

CSA Notice regarding
Coordinated Blanket Order 93-930 *Re Temporary exemptions for derivatives firms from certain obligations when transacting with certain investment funds and for senior derivatives managers from certain reporting obligations*

July 25, 2024

Introduction

On July 25, 2024, the Canadian Securities Administrators (the **CSA** or **we**) published temporary exemptions from specific requirements of National Instrument 93-101 *Derivatives: Business Conduct* (the **Business Conduct Rule** or the **Rule**) regarding derivatives firms dealing with or advising certain investment funds advised or managed by registered or authorized foreign advisers or investment funds managers, and reporting requirements for senior derivatives managers to facilitate transition to the new regime.

The CSA has coordinated the relief through local blanket orders that are substantively harmonized across the country entitled Coordinated Blanket Order 93-930 *Re Temporary exemptions for derivatives firms from certain obligations when transacting with certain investment funds and for senior derivatives managers from certain reporting obligations* (collectively, the **Blanket Order**).

The Blanket Order is being issued in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan, and Yukon.

We anticipate that, if the Business Conduct Rule is approved by B.C.'s Minister of Finance, the British Columbia Securities Commission will issue an order that will have the same substantive effect as the Blanket Order.

Background

On September 28, 2023, the CSA published the Business Conduct Rule. The Business Conduct Rule comes into force on September 28, 2024 (the **Effective Date**).

We received submissions with respect to the following:

(i) *Uniform treatment of certain investment funds*

Some derivatives firms are concerned that the Business Conduct Rule might not be applied uniformly. The main issue relates to how the Rule applies to investment funds that are recognized as 'eligible derivatives parties' (**EDPs**). There is concern that the Rule does not explicitly categorize as EDPs investment funds advised by advisers, or managed by investment funds managers, that are registered or authorized outside Canada, such as those regulated by the U.S. Securities and Exchange Commission (**SEC**) or the U.S. Commodity Futures Trading Commission

(CFTC). These firms noted that this could result in the Rule being applied unevenly to the same investment fund, since the application of the requirements in the Rule depends on whether a derivatives party is classified as an EDP or non-EDP.¹

(ii) Extension of timing to deliver certain reports to the board of a derivatives dealer

Derivatives firm requested that the CSA extend the deadline for senior derivatives managers of a derivatives dealer to submit the required reports to their board (the **SDM compliance report**). Specifically, they asked for this reporting to begin in the next calendar year rather than the current calendar year. The reason for this request is the brief period between the Rule's Effective Date and the end of the 2024 year, combined with the operational challenges involved in meeting the current 2024 year-end deadline.

Description of the Blanket Order

The purpose of the Blanket Order is to provide the following exemptions:

(i) Exemption for a derivatives firm in respect of certain investment funds advised or managed by certain regulated foreign advisers

To align with the exemption framework in section 8 of the Business Conduct Rule [*Exemptions from certain requirements in this Instrument when dealing with or advising an eligible derivatives party*], a derivatives firm is exempt from certain Rule requirements, except for core obligations in subsection 8(3), when transacting with an investment fund managed or advised by a foreign equivalent to a Canadian registered or authorized investment fund manager or adviser. This exemption aims to create a level-playing field for both domestic- and foreign-advised or foreign-managed investment funds seeking EDP status.

(ii) Exemption for a senior derivatives manager from the requirement to submit the SDM compliance report by year-end 2024

A senior derivatives manager is exempt from submitting the SDM compliance report to the board of the derivatives dealer by the current year-end deadline, as required in section 32(3) of the Rule. However, the period from the Effective Date to the end of 2024 must be addressed in the 2025 SDM compliance report.

Day on Which the Blanket Order Ceases to be Effective

The Blanket Order is effective on September 28, 2024. It will cease to be effective in Ontario on March 28, 2026.

¹ It was also submitted that this appeared to be inconsistent with paragraph (k) of the EDP definition, which applies in the context of managed accounts.

Questions

Please refer your questions about this CSA Notice to any of the following:

Dominique Martin
Chair, CSA Derivatives Committee
Senior Director, Market Activities and
Derivatives
Autorité des marchés financiers
514-395-0337, ext. 4351
dominique.martin@lautorite.qc.ca

Alison Beer
Senior Legal Counsel
Derivatives, Trading & Markets Division
Ontario Securities Commission
abeer@osc.gov.on.ca

Leigh-Anne Mercier
General Counsel
Manitoba Securities Commission
204-945-0362
leigh-Anne.Mercier@gov.mb.ca

Abel Lazarus
Director, Corporate Finance
Nova Scotia Securities Commission
902-424-6859
abel.lazarus@novascotia.ca

Michael Brady
Deputy Director, Capital Markets Regulation
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca

Brian Murphy
Manager, Registration
Nova Scotia Securities Commission
902-424-4592
brian.murphy@novascotia.ca

Amélie McDonald
Manager, Policy – Securities
Financial and Consumer Services Commission,
New Brunswick
506-635-2938
amelie.mcdonald@fcnb.ca

Janice Cherniak
Senior Legal Counsel
Alberta Securities Commission
403-355-4864
janice.cherniak@asc.ca

Graham Purse
Legal Counsel
Securities Division
Financial and Consumer Affairs Authority of
Saskatchewan
306-787-5867
graham.purse2@gov.sk.ca

Manitoba Securities Commission

COORDINATED BLANKET ORDER 93-930

Citation: Re Temporary exemptions for derivatives firms from certain obligations when transacting with certain investment funds and for senior derivatives managers from certain reporting obligations

Date: July 25, 2024

Definitions

1. Terms defined in the *Securities Act* (Manitoba) (the **Act**), National Instrument 14-101 *Definitions* and National Instrument 93-101 *Derivatives: Business Conduct* (the **Business Conduct Rule**) have the same meaning in this Order.

