

Notice No. 91-701

NOVA SCOTIA SECURITIES COMMISSION STAFF NOTICE

IN THE MATTER OF THE SECURITIES ACT,
R. S. N. S. 1989, C. 418, AS AMENDED

- AND -

IN THE MATTER OF
BLANKET ORDER 91-501 *OVER-THE-COUNTER TRADES IN DERIVATIVES*

February 17, 2016

Concurrent with the proclamation of amendments to the *Securities Act*, R. S. N. S. 1989, c. 418, as amended (the Act) to facilitate the regulation of derivatives, the Nova Scotia Securities Commission (the Commission) issued Blanket Order 91-501 *Over-the-Counter Trades in Derivatives* (the Blanket Order) to address certain over-the-counter (OTC) trades in derivatives and derivative-like securities. The Blanket Order is effective February 17, 2016.

As of February 17, 2016, a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives in Nova Scotia or advising others in Nova Scotia as to the investing in or the buying or selling of derivatives is subject to the registration requirements set out in section 31 of the Act.

A “derivative” is defined in the Act as meaning an option, swap, future, forward or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest, as well as contracts or instruments that are designated or prescribed as a derivative. However an option, swap, future, forward or other financial or commodity contract or instrument is not a “derivative” if its interest is derived from, referenced to or based on a security, and a trade in the security pursuant to the contract or instrument would constitute a distribution. Corresponding amendments have been made to the definition of “security” under the Act.

The purpose of the Blanket Order is to provide an exemption from the registration requirement in Nova Scotia for OTC trades in derivatives and derivative-like securities that occur between persons or companies that each meet the definition of a “qualified party” in the Blanket Order. The definition of qualified party refers generally to governments, financial institutions, registrants, and other persons or companies that meet prescribed terms. Qualified parties are able to determine for themselves, without assistance from a registrant or any mandated disclosure under the Act, whether an OTC trade of a derivative is appropriate in the circumstances. It is also assumed that qualified parties can assess the creditworthiness of their counterparties and the risks inherent in OTC trades of derivatives.

The Blanket Order also provides a registration exemption for any person or company trading in a physical commodity contract, that is, a derivative or derivative-like security that is not listed on an

exchange, contains an obligation to make or take future delivery of a commodity (other than cash or currency) and is intended by the counterparties to be physically settled.

In addition, the Blanket Order exempts distributions of derivative-like securities, which are subject to the prospectus requirements under the Act on the basis of being characterized as “securities”, from the prospectus requirements.

The provisions of this Blanket Order are similar to blanket orders currently in place in other Canadian provinces. The Commission continues to work with other members of the Canadian Securities Administrators and other domestic and foreign regulators to develop a harmonized regulatory regime for OTC traded derivatives.

Commission Staff Contacts

Any questions relating to this Staff Notice can be referred to:

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