



Saskatchewan  
Financial Services  
Commission  
Securities Division

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

### COMPANION POLICY

- 1 Section 27 of *The Securities Act, 1988* (the Act) requires that persons who or companies that trade in securities or exchange contracts be registered.
- 2 Section 58 of the Act prohibits the distribution of securities unless a preliminary and a final prospectus have been filed with the Commission, and the Director has issued receipts for the prospectuses.
- 3 The definition of “security” in the Act includes futures contracts and options that are not exchange contracts. Therefore parties who enter into futures contracts or options are subject to the registration and prospectus requirements of the Act.
- 4 The British Columbia Securities Commission made Blanket Order 91-501 effective November 24, 1999 (the BCSC Order). The BCSC Order was made for the purpose of enabling certain parties to enter into over-the-counter derivatives without being subject to the registration and prospectus requirements.

The BCSC Order was granted on the basis that qualified parties are able to determine for themselves, without assistance from a registrant or any mandated disclosure under the securities act, whether entering into an OTC derivative is appropriate in the circumstances. It was also assumed that qualified parties can assess the creditworthiness of their counterparties and the risks inherent in entering into OTC derivatives.

- 5 The Alberta Securities Commission also made Blanket Order 91-503 *Over-the-Counter Derivative Transactions and Commodity Contracts* effective March 31, 2008 (the ASC Order). The ASC Order gave relief similar to the relief in the BCSC Order.
- 6 Parties have requested that the Director issue an order giving relief from the registration and prospectus requirements that is similar to the relief granted in the BCSC and ASC Orders for trades in OTC derivatives in Saskatchewan.
- 7 The Director therefore issued General Order 91-907 *Over-the-Counter Derivatives* (General Order 91-907) that is substantially similar to the BCSC Order. This is except for:
  - (a) Clause (p) of the definition of qualified party that includes the additional requirement that a person or company in clause (p) be an accredited investor. Clause (p) of the definition of qualified party in General Order 91-907 is intended to apply to a person who or company that deals in a commodity and enters into an OTC derivative where a material component of the

underlying interest is, directly or indirectly, the commodity in which the party deals, or a related, affecting or correlating commodity, security or variable. The Commission's intention is to provide an exemption for persons or companies that enter into OTC derivatives for the purpose of commercial hedging.

(b) A further exemption from the registration and prospectus requirements where:

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

(c) A further exemption from the registration and prospectus requirements where:

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

8 General Order 91-907 does not provide relief from sections 40 and 41 of the Act.

(a) Section 40 provides that no person or company shall trade in an exchange contract on an exchange in Saskatchewan unless the exchange is recognized by the Commission and the Commission has accepted the form of exchange contract.

(b) Section 41 provides that no person or company shall trade in an exchange contract on behalf of another person or company on an exchange located outside of Saskatchewan unless the exchange is recognized by the Commission.

Dated November 26, 2009

Amended January 18, 2011