Background

2. On September 28, 2023, the Manitoba Securities Commission (the **Commission**) published the Business Conduct Rule. The Business Conduct Rule comes into force on September 28, 2024 (the **effective date**).

Certain investment funds advised or managed by registered or authorized foreign advisors or investment fund managers

3. The Business Conduct Rule uses a two-tiered framework to regulate the conduct of derivatives firms:
 - (a) certain obligations as set out in subsection 8(3) apply to all transactions, whether a derivatives firm is transacting with an eligible derivatives party (an **EDP**) or a non-eligible derivatives party (a **non-EDP**) (the **core obligations**);
 - (b) certain additional obligations apply only when a derivatives firm is transacting with a non-EDP (the **additional obligations**).
4. The EDP designation in this framework functions as a status test to distinguish between derivatives parties that are sufficiently sophisticated or financially resourced (i.e., EDPs), and those that are not (i.e., non-EDPs). While transactions by derivatives firms with EDPs only require adherence to the core obligations in the Business Conduct Rule, transactions with non-EDPs require adherence to both the core obligations and the additional obligations.
5. After publication of the advanced notice of adoption of the Business Conduct Rule on September 28, 2023, staff of the Commission received submissions from certain derivatives market participants that the obligations under the Business Conduct Rule risk being applied inconsistently to the same derivatives party. Specifically, certain investment funds that would qualify as EDPs under paragraph (l) of the EDP definition where they are managed or advised by a registered adviser or registered investment fund manager under the securities legislation of a jurisdiction of Canada, would be treated as non-EDPs in circumstances where they are managed or advised by an adviser or investment fund manager that is registered or authorized to carry on business under

the legislation of a foreign jurisdiction, including a foreign adviser or investment fund manager registered with or authorized by the United States Securities and Exchange Commission. This inconsistency does not align with paragraph (k) of the EDP definition in the context of managed accounts, which allows a derivatives party to be considered an EDP, regardless of whether it is managed by a registered or authorized adviser under the securities legislation of a jurisdiction of Canada or a foreign equivalent adviser.

Timing of reporting responsibilities by senior derivatives managers

6. The Business Conduct Rule requires senior derivatives managers of derivatives dealers to submit the report referred to in paragraph 32(3)(a) (the **SDM Compliance Report**) in each calendar year to their board of directors (the **Board**). Since the effective date of the Business Conduct Rule is September 28, 2024, in order to be in compliance, senior derivatives managers are required to submit a SDM Compliance Report to their Board in 2024.
7. Derivatives firms that are subject to the derivatives legislation of foreign jurisdictions have reporting obligations in the foreign jurisdiction that are similar to the reporting obligations they have under the Business Conduct Rule (the **Foreign Compliance Report**).
8. Staff of the Commission received submissions from certain derivatives market participants that derivatives firms obligated to submit both Foreign Compliance Reports and SDM Compliance Reports prefer to submit both reports concurrently, for the following reasons:
 - (a) the timeline for submitting a SDM Compliance Report within the 2024 calendar year does not align with established timelines and internal processes for submitting Foreign Compliance Reports in the same calendar year; and
 - (b) since the SDM Compliance Report would only cover the last quarter of 2024, requiring its submission to the Board would serve limited purposes and introduce unnecessary operational burdens and complexities considering the short timeframe.

As a result, Staff of the Commission received a request to extend the 2024 deadline to submit the SDM Compliance Report to the Board.

Exemptive Relief

9. The proposed exemptions will
 - (a) ensure that investment funds managed by an investment fund manager or advised by an adviser regulated in a foreign jurisdiction have the same treatment as an investment fund managed by an investment fund manager or advised by an adviser regulated in Canada,
 - (b) extend the deadline for senior derivatives managers to prepare and submit a 2024 SDM Compliance Report to the Board to the 2025 calendar year.

Order

Certain investment funds advised or managed by registered or authorized foreign advisors or investment fund managers may qualify as EDPs

10. (1) Considering that it would not be prejudicial to the public interest to do so, the Commission orders under subsection 20(1) of the Act that a derivatives firm is exempt from the provisions of the Business Conduct Rule, in relation to a transaction with a derivatives party if the derivatives party is an investment fund that is
 - (a) managed by the equivalent of a registered or authorized investment fund manager under the securities legislation or under the commodities futures legislation of a foreign jurisdiction, or
 - (b) advised by the equivalent of a registered or authorized adviser under the securities legislation or under the commodities futures legislation of a foreign jurisdiction,
- (2) The exemption in subsection 10(1) of this Order does not apply in respect of the following:
 - (a) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];
 - (b) sections 24 [*Interaction with other Instruments*] and 25 [*Segregating derivatives party assets*];
 - (c) subsection 28(1) [*Content and delivery of transaction information*];
 - (d) Part 5 [*Compliance and recordkeeping*].

Extended timeframe for submitting the SDM Compliance Report

11. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under subsection 20(1) of the Act that a senior derivatives manager is exempt from the obligation under subsection 32(3) of the Business Conduct Rule to prepare and submit to the Board a SDM Compliance Report for the calendar year ending December 31, 2024, subject to all of the following conditions:
 - (a) the derivatives firm is in compliance with all other applicable provisions of the Business Conduct Rule, including, for greater certainty, section 33, which sets out the obligation of a derivatives dealer to report instances of material non-compliance to the applicable regulator or securities regulatory authority;
 - (b) a senior derivatives manager relying on this exemption will submit a SDM Compliance Report in the 2025 calendar year that is inclusive of the period between September 28, 2024 and December 31, 2024.

Effective Date

12. This Order comes into effect on September 28, 2024.

For the Commission:



Chris Besko
Director
Manitoba Securities Commission