

Financial and Consumer Services Commission of New Brunswick (the 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* (New Brunswick) (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 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.

9. The Commission has delegated to the Executive Director of Securities the Commission's power under section 208 of the *Act* to exempt, in whole or in part, a person or class of persons from any requirement of any National Instrument, Multilateral Instrument, or Local Instrument, subject to such terms and conditions considered appropriate.

Exemptive Relief

10. 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

11. (1) Considering that it would not be prejudicial to the public interest to do so, the Executive Director of Securities orders under section 208 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 11(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

12. Considering that it would not be prejudicial to the public interest to do so, the Executive Director of Securities orders under section 208 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 and Term

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

For the Commission:

“original signed by”

To-Linh Huynh
Executive Director of Securities