond the expiry of the interim class orders.

An international firm relying on an exemption in OI 32-507 or OI 91-505 is not required to take any action as a consequence of the coming into force of the Instruments.

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<sup>2</sup> [https://www.osc.ca/sites/default/files/2021-03/sn\\_20201201\\_32-506\\_exemptions-for-international-dealers-advisers-and-sub-advisers.pdf](https://www.osc.ca/sites/default/files/2021-03/sn_20201201_32-506_exemptions-for-international-dealers-advisers-and-sub-advisers.pdf)

<sup>3</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/1/11-784/osc-news-release-osc-makes-doing-business-easier-ontario-market-participants>

<sup>4</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/3/32-506/proposed-osc-rule-32-506-under-commodity-futures-act-exemptions-international-dealers-advisers-and-comment-letters>

<sup>5</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/3/32-507>

<sup>6</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/9/91-505>

### **Anticipated Costs and Benefits of the Instruments**

As explained in the Notice, we believe the Instruments, if adopted, will have the following benefits to international firms and to institutional investors that rely upon the trading and advisory services provided by such firms:

- they will have the effect of enhancing institutional investor choice and thereby reduce costs for institutional investors, since institutional investors will now be able to receive services from any international firm that is appropriately registered in its home jurisdiction and meets the other conditions of the exemptions in the Instruments, and institutional investors will not be limited to those international firms that have taken the additional step of applying for and obtaining discretionary relief orders;
- they will eliminate the need for international dealers, advisers and sub-advisers to have to make individual applications for exemptive relief under the CFA in order to be able to benefit from the exemptions, thereby eliminating the need to pay application fees and associated legal counsel fees (which in some cases may otherwise be passed on to the firm's Canadian institutional clients);
- they will respond to stakeholder comments that the OSC and the CSA should propose amendments to their legislation to introduce an international dealer, international adviser and international sub-adviser exemption for international firms similar to the exemptions for international firms in Sections 8.18, 8.26 and 8.26.1 of NI 31-103; and
- they should help standardize the terms and conditions of the international firm exemptions and eliminate certain terms and conditions that are currently found in discretionary relief orders.

Please refer to the Cost-Benefit Analysis set out as Annex C to the Notice for additional information about the anticipated benefits from this initiative.

### **Impact on Investors of the Instruments**

We anticipate that the Instruments will have the effect of enhancing institutional investor choice and thereby reduce costs for institutional investors, since institutional investors will now be able to receive services from any international firm that is appropriately registered in its home jurisdiction and meets the other conditions of the exemptions in the rule, and will not be limited to those international firms that have applied for and obtained discretionary relief orders.

### **Authority for OSC Rule 32-506 and the 91-502 Amendment**

The rule-making authority for OSC Rule 32-506 is provided in paragraphs 8 to 11 and 16 of subsection 65(1) of the CFA.

The rule-making authority for the 91-502 Amendment is provided in paragraphs 8 to 11 and 16 of subsection 65(1) of the CFA and paragraphs 1, 2, 8.1 and 35 of subsection 143(1) of the OSA.

### **Contents of Annexes**

This Notice contains the following Annexes:

- Annex A – list of commenters, summary of comments and responses
- Annex B – OSC Rule 32-506 including Form 32-506F1
- Annex C – the 91-502 Amendment

### **Questions**

Please refer your questions to any of the following:

Paul Hayward  
Senior Legal Counsel, Compliance and Registrant Regulation  
Ontario Securities Commission  
(416) 593-8288  
[phayward@osc.gov.on.ca](mailto:phayward@osc.gov.on.ca)

Maye Mouftah  
Senior Legal Counsel, Compliance and Registrant Regulation  
Ontario Securities Commission  
(416) 593-2358  
[mmouftah@osc.gov.on.ca](mailto:mmouftah@osc.gov.on.ca)

ANNEX A

SUMMARY OF COMMENTS AND RESPONSES

Commenters

The Portfolio Management Association of Canada (PMAC)

Stikeman Elliott (Alix d'Anglejan-Chatillon and Kenneth G. Ottenbreit) (SE)

General

1. Summarized Comment:

All commenters expressed their support for the Proposed Instruments.

