



Adoption of new Alberta OTC derivatives order to reflect pending legislative changes

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Earlier this week, [Alberta Securities Commission](#) staff [proposed](#) replacing [ASC Blanket Order 91-505 Over-the-Counter Derivatives Transactions](#), with a new blanket order aimed at conforming the prospectus and dealer registration exemptions available under the existing order to pending amendments to the [Securities Act](#).

The pending amendments will, among other things, exclude “futures contracts” from the definition of “security” while introducing the concept of “derivatives” (which will exclude any products that have attributes of a derivative but are also a security, referred to as “derivative-like securities”) and exclude derivatives from the prospectus requirement entirely. As a result, the new blanket order will no longer provide a prospectus exemption for derivatives.

However, in order to maintain the scope of the current prospectus and registration exemptions of the existing Blanket Order, the new blanket order will ensure that a prospectus exemption will also be available for over-the-counter trades in derivative-like securities and that a dealer registration exemption will continue to be available for over-the-counter trades in derivatives and derivative-like securities, in each case if (i) at the time of the trade each counterparty was a qualified party; or (ii) the trade was in a physical commodity contract.

Further, under the new blanket order, the definition of “qualified party” is proposed to be more closely aligned with the definition of “accredited investor” in [NI 45-106 Prospectus and Registration Exemptions](#).

The new blanket order is proposed to come into effect concurrently with the amendments to Alberta's *Securities Act* expected to come into force on October 31, 2014, and is intended only as a stop-gap measure until the [Canadian Securities Administrators](#) can harmonize the regulation of OTC-traded derivatives.

In light of the proposed new blanket order, parties should ensure that their representations to qualified party status are drafted broadly enough so as to capture the breadth of qualified parties contemplated by the replacement blanket order.

The ASC is accepting comments on the proposal until October 17, 2014. For more information, see [ASC Staff Notice 91-706](#).

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