

BC Companion Policy 91-502CP
Short Term Foreign Exchange Transactions

The British Columbia Securities Commission has learned that there is confusion in the market about when a foreign exchange contract or “forex” contract is a “security”.

Definition of security

The definition of “security” in section 1(1) of the *Securities Act* (Act) includes three components that could describe forex contracts. They are

- a document, instrument or writing commonly known as a security
- an investment contract
- an instrument that is a futures contract or an option but is not an exchange contract

Commission decisions

Several Commission decisions set out below concluded that the forex contracts offered in each case were investment contracts and, therefore, securities as defined in section 1(1) of the Act.

- In the Matter of Yuen Chow International Group, et al., [1995] 22 BCSC Weekly Summary 26
- In the Matter of Currency Specialist Ltd., et al., [1995] 22 BCSC Weekly Summary 6
- In the Matter of Chinamax International Investment Ltd., et al., [1997] 13 BCSC Weekly Summary 21

Blanket Order 91-502

Blanket Order 91-502 *Short Term Foreign Exchange Transactions* states that a contract or other obligation to purchase or sell the currency of any jurisdiction, where the terms of the transaction require settlement not later than three business days after the entering into of the transaction, is not a futures contract, provided that the contract or obligation is not otherwise a security under the Act. This Blanket Order is designed to provide relief from the registration and prospectus requirements for businesses managing currency risk in their business operations. It is not meant to provide registration relief for other investors.

Determining whether a forex contract is a security

To determine whether a forex contract is a “security”, you cannot rely on Blanket Order 91-502 alone to conclude that a forex contract is not a futures contract and, therefore, not a “security”. This is the case even when the terms of the transaction require settlement within three business days after entering into the transaction. You must next consider whether another part of the definition of “security” applies.

Effective December 4, 2009.