PMAC agreed that the Proposals closely track the terms and conditions of the exemptive relief decisions that have been granted and indicated that PMAC supports the changes to the recent standard form of decisions as set out in the Proposals, including the expanded definition of CFA Permitted Client.

PMAC stated that the Proposals strike the appropriate balance between investor protection and burden reduction and that they will help achieve the desired outcomes of reducing costs associated with filing and renewing applications for exemptive relief. The Proposals provide consistency in regulatory outcomes which will result in additional benefits such as permitting local firms to retain international sub-advisors who have the necessary professional investment experience for the benefit of investors.

SE indicated that they were generally very supportive of the Proposed Rule as it would create exemptions under the CFA equivalent to the international dealer, international adviser and international sub-adviser exemptions under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

They agreed that the codification and standardization of these exemptions under the CFA will materially reduce the regulatory burden on international firms which have historically had to apply for discretionary exemption orders in order to service Ontario institutional investors seeking to trade on non-Canadian futures exchanges. They also noted that the form, defined terms and terms and conditions of these exemption orders have varied over time and from one application to the next. This has created some uncertainty in the market as to the outcome of the application process and the permissible activities and requirements which may vary as between comparably situated international firms. They therefore support the standardization of the exemptions under the CFA and the streamlining of the requirements consistent with NI 31-103.

SE were also supportive of the proposed amendment to OSC Rule 91-502 to address the historical uncertainty as to whether the options proficiency requirements apply to international firms under the CFA and whether exemptive relief is actually required

**Response:** We thank the commenters for their support.

Request for blanket extension of existing relief

2. PMAC requested that the OSC issue a blanket extension for existing exemptive relief of this nature until such time as the Proposals come into force so as to avoid the cost and burden of renewing relief for those firms whose sunset clauses in exemptive relief decisions might expire prior to the coming into force of the Proposals.

**Response:**

Since April 15, 2021, international firms have been able to rely on the following interim class orders that provide substantially the same relief as the relief that will be provided by the Instruments, once the Instruments are in force:

- Ontario Instrument 32-507 (*Commodity Futures Act*) Exemptions for International Dealers, Advisers and Sub-Advisers (Interim Class Order) (OI 32-507)<sup>7</sup>

<sup>7</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/3/32-507>

- Ontario Instrument 91-505 *Exemptions from the Options Proficiency Requirement for International Dealers, Advisers and Sub-Advisers (Interim Class Order)*(**OI 91-505**)<sup>8</sup>

The interim class orders expire on the date that the Instruments come into force. An international firm relying on an exemption in the interim class orders is not required to take any action as a consequence of the coming into force of either or both of the Instruments.

**Condition that international dealers “not have an office or place of business in Ontario”**

3. SE noted that paragraph 3(1)(b)(i) of the Proposed Rule would limit the availability of the dealer registration exemption for international dealers to firms that “... [do] not have an office or place of business in Ontario”.

These commenters suggested that this limitation is inconsistent with the terms and conditions of the “international dealer exemption” under section 8.18 of NI 31-103. Given the stated purpose of the Proposed Rule of codifying certain exemptions from registration requirements in the CFA that are routinely granted by the OSC to international firms, the commenters submitted that the new exemptions under the Proposed Rule should be consistent with the exemptions available to international firms under NI 31-103.

These commenters further noted that, based on their experience, limiting the availability of the international dealer exemption to only those firms that have zero presence in Ontario would have an unnecessary adverse impact on international market participants, especially in the current global environment. As an example, they were aware of firms which have (or are considering having) an employee (often a Canadian citizen or the spouse of a Canadian citizen) located in Ontario because the employee is requesting that option as a result of the COVID-19 pandemic and related travel restrictions, or for family reasons. Similarly, they were also aware of Canadian citizens employed by international firms who may move to Canada, either temporarily or permanently, due to political issues in various countries globally. Regardless of motivation, there is an increasing need to have the flexibility of having have a limited presence in Ontario, particularly for firms seeking to retain highly specialized professionals with deep subject matter expertise or to respond to the personal needs of members of their teams as responsible employers. The scope of that presence is typically inherently limited by the permitted activities restrictions under the exemptions and by cross-border operational and tax considerations, and is subject to the rules of the home country regulator on remote supervision and compliance.

