



Saskatchewan
Financial Services
Commission
Securities Division

GENERAL ORDER 91-907 OVER-THE-COUNTER-DERIVATIVES

IN THE MATTER OF *THE SECURITIES ACT, 1988* (the Act)

AND

IN THE MATTER OF OVER-THE-COUNTER DERIVATIVES

ORDER (Section 83 of the Act)

WHEREAS the Saskatchewan Financial Services Commission has assigned to the Director of the Securities Division the power to make exemption orders under the provisions of *The Securities Act, 1988* including orders of general application;

AND WHEREAS an application has been made to the Director for an order pursuant to section 83 of the Act that trades in over-the-counter derivatives by qualified parties be exempt from the registration requirement in section 27 of the Act and the prospectus requirement in section 58 of the Act;

AND WHEREAS in this Order:

“**Act**” means *The Securities Act, 1988*;

“**accredited investor**” has the same meaning as in National Instrument 45-106 *Prospectus and Registration Exemptions*;

“**Accord**” means the accord to comply with the International Convergence of Capital Measurement and Capital Standards issued by the Basel Committee on Banking Regulations and Supervisory Practices or any successor standards;

“**exchange contract**” has the meaning prescribed for that term in the Act;

“**futures contract**” has the meaning prescribed for that term in the Act;

“**over-the-counter or OTC derivative**” means a futures contract or an option that is not an exchange contract;

“**qualified party**” means the following:

- (a) a bank to which the *Bank Act* (Canada) applies;

- (b) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
- (c) a bank subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord;
- (d) a credit union central or a federation of caisses populaires or any credit union or regional caisse populaire located, in each case, in Canada;
- (e) a loan or trust corporation registered under the loan and trust corporations legislation of a province or territory of Canada or under the *Trust and Loan Companies Act* (Canada);
- (f) a loan or trust company subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord for banks that are subject to the country's banking regulation and supervision;
- (g) an insurance company licensed to do business in Canada or a province or territory of Canada;
- (h) an insurance company subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord for banks that are subject to the country's banking regulation and supervision;
- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial or territorial pension supervisory authority;
- (j) a mutual fund or non-redeemable investment fund, if each investor in the fund is a qualified party;
- (k) a mutual fund, if the investment portfolio of the fund is managed by a person or company that is registered under the Act or the securities legislation of another province or territory in Canada as a portfolio manager or equivalent;
- (l) a non-redeemable investment fund, if the investment portfolio of the fund is managed by a person or company that is registered under the Act or the securities legislation of another province or territory in Canada as a portfolio manager or equivalent;
- (m) a person or company registered under the Act or the securities legislation of another province or territory in Canada as an investment dealer or equivalent;
- (n) a person or company registered under the Act or the securities legislation of another province or territory in Canada as a portfolio manager or equivalent;
- (o) a person or company registered under the Act or the securities legislation of another province or territory in Canada as an investment dealer or equivalent that is exempt from registration as

a portfolio manager or equivalent under the Act or the securities legislation of the province or territory;

- (p) a person who or company that is an accredited investor and buys, sells, trades, produces, markets, brokers or otherwise uses a commodity in their business and that enters into an OTC derivative, provided that a material component of the underlying interest of the OTC derivative is:
 - (i) a commodity that the person or company buys, sells, trades, produces, markets, brokers, or otherwise uses in its business;
 - (ii) a related commodity, security or variable;
 - (iii) a commodity, security or variable that directly or indirectly affects the commodity that the person or company buys, sells, trades, produces, markets, brokers or otherwise uses in its business;
 - (iv) a commodity, security or variable for which there is a high degree of correlation between the movement in its value and the movement in the value of the commodity that the person or company buys, sells, trades, produces, markets, brokers, or otherwise uses in its business; or
 - (v) another OTC derivative, where a material component of the underlying interest of that OTC derivative is a commodity, security or variable referred to in sub-clauses (i) to (iv) to above;
- (q) a person who or company that:
 - (i) together with its affiliates has entered into one or more OTC derivatives with counterparties that are not its affiliates, if:
 - (1) the aggregate value of the notional principal amounts of the OTC derivatives is at least \$1 billion (or its equivalent); and
 - (2) any of the OTC derivatives was outstanding on any day during the previous 15 month period; or
 - (ii) together with its affiliates had total gross marked-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, in one or more OTC derivatives on any day during the previous 15 month period;
- (r) an individual who, either alone or jointly with the individual's spouse, has a net worth, as shown in the individual's most recent statement of assets and liabilities, of at least \$5 million (or its equivalent in another currency), excluding the value of any principal residence;
- (s) a company, partnership, unincorporated association, organization or trust, with total assets, as shown in the balance sheet for its most recently completed financial year end (prepared in

accordance with generally accepted accounting principles and audited, if the party has produced an audited balance sheet for that financial year end), in excess of \$25 million (or its equivalent in another currency);

- (t) a person who or company that, directly or indirectly, is wholly-owned by any of the persons or companies described in clauses (a), (b), (c), (d), (e), (f), (g), (h), (m), (n), (o), (r) and (s);
- (u) a person who or company that, directly or indirectly, wholly owns any of the persons or companies described in clauses (a), (c), (d), (e), (f), (g), (h), (m), (n), (o) and (s);
- (v) a direct or indirect wholly-owned subsidiary of a person or company described in clause (u);
- (w) Her Majesty in right of Canada or any province or territory of Canada and any crown corporation, instrumentality or agency of Canada or a province or territory;
- (x) a national government of a country or any political division of a country and any instrumentality or agency of that government or political division;
- (y) a Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;
- (z) a person or company whose obligations in respect of the OTC derivative are fully guaranteed by another qualified party;

AND WHEREAS in this Order:

- (a) A party to an OTC derivative is a qualified party if that party is a qualified party at the time the party enters into the OTC derivative;
- (b) a party entering into an OTC derivative with a party who claims to be a qualified party is entitled to rely on a representation by that party that the party is a qualified party, unless the first party has reasonable grounds to believe that the representation is false;
- (c) a party referred to in clauses (e), (f), (g), (h), (n), or (o) of the definition of qualified party is deemed to be acting as principal when it acts as an agent or trustee for accounts that it fully manages;
- (d) “entering into an OTC derivative” includes the writing or acquisition of an option;

AND WHEREAS the Director is of the opinion that it would not be prejudicial to the public interest to make this Order;

IT IS ORDERED pursuant to section 83 of the Act that the registration requirement in section 27 and the prospectus requirement in section 58 of the Act do not apply to a trade in an OTC derivative where each party to the trade is a qualified party acting as principal.

IT IS FURTHER ORDERED pursuant to section 83 of the Act that the registration requirement in section 27 and the prospectus requirement in section 58 of the Act do not apply to a trade in an OTC derivative where:

- (a) the OTC derivative is a contract for the production of an agricultural commodity or the purchase and sale of an agricultural commodity; and
- (b) each party to the contract is engaged in the production of the agricultural commodity or the purchase or sale of the agricultural commodity.

IT IS FURTHER ORDERED pursuant to section 83 of the Act that the registration requirement in section 27 and the prospectus requirement in section 58 of the Act do not apply to a trade in an OTC derivative where:

- (a) the OTC derivative is a contract for the production of natural gas or the purchase and sale of natural gas; and
- (b) each party to the contract is engaged in the production of natural gas or the purchase or sale of natural gas.

DATED November 26, 2009

Amended January 18, 2011

“Barbara Shourounis”

Barbara Shourounis
Director