

In the Matter of the  
Securities Legislation of  
Saskatchewan (the **Jurisdiction**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
ICAP Corporates LLC (the Filer)

## **DECISION**

### **Background**

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) that the Filer be exempt from the requirement to be registered as a dealer in order to trade exchange contracts with permitted clients (Permitted Clients) as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* on exchanges located outside Saskatchewan (the Requested Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Saskatchewan Financial Services 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* (MI 11-102) is intended to be relied upon in British Columbia.

### **Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning in this decision unless they are defined in this decision.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a limited liability corporation formed under the laws of the state of Delaware of the United States of America and is a wholly-owned, indirect subsidiary of ICAP plc (ICAP). The head office of the Filer is located in Jersey City, New Jersey, United States.

2. ICAP's shares are listed on the London Stock Exchange and it is a FTSE 100 company. ICAP is registered in England no. 3611426.
3. ICAP owns, directly or indirectly, subsidiaries other than the Filer in the United States and Canada which are relying on the international dealer registration exemption in certain other Canadian jurisdictions, as more particularly described on the website of the Canadian Securities Administrators.
4. The Filer is a broker-dealer registered with the Securities and Exchange Commission of the United States ("SEC"). The Filer is also a member of the Financial Industry Regulatory Authority ("FINRA"). The Filer has four trading licenses with the New York Stock Exchange ("NYSE"), and is a member of the NYSE Amex LLC, NASDAQ Stock Market, NYSE Arca, the National Stock Exchange and the Chicago Board Options Exchange. The Filer also is registered as a non-clearing futures commission merchant ("FCM") with the United States Commodity Futures Trading Commission of the United States ("CFTC") and is a member of the National Futures Association ("NFA").
5. Pursuant to its United States registrations and memberships, the Filer is authorized to handle customer orders, and otherwise act as a futures broker, in the United States. Rules of the CFTC and NFA require the Filer to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules including know-your-customer obligations, account opening, suitability, anti-money laundering checks, credit checks, delivery of confirmation statements, clearing deposits and initial and maintenance margins. These rules do not permit the Filer to treat Permitted Clients materially differently from the Filer's United States customers.
6. The Filer does not receive and hold customer margin deposits, securities or other monies.
7. The Filer will offer Permitted Clients the ability to trade exchange contracts on Non-Canadian Exchanges only.
8. Each of the Non-Canadian Exchanges are listed in General Ruling/Order 11-901 of the Commission *Recognition of Certain Exchanges Order*.
9. The Filer proposes to effect trades in exchange contracts acting as principal to or from Permitted Clients or acting as agent on behalf of Permitted Clients and will conduct execution services with respect to such trades in exchange contracts.
10. The Filer will not maintain an office, sales force or physical place of business in a jurisdiction where it relies on this decision (the Exempting Jurisdictions).
11. The Filer will solicit business in the Exempting Jurisdictions only from persons who qualify as Permitted Clients.
12. The Filer undertakes not to rely upon section 4.7(1) MI 11-102 to passport this decision into the Province of Alberta.

13. The Filer will not provide advice relating to trades in exchange contracts to Permitted Clients and does not intend to act as an adviser to such Permitted Clients in respect of trades in exchange contracts.
14. The exchange contracts to be traded by Permitted Clients may include, but will not be limited to, exchange contracts in futures, options and commodities such as but not limited to agricultural and energy futures, options and commodities.
15. Permitted Clients will be able to execute trades in exchange contracts through the Filer by contacting the Filer's trading and sales personnel located in the United States. Permitted Clients may also be able to self-execute trades in exchange contracts electronically via an independent service vendor and/or other electronic trading routing.
16. The Filer may execute a Permitted Client's order on the relevant Non-Canadian Exchange in accordance with the rules and customary practices of the exchange, or engage another broker duly recognized by the Non-Canadian Exchange to assist in the execution of orders. The Filer will remain responsible for the execution of each such order.
17. The Filer performs execution functions only for trades in exchange contracts. As an execution broker, the Filer gives up trades to clearing brokers who have been designated by the customers as their clearing broker (a Non-ICAP Clearing Broker).
18. The Non-ICAP Clearing Broker is required to comply with the rules of the exchanges and clearing houses of which it is a member and any relevant regulatory requirements, including requirements under the CFA as applicable. Each such Non-ICAP Clearing Broker will represent to the Filer in an industry-standard give-up agreement that it will perform its obligations 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 Permitted Client's contract orders will be executed and cleared. The Filer will not enter into a give-up agreement with any Non-ICAP Clearing Broker located in the United States unless such clearing broker is registered with the CFTC and/or the SEC, as applicable.
19. A clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in exchange contracts and Permitted Client orders will be submitted to the exchange in the name of the Non-ICAP Clearing Broker or the Filer or, on exchanges where the Filer is not a member, in the name of another carrying broker. The Permitted Client will be responsible to the Filer for payment of initial margin in respect of all newly open positions, as well as daily mark-to-market variation margin and the Filer, the carrying broker or the Non-ICAP Clearing Broker will be, in turn, responsible to the clearing corporation/division for payment.
20. Permitted Clients that direct the Filer to give up transactions in contracts for clearance and settlement by Non-ICAP Clearing Brokers will execute the give-up agreements described above.
21. Permitted Clients will pay commissions for trades to the Filer or the Non-ICAP Clearing Broker or such commissions may be shared with the Non-ICAP Clearing Broker.