As such, these commenters submitted that the conditions of the international dealer exemption under the Proposed Rule should be closely aligned with those under the international dealer exemption under NI 31-103. Material variations in restrictions of this type create compliance and operational complexities that may ultimately deter foreign market participants from servicing Ontario institutional investors, more often than not in response to their request for specialized trading services.

**Response:**

We have not made a change to OSC Rule 32-506 in response to this comment but would be willing to consider this issue further in the context of an application for exemptive relief.

As explained in the Notice and Request for Comment published in December 2020, the purpose of the Instruments is to codify relief that is routinely granted by the Commission under both the CFA and OSC Rule 91-502 to international firms on the basis of terms and conditions that have become relatively standardized.

The condition that the international firm seeking to rely on the international firm exemption not have an office or place of business in Ontario is a longstanding and standard condition of these types of decisions.

We note that exemptive relief decisions for international firms under the CFA have historically included a number of additional representations and conditions as compared to the corresponding exemptions for international firms in NI 31-103 due to the differences between the registration regime and the scheme of exemptions under the OSA and the CFA and ongoing work by OSC and CSA staff in developing a modernised and harmonised regime for exchange-traded and over-the-counter (OTC) derivatives.

As another example of a difference between the international firm exemptions in OSC Rule 32-506 (and also proposed National Instrument 93-101 *Derivatives: Business Conduct* (**NI 93-101**) as published for comment on January 20, 2022), and the international firm exemptions in NI 31-103, in the case of the international firm exemptions in OSC Rule 32-506, there is a condition in clause 3(1)(b)(i) of OSC Rule 32-506 that the international firm have its head office or principal place of business in a “specified foreign jurisdiction”.

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<sup>8</sup> <https://www.osc.ca/en/securities-law/instruments-rules-policies/9/91-505>

As explained in the Notice and Request for Comment in respect of OSC Rule 32-506, the term “specified foreign jurisdiction” means any of Australia, Brazil, any member country of the European Union, Hong Kong, India, Japan, Korea, Mexico, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. This list of foreign jurisdictions is based on the list of foreign specified foreign jurisdictions in OSC Rule 72-503 *Distributions Outside Canada*, the foreign jurisdictions under consideration for proposed NI 93-101 and foreign jurisdictions in respect of which Commission has granted international firm relief under the CFA.

The fact that a foreign jurisdiction is not included in the definition of “specified foreign jurisdiction” is not intended to suggest any policy concern with the regulatory regime of that foreign jurisdiction. It simply means OSC staff have not had an opportunity to consider an application for relief from a firm in that foreign jurisdiction. We anticipate that this definition may be amended from time to time to include additional foreign jurisdictions once we have had a chance to consider the regulatory regimes in these additional foreign jurisdictions.

Accordingly, OSC staff will continue to consider on a case-by-case basis applications for exemptive relief by international firms and other market participants that raise novel issues or that indicate that the standard set of terms and conditions set out in the Proposed Instrument are not appropriate for the applicant’s business model or institutional client base.

**Elimination of “notice of regulatory action” condition**

4. The SE commenters were very supportive of eliminating the condition that an international firm submit regulatory action information in respect of the firm, its predecessors and specified affiliates (a **notice of regulatory action**).

The commenters noted that this information is available from other regulatory databases such as the FINRA BrokerCheck and the NFA BASIC, global compliance and risk management databases and, as appropriate, may be the subject of books and records production requests. In their experience, this requirement has created material compliance challenges for well-intentioned firms with significant compliance systems and a global regulatory footprint. This burden has been disproportionate to the limited marginal benefits that result from populating a notice of regulatory action with information that is already submitted to other global regulators or may be otherwise obtained. Information on “specified affiliates” operating in different countries and time zones may also be difficult to collect, compile and update reliably within a short timeframe. In some cases, the information may be subject to foreign non-disclosure rules. As “market participants” under the CFA, the filers under the Proposed Rule would be subject to applicable regulatory books and records production requirements and, in certain cases, reciprocal exchange of information MOUs as between interested regulators. They also noted that there is no corresponding notification requirement in the “international dealer exemption” or “international adviser exemption” under NI 31-103 and again support a close alignment of the terms and conditions.

