

# Goodmans<sup>LLP</sup> Update

## Ontario Securities Commission to Codify Routine Exemptive Relief for International Firms

The Ontario Securities Commission (OSC) recently published for comment [Proposed OSC Rule 32-506 – Exemptions for International Dealers, Advisers and Sub-Advisers \(“Proposed Rule”\)](#). If adopted, the Proposed Rule would codify certain relief from registration requirements in the [Commodity Futures Act \(“CFA”\)](#) and [OSC Rule 91-502 – Trades in Recognized Options \(“Rule 91-502”\)](#) that have been routinely granted by the OSC on a discretionary basis. The Proposed Rule is intended to enhance institutional investor access to international options and futures markets and reduce the regulatory burden on international firms that offer trading or advisory services to institutional clients in Ontario in relation to options and commodity futures contracts that trade on foreign exchanges. The OSC is accepting comments on the Proposed Rule until March 1, 2021.

### The Existing Regime

The CFA generally prohibits a person or a company from trading in a commodity futures contract or a commodity futures option (collectively, a “contract”), unless the person or company is registered as a dealer. Similarly, under the CFA, no person or company may act as an adviser in respect of a contract, unless the person or company is registered as an adviser.

NI 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”) codifies the exemptions from registration requirements available for international firms dealing with institutional clients in securities. In contrast, there is no comparable relief under the CFA that affords a standardized set of exemptions to international firms dealing with contracts trading on foreign exchanges for institutional clients. Accordingly, international firms are required to seek discretionary relief from the registration requirements to provide trading or advisory services with respect to foreign contracts in Canada.

Additionally, Rule 91-502 requires a person trading in or giving advice in respect of a “recognized option” (as defined in Rule 91-502) to have successfully completed the Derivatives Fundamentals and Options Licensing Course. This requirement is in addition to the general proficiency requirements imposed on registered individuals in NI 31-103.

There has been some uncertainty as to whether this incremental proficiency requirement in Rule 91-502 applies to international firms that provide trading or advisory services in Canada in relation to options that trade on foreign exchanges. Consequently, international firms applying for an exemptive relief order under the CFA typically also seek an exemption from this proficiency requirement in Rule 91-502.

### The Proposed Rule

Under the Proposed Rule, the OSC would codify the relief available to international firms that provide trading or advisory services to institutional clients in Ontario in relation to options and commodity futures contracts that trade on foreign exchanges, provided that they are appropriately registered in their home jurisdictions to provide such services and the remaining terms and conditions of the Proposed Rule are satisfied. Notably, the Proposed Rule would create a definition of a “CFA permitted client” that includes any person or company that is

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a “permitted client” under NI 31-103 (e.g., banks, registered securities advisers or dealers, and pension funds), as well as certain additional categories, such as registered advisers or dealers in commodity futures or derivatives and family trusts established by permitted clients.

The Proposed Rule would require international firms to (among other things):

- provide a written statement to CFA permitted clients that the firm is not registered to trade or advise in Ontario and that there may be difficulty enforcing legal rights against the firm;
- submit Form 32-506F1 – *Submission to Jurisdiction and Appointment of Agent for Service* to the OSC;
- notify the OSC that it has relied on the exemption by December 1 of the applicable year; and
- pay a participation fee in accordance with OSC Rule 13-502 – *Fees* in relation to its reliance on the exemption in the Proposed Rule (assuming the firm is not registered under the *Securities Act* (Ontario) and does not rely on the exemptions in NI 31-103).

The OSC has also proposed to amend Rule 91-502 to provide an exemption from the proficiency requirement in Rule 91-502 with respect to advice relating to recognized options that trade on foreign exchanges. If adopted, an international firm that otherwise complies with the terms and conditions of the exemption from registration requirements under the Proposed Rule would also be exempted from the incremental proficiency requirement in Rule 91-502.

The OSC will continue to consider applications on a case-by-case basis if the exemptive relief raises novel issues or if applicants indicate that the standard set of terms and conditions under the Proposed Rule are not appropriate for the applicant’s business model or institutional client base.

For more information on the Proposed Rule, please contact any member of our [Corporate Finance and Securities Group](#).

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