22. The Filer's services will be offered exclusively to Permitted Clients, all of which are sophisticated investors with expertise in trading futures contracts.
23. In addition to the sophistication of the Filer's clients, the Filer is sophisticated and experienced in this type of trading, and regulated in the United States. The Filer is subject to the rules of the CFTC and the NFA.
24. In the absence of the Requested Relief, in order to provide order routing and client-side trade execution services to its clients the Filer would be required to obtain and maintain registration as an investment dealer under the applicable legislation of the Exempting Jurisdictions.

### **Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

1. each of the Filer's clients in respect of exchange contracts trading in the Exempting Jurisdictions will be a Permitted Client and has represented and covenanted that the Non-ICAP Clearing Broker is registered or exempt from registration under the legislation of the Exempting Jurisdictions;
2. the trade is made on one of the Non-Canadian Exchanges such that trade order execution and clearance is wholly conducted outside the Exempting Jurisdictions;
3. at the time of the trade, the Filer:
  - (a) has its head office or principal place of business in the United States;
  - (b) is registered as a futures commission merchant with the CFTC in good standing;
  - (c) is a member in good standing with the NFA; and
  - (d) engages in the business of a futures commission merchant in contracts in the United States;
4. the Filer provides the following disclosure to each client in the Exempting Jurisdictions when opening the client's account:
  - (a) a statement that the Filer is not registered in the Exempting Jurisdictions to trade in exchange contracts as principal or agent;
  - (b) a statement that the Filer's head office or principal place of business is located in Jersey City, New Jersey, United States;
  - (c) a statement that all or substantially all of the Filer's assets may be situated outside of Canada;

- (d) a statement that there may be difficulty enforcing legal rights against the Filer because of the above;
  - (e) the name and address of the Filer's agent for service of process in the Exempting Jurisdictions; and
  - (f) a risk disclosure statement providing substantially similar disclosure to that required under the Legislation for registered dealers trading in exchange contracts.
5. the Filer has submitted to the securities regulatory authority of the Exempting Jurisdictions a completed Submission to Jurisdiction and Appointment of Agent for Service in the form attached as Appendix "A";
  6. the Filer notifies the securities regulatory authority of the Exempting Jurisdictions of any regulatory action after the date of this decision in respect of the Filer by completing and filing Appendix "B" within 30 days of the commencement of such action;
  7. by December 1 of each year, the Filer notifies the to the securities regulatory authority of the Exempting Jurisdictions of its continued reliance on the exemption from registration granted pursuant to this decision; and
  8. this decision shall expire five years after the date hereof.

DATED at Regina, Saskatchewan this 3 of May 2012.



Dean Murrison  
Director, Securities Division

## Appendix A

### 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 of the firm:

Jurisdiction of incorporation of 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 sections 83 and 160 of *The Securities Act, 1988* 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)

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)

**APPENDIX B**

**Notice of Regulatory Action**

1. Has the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide the following information for each settlement agreement:

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Name of entity

Regulator/organization

Date of settlement (yyyy/mm/dd)

Details of settlement

Jurisdiction

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2. Has any financial services regulator ,securities or derivatives exchange, SRO or similar organization:

**Yes    No**

(a) Determined that the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization? \_\_\_\_\_

(b) Determined that the firm made a false statement or omission? \_\_\_\_\_

(c) Issued a warning or requested an undertaking by the firm? \_\_\_\_\_

(d) Suspended or terminated any registration, licensing or membership of the firm? \_\_\_\_\_

(e) Imposed terms or conditions on any registration or membership of the firm? \_\_\_\_\_



(f) Conducted a proceeding or investigation involving the firm? \_\_\_\_\_

(g) Issued an order (other than an exemption order) or a sanction to the firm for securities or derivatives-related activity (e.g. cease trade order)? \_\_\_\_\_

If yes, provide the following information for each action:

Name of Entity

Type of Action

Regulator/organization

Date of action (yyyy/mm/dd)

Reason for action

Jurisdiction

3. Is the firm aware of any ongoing investigation of which the firm is the subject?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide the following information for each investigation:

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Name of entity

Reason or purpose of investigation

Regulator/organization

Date investigation commenced (yyyy/mm/dd)

Jurisdiction

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Name of firm

Name of firm's authorized signing officer or partner

Title of firm's authorized signing officer or partner

Signature

Date (yyyy/mm/dd)

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***Witness***

The witness must be a lawyer, notary public or commissioner of oaths.

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Name of witness

Title of witness

Signature

Date (yyyy/mm/dd)

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