**Response:** We thank the commenters for their support.

ANNEX B

ONTARIO SECURITIES COMMISSION RULE 32-506  
(Under the *Commodity Futures Act*)  
EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS

PART 1 DEFINITIONS

1. Definitions

(1) In this Rule,

“**Act**” means the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended from time to time;

“**Canadian financial institution**” has the meaning ascribed to that term in section 1.1 [*definitions*] of NI 45-106 under the *Securities Act*;

“**CFA adviser registration requirement**” means the provisions of section 22 of the Act that prohibit a person or company from acting as an adviser as to trading in a contract unless the person or company is registered in the appropriate category of registration under the Act;

Note: The following definition of “CFA permitted client” includes any person or company that is a “permitted client” as that term is defined in section 1.1 of NI 31-103 but also includes certain additional categories, including the following:

- a person or company registered under the commodity futures or derivatives legislation of a jurisdiction of Canada as an adviser or dealer; (clause (d.1))
- a family trust established by a permitted client that meets certain criteria (clause (o.1))
- an individual who, together with a spouse and/or a family trust that meets the criteria in clause (o.1), beneficially owns net financial assets that exceed \$5 million (clause (o.2))

In addition, certain references to “securities legislation” in the definition of “permitted client” in NI 31-103 have been replaced with “securities, commodity futures or derivatives legislation”.

“**CFA dealer registration requirement**” means the provisions of section 22 of the Act that prohibit a person or company from trading in a contract unless the person or company is registered in the appropriate category of registration under the Act;

“**CFA permitted client**” means any of the following:

- (a) a Canadian financial institution or a Schedule III bank;
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- (c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;
- (d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser, investment dealer, mutual fund dealer or exempt market dealer;
- (d.1) a person or company registered under the commodity futures or derivatives legislation of a jurisdiction of Canada as an adviser or dealer;
- (e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;
- (f) referred to in paragraphs (a) to (e);
- (g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;
- (i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;
- (k) a person or company acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada or a foreign jurisdiction;
- (l) an investment fund if one or both of the following apply:
  - (i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
  - (ii) the fund is advised by a person or company authorized to act as an adviser under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada;
- (m) in respect of a dealer, a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1[*definitions*] of NI 45-106, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;
- (n) in respect of an adviser, a registered charity under the *Income Tax Act* (Canada) that is advised by an eligibility adviser, as defined in section 1.1[*definitions*] of NI 45-106, or an adviser registered under the securities, commodity futures or derivatives legislation of the jurisdiction of the registered charity;
- (o) an individual who beneficially owns financial assets, as defined in section 1.1[*definitions*] of NI 45-106, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million;
- (o.1) in the case of a CFA permitted client that is an individual, a trust established by the individual for the benefit of the individual's family members of which a majority of the trustees are CFA permitted clients and all of the beneficiaries are the individual's spouse, a former spouse or a parent, grandparent, brother, sister, child or grandchild of that individual, of that individual's spouse or of that individual's former spouse;
- (o.2) an individual who is not a CFA permitted client under clause (o) of the definition of CFA permitted client but who, together with a spouse and/or a family trust as described in clause (o.1) above established by the individual or the individual's spouse, beneficially own financial assets, as defined in section 1.1 of NI 45-106, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$5 million;
- (p) a person or company that is entirely owned by an individual or individuals referred to in paragraph (o), who holds the beneficial ownership interest in the person or company directly or through a trust, the trustee of which is a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction;
- (q) a person or company, other than an individual or an investment fund, that has net assets of at least \$25 million as shown on its most recently prepared financial statements;
- (r) a person or company that distributes securities of its own issue in Canada only to persons or companies referred to in paragraphs (a) to (q);

**"commodity trading manager"** means an adviser that is registered under the Act in the category of "commodity trading manager" as provided for in section 8 [*categories of registration*] of Regulation 90 under the Act;

**"foreign contract"** means a contract that is primarily traded on one or more non-Canadian exchanges and primarily cleared through one or more clearing corporations that are located outside of Canada;

**"individual"** means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his or her capacity as trustee, executor, administrator or other legal personal representative;

**"investment fund"** has the meaning ascribed to that term in subsection 1(1) of the *Securities Act*;



“**jurisdiction of Canada**” means a province or territory of Canada;

“**managed account**” means an account of a client for which a person or company makes the investment decisions if that person or company has discretion to trade in securities, contracts or derivatives for the account without requiring the client’s express consent to a transaction;

“**NI 14-101**” means National Instrument 14-101 *Definitions* under the *Securities Act*;

“**NI 31-103**” means National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations under the *Securities Act*;

“**NI 45-106**” means National Instrument 45-106 *Prospectus Exemptions* under the *Securities Act*;

“**non-Canadian exchange**” means a commodity futures exchange that is located outside of Canada;

“**non-registrant CFA permitted client**” means a person or company that is a CFA permitted client other than a person or company that is registered as an adviser or dealer under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada;

“**OSA adviser registration requirement**” means the provisions of section 25 of the *Securities Act* that prohibit a person or company from engaging in the business of, or holding himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in securities or buying or selling securities unless the person or company satisfies the applicable provisions of section 25 of the *Securities Act*;

“**OSA dealer registration requirement**” means the provisions of section 25 of the *Securities Act* that prohibit a person or company from engaging in the business of, or holding himself, herself or itself out as engaging in the business of, trading in securities unless the person or company satisfies the applicable provisions of section 25 of the *Securities Act*;

“**OSA international adviser exemption**” means the exemption from the OSA adviser registration requirement set out in section 8.26 [*international adviser*] of NI 31-103 under the *Securities Act*;

“**OSA international dealer exemption**” means the exemption from the OSA dealer registration requirement set out in section 8.18 [*international dealer*] of NI 31-103 under the *Securities Act*;

“**OSA international sub-adviser exemption**” means the exemption from the OSA adviser registration requirement set out in section 8.26.1 [*international sub-adviser*] of NI 31-103 under the *Securities Act*;

“**permitted client**” has the meaning ascribed to that term in section 1.1 [*definitions*] of NI 31-103 under the *Securities Act*;

“**principal adviser**” means an adviser registered under the Act in the category of commodity trading manager for which a sub-adviser provides sub-advisory services;

“**Schedule III bank**” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“**Securities Act**” means the *Securities Act*, R.S.O. 1990, c. S.5, as amended from time to time;

“**securities legislation**” means, for a local jurisdiction of Canada, the statute and other instruments listed in Appendix B of NI 14-101, opposite the name of the local jurisdiction;

“**specified foreign jurisdiction**” means any of Australia, Brazil, any member country of the European Union, Hong Kong, India, Japan, Korea, Mexico, New Zealand, Singapore, Switzerland, the U.K., and the U.S.;

“**sub-adviser**” means an adviser to

- (a) a registered adviser, or
- (b) a registered dealer acting as a commodity trading manager as permitted by subsection 44(2) [*exemptions from registration requirements*] of Ontario Regulation 90;

“**sub-advisory services**” means services provided by a sub-adviser to a principal adviser for purposes of providing, on a discretionary basis, adviser services in respect of contracts to the principal adviser’s sub-advisory clients;

“**sub-advisory client**” means a client of a principal adviser for whom a sub-adviser to the principal adviser provides sub-advisory services;

“**trading restrictions in the CFA**” means the provisions of section 33 of the Act that prohibit a person or company from trading in contracts unless the person or company satisfies the applicable provisions of section 33 of the Act;

“**U.K.**” means the United Kingdom of Great Britain and Northern Ireland; and

“**U.S.**” means the United States of America.

- (2) Terms used in this Rule that are defined in the Act have the meaning ascribed to them in the Act, unless otherwise defined in this Rule or the context otherwise requires.
- (3) Terms used in this Rule that are not defined in the Act but are defined in subsection 1(1) of the *Securities Act* have the same meaning as in the *Securities Act* unless the context otherwise requires.
- (4) In this Rule, a person or company is deemed to be an affiliate of another person or company if one of them is the subsidiary of the other or if both are subsidiaries of the same person or company or if each of them is controlled by the same person or company.
- (5) A person or company is deemed to be controlled by another person or company or by two or more persons and companies if,
  - (a) voting securities of the first-mentioned person or company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other persons and companies; and
  - (b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned person or company.
- (6) A person or company shall be deemed to be a subsidiary of another person or company if,
  - (a) it is controlled by,
    - (i) that other, or
    - (ii) that other and one or more persons and companies each of which is controlled by that other, or
    - (iii) two or more persons and companies each of which is controlled by that other; or
  - (b) it is a subsidiary of a person or company that is that other’s subsidiary.

## **PART 2 DEALER REGISTRATION EXEMPTIONS**

### **2. General condition to exemptions from the CFA dealer registration requirement**

The exemptions in this Part are not available to a person or company if the person or company is registered under the Act and if their category of registration permits the person or company to act as a dealer or trade in the contract for which the exemption is provided.

### **3. Dealer registration exemption – International dealer**

- (1) The CFA dealer registration requirement does not apply to a person or company in respect of a trade in a contract to, with or on behalf of a CFA permitted client, where the person or company is acting as principal or agent in such trade to, with or on behalf of the CFA permitted client, if at the time of the trade all of the following apply:
  - (a) the trade is in respect of a foreign contract on a non-Canadian exchange;
  - (b) the person or company:
    - (i) has its head office or principal place of business in a specified foreign jurisdiction and does not have an office or place of business in Ontario;
    - (ii) engages in the business of trading in contracts in the specified foreign jurisdiction; and
    - (iii) is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of the specified foreign jurisdiction in which its head office or principal place of business is located in a category of registration, licensing or authorization that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Ontario;

- (c) the person or company has provided to the CFA permitted client, other than a CFA permitted client that is registered under the securities, commodity futures or derivatives legislation of a jurisdiction of Canada, the following disclosure in writing:
    - (i) a statement that the person or company is not registered in Ontario to trade in contracts as principal or agent;
    - (ii) a statement specifying the location of the head office or principal place of business of the person or company;
    - (iii) a statement that all or substantially all of the assets of the person or company may be situated outside of Canada;
    - (iv) a statement that there may be difficulty enforcing legal rights against the person or company because of the above; and
    - (v) the name and address of the person or company's agent for service of process in Ontario; and
  - (d) the person or company has submitted to the Commission a completed Form 32-506F1 Submission to Jurisdiction and Appointment of Agent for Service;
- (2) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the Commission of that fact by December 1 of that year.
  - (3) Subsection (2) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.
  - (4) If a person or company relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year and is not registered under the *Securities Act* and does not rely on the OSA international dealer exemption, the person or company must pay a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees*, as if the person or company relied on the OSA international dealer exemption.
  - (5) The CFA adviser registration requirement does not apply to a person or company that is exempt from the CFA dealer registration requirement under this section where the person or company provides advice to a CFA permitted client and the advice is
    - (a) in connection with an activity or trade described under subsection (1), and
    - (b) not in respect of a managed account of the CFA permitted client.

#### **4. Dealer registration exemption – CFA permitted client of an international dealer**

The CFA dealer registration requirement does not apply to a CFA permitted client in respect of a trade in a contract on a non-Canadian exchange to, with or on behalf of a person or company relying on the dealer registration exemption in section 3.

#### **5. Exemption from the trading restrictions in the Act**

The trading restrictions in the Act do not apply to a person or company in connection with a trade in a contract on a non-Canadian exchange if the person or company is exempt from the CFA dealer registration exemption under section 3 or section 4.

### **PART 3 ADVISER REGISTRATION EXEMPTIONS**

#### **6. General condition to exemptions from the CFA adviser registration requirement**

The exemptions in this Part are not available to a person or company if the person or company is registered under the Act and if their category of registration permits the person or company to act as an adviser in respect of the activities for which the exemption is provided.

#### **7. Adviser registration exemption – International adviser**

- (1) The CFA adviser registration requirement does not apply to a person or company in respect of advice provided to a non-registrant CFA permitted client as to the trading of foreign contracts provided that at the time of providing the advice all of the following apply:

- (a) the person or company provides advice to the non-registrant CFA permitted client only as to the trading of foreign contracts and does not provide advice as to the trading of contracts that are not foreign contracts, unless providing such advice is incidental to its providing advice on foreign contracts;
  - (b) the person or company:
    - (i) has its head office or principal place of business in a specified foreign jurisdiction;
    - (ii) engages in the business of advising others in relation to contracts in the specified foreign jurisdiction; and
    - (iii) in a category of registration, or operates under an exemption from registration, or is otherwise licensed or authorized under the applicable securities, commodity futures or derivatives legislation of the specified foreign jurisdiction, to carry on the activities in the specified foreign jurisdiction that registration under the Act as an adviser in the category of commodity trading manager would permit it to carry on in Ontario;
  - (c) as at the end of the person or company's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the person or company, its affiliates and its affiliated partnerships, excluding the gross revenue of an affiliate or affiliated partnership of the person or company if the affiliate or affiliated partnership is registered under securities legislation, commodity futures legislation or derivatives legislation of a jurisdiction of Canada, was derived from the portfolio management activities of the person or company, its affiliates and its affiliated partnerships in Canada (including for clarity both securities-related and commodity-futures-related activities);
  - (d) prior to advising a non-registrant CFA permitted client with respect to a foreign contract, the person or company provides the non-registrant CFA permitted client the following disclosure in writing:
    - (i) a statement that the person or company is not registered in Ontario to provide the advice described in paragraph (a) of this exemption;
    - (ii) a statement specifying the location of the head office or principal place of business of the person or company;
    - (iii) a statement that all or substantially all of the assets of the person or company may be situated outside of Canada;
    - (iv) a statement that there may be difficulty enforcing legal rights against the person or company because of the above;
    - (v) the name and address of the person or company's agent for service of process in Ontario;
  - (e) the person or company has submitted to the Commission a completed Form 32-506F1 *Submission to Jurisdiction and Appointment of Agent for Service*;
- (2) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the Commission of that fact by December 1 of that year.
  - (3) Subsection (2) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.
  - (4) If a person or company relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year and is not registered under the *Securities Act* and does not rely on the OSA international adviser exemption, the person or company must pay a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees*, as if the person or company relied on the OSA international adviser exemption.

**8. Adviser registration exemption – International sub-adviser**

- (1) The CFA adviser registration requirement does not apply to a person or company acting as a sub-adviser to a principal adviser in respect of the provision of sub-advisory services if at the time of providing the sub-advisory services all of the following apply:
  - (a) the principal adviser is registered under the Act as an adviser in the category of commodity trading manager;

## B.5: Rules and Policies

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- (b) the head office or principal place of business of the person or company acting as sub-adviser is in a specified foreign jurisdiction;
- (c) the person or company acting as sub-adviser engages in the business of advising others in relation to contracts in the specified foreign jurisdiction;
- (d) the person or company acting as sub-adviser is registered in a category of registration, or operates under an exemption from registration, or is otherwise licensed or authorized under the applicable securities, commodity futures or derivatives legislation of the specified foreign jurisdiction, to carry on the activities in the specified foreign jurisdiction that registration under the Act as an adviser would permit it to carry on in Ontario;
- (e) the obligations and duties of the person or company acting as sub-adviser are set out in a written agreement with the principal adviser;
- (f) the principal adviser has entered into a written agreement with each sub-advisory client in respect of whom the person or company acting as sub-adviser is providing sub-advisory services, agreeing to be responsible for any loss that arises out of the failure of the person or company acting as sub-adviser:
  - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the principal adviser and the sub-advisory client; or
  - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**);
- (g) if a sub-advisory client for whom sub-advisory services are being provided is an investment fund, the prospectus or other offering document (in either case, the **Offering Document**) of the investment fund includes, or will include, the following:
  - (i) a statement that the principal adviser is responsible for any loss that arises out of the failure of the person or company acting as sub-adviser in respect of the sub-advisory services to meet the Assumed Obligations; and
  - (ii) a statement that there may be difficulty in enforcing any legal rights against the person or company acting as sub-adviser in respect of the sub-advisory services (or any of its representatives) because that person or company is resident outside of Canada and all or substantially all of their assets are situated outside of Canada; and
- (h) the disclosure required by paragraph 8(1)(g) is provided in writing prior to purchasing any contracts for each sub-advisory client that is a managed account for which the principal adviser engages the person or company to provide the sub-advisory services.

### 9. Effective date

This Instrument comes into force on October 14, 2022.

**FORM 32-506F1**  
**SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE**  
**ONTARIO SECURITIES COMMISSION RULE 32-506 (Under the *Commodity Futures Act*)**  
**EXEMPTIONS FOR INTERNATIONAL DEALERS, ADVISERS AND SUB-ADVISERS**

Sections 3 [*international dealer*] and 7 [*international adviser*])

1. Name of person or company ("**International Firm**"): \_\_\_\_\_
2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm: \_\_\_\_\_
3. Jurisdiction of incorporation of the International Firm: \_\_\_\_\_
4. Head office address of the International Firm: \_\_\_\_\_
5. 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: \_\_\_\_\_
6. The International Firm is relying on an exemption under OSC Rule 32-506 and/or an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*:  
  
 Section 8.18 [*international dealer*]  
 Section 8.26 [*international adviser*]  
 Other [*specify*]: \_\_\_\_\_
7. Name of agent for service of process (the "**Agent for Service**"): \_\_\_\_\_
8. Address for service of process on the Agent for Service: \_\_\_\_\_
9. 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.
10. 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.
11. Until 6 years after the International Firm ceases to rely on an exemption in section 3 [*international dealer*] or section 7 [*international adviser*] of Ontario Securities Commission Rule 32-506 (*under the Commodity Futures Act*) *Exemptions for International Dealers, Advisers and Sub-Advisers*, the International Firm must submit to the regulator
  - (a) 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;
  - (b) 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; and
  - (c) a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.
12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

**B.5: Rules and Policies**

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Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of the International Firm or authorized signatory)

\_\_\_\_\_  
(Name of signatory)

\_\_\_\_\_  
(Title of signatory)

**Acceptance**

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)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

<https://www.osc.ca>

ANNEX C

AMENDMENT TO  
ONTARIO SECURITIES COMMISSION RULE 91-502 *TRADES IN RECOGNIZED OPTIONS*

1. **Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* is amended by this Instrument.**
2. **Section 1.1 is amended by deleting the definition of “Canadian Options Course” and by adding the following definitions:**

“Derivatives Fundamentals and Options Licensing Course” means the course prepared and conducted by The Canadian Securities Institute and so named by that Institute on the date that this Rule comes into force and every predecessor to that course and every successor to that course that does not significantly narrow a subject matter;
3. **Section 3.1 is amended by replacing “the Canadian Options Course” with “the Derivatives Fundamentals and Options Licensing Course”.**
4. **Part 3 is amended by adding the following section:**
  - 3.2 Section 3.1 does not apply to
    - (a) a person or company exempt from the dealer registration requirement or the adviser registration requirement if the person or company complies with the terms and conditions of the exemption from the registration requirement; and
    - (b) a person or company exempt from the CFA dealer registration requirement or the CFA adviser registration requirement (as those terms are defined in Ontario Securities Commission Rule 32-506 (Commodity Futures Act) *Exemptions for International Dealers, Advisers and Sub-Advisers*) if the person or company complies with the terms and conditions of the exemption from the registration requirement.
5. **This Instrument comes into force on October 14, 2022.**