

## Headnote

Multilateral Instrument 11-102 –Passport System - Securities Act s. 48 Dealer – Exemption from s. 34(a) requirement to be registered as a dealer to trade exchange contracts – A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer – The person is registered or qualified as a dealer in the jurisdiction in which they reside or carry on business; the person will only trade exchange contracts with sophisticated investors.

## Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 48

February 7, 2025

**In the Matter of  
the Securities Legislation of  
British Columbia  
(the Jurisdiction)**

**and**

**In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions**

**and**

**In the Matter of  
R.J. O'Brien & Associates LLC  
(the Filer)**

**Decision**

### **Background**

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**), in particular, under section 48 of the Securities Act (British Columbia) (the **Act**), granting relief from the requirement in section 34(a) of the Act for the Filer to be registered as a dealer in connection with trades in contracts or instruments, including futures contracts and options, that have their performance guaranteed by a clearing agency and that are traded on an exchange pursuant to standardized terms and conditions set out in that exchange's bylaws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange (**Exchange Contracts**) that trade on certain exchanges located outside Canada (**Foreign Exchange Contracts**) with the Jurisdiction's residents that fall within the definition of "eligible derivatives party" as defined below (the **Exemption Sought**).

Under the *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

1. the British Columbia Securities Commission is the principal regulator for this decision; and
2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in Alberta and Saskatchewan (the **Non-Principal Jurisdictions** and, together with the Jurisdiction, the **Jurisdictions**).

### **Interpretation**

¶ 2 In this decision:

1. “eligible derivatives party” means any of the following:
  - (a) a Canadian financial institution;
  - (b) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
  - (c) a subsidiary of a person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;
  - (d) a person or company registered under the securities legislation of a jurisdiction of Canada as any of the following:
    - (i) a derivatives dealer;
    - (ii) a derivatives adviser;
    - (iii) an adviser;
    - (iv) an investment dealer;
  - (e) a pension fund that is regulated by the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of the pension fund;
  - (f) an entity organized under the laws of a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);
  - (g) the Government of Canada or the government of a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or the government of a jurisdiction of Canada;
  - (h) a government of a foreign jurisdiction or any agency of that government;

- (i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;
- (k) a person or company that is acting on behalf of a managed account if the person or company is registered or authorized to carry on business as either of the following:
  - (i) an adviser or a derivatives adviser in a jurisdiction of Canada;
  - (ii) the equivalent of an adviser or a derivatives adviser under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;
- (l) an investment fund if either of the following apply:
  - (i) the investment fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
  - (ii) the investment fund is advised by an adviser registered or exempted from registration under securities legislation or under commodity futures legislation of a jurisdiction of Canada;
- (m) a person or company, other than an individual, that has net assets of at least \$25 000 000 as shown on its most recently prepared financial statements;
- (n) a person or company that has represented to the derivatives firm, in writing, that it is a commercial hedger in relation to the derivatives that it transacts with the derivatives firm;
- (o) an individual that beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, that have an aggregate realizable value before tax but net of any related liabilities of at least \$5 000 000;
- (p) a person or company, other than an individual, that has represented to the derivatives firm, in writing, that its obligations under derivatives that it transacts with the derivatives firm are fully guaranteed or otherwise fully supported, under a written agreement, by one or more derivatives parties referred to in this definition, other than a derivatives party referred to in paragraph (n) or (o);
- (q) a person that has been recognized or exempted from recognition as a clearing agency.

2. Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

### **Representations**

¶ 3 This decision is based on the following facts represented by the Filer:

1. The Filer has chosen the British Columbia Securities Commission as the principal regulator because:
  - (a) the Filer has already obtained similar relief in Ontario; and
  - (b) outside of Ontario, as between Alberta, Saskatchewan and British Columbia, British Columbia is the jurisdiction in which the Filer expects to have substantial client relationships for the activities described in this decision.
2. The Filer is a limited liability company formed under the laws of the state of Delaware of the United States of America. The head office of the Filer is located in Chicago, Illinois, United States of America.
3. The Filer is not a reporting issuer in any jurisdiction of Canada.
4. The Filer is a privately-held business wholly-owned by the O'Brien family of Chicago, Illinois. The Applicant was founded in 1914 and is based in Chicago, Illinois.
5. The Filer provides futures commission merchant services which include commodity clearing and execution services to various financial, industrial and agricultural institutions, including affiliates of the Filer. In addition to the Filer's futures commission merchant services, the Filer's business also includes brokering or intermediating bilateral over-the-counter (OTC) derivatives transactions with counterparties located in the U.S. and is limited to transacting with, or on behalf of, institutional and other non-retail clients.
6. The Filer is registered as a futures commission merchant and swap dealer with the U.S. Commodity Futures Trading Commission (**U.S. CFTC**) and is a member of the U.S. National Futures Association (**U.S. NFA**).
7. As a registered futures commission merchant, the Filer is authorized to handle customer orders and hold customer margin deposits and is required to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules.
8. The Filer is a member of the Chicago Mercantile Exchange (CME), Chicago Board of Trade (CBOT), New York Mercantile Exchange, Inc. (NYMEX), Commodity Exchange Inc. (COMEX), ICE Futures U.S., ICE Futures Europe, ICE Endex, ICE Abu Dhabi, Bitnomial Exchange, Dubai Mercantile Exchange, and CBOE Futures Exchange.
9. The Filer is not in default of securities legislation in any jurisdiction of Canada or with securities regulatory requirements applicable in a foreign jurisdiction in which the Filer carries on business.

10. The Filer is not registered pursuant to securities or commodity futures legislation in any jurisdiction of Canada. The Filer is relying on the International Dealer Exemption as set forth in Section 8.18 International Dealer of NI 31-103 in relation to trades in securities in provinces of British Columbia, Alberta, and Saskatchewan.
11. The Filer currently offers certain of its clients in the Jurisdictions the ability to trade in Foreign Exchange Contracts because of relief granted to the Filer through an order granted by the British Columbia Securities Commission on June 12, 2012 (the **2012 BC Relief**) and an order granted by the Alberta Securities Commission on March 16, 2017 (the **2017 AB Relief** and together with the **2012 BC Relief**, the **Previous Relief**). The 2012 BC Relief and the 2017 AB Relief expired on June 12, 2017 and March 16, 2022, respectively, and the effect of the Exemption Sought is to replace the Previous Relief, on substantially the same terms and conditions, for a further interim period of up to five years (as described below).
12. The Filer proposes to offer certain of its clients in the Jurisdictions that are an eligible derivatives party the ability to trade in Foreign Exchange Contracts through the Filer.
13. The Filer will solicit business in the Jurisdictions only from persons who qualify as an eligible derivatives party.
14. Clients of the Filer that are an eligible derivatives party will only be offered the ability to trade Foreign Exchange Contracts trading on exchanges (and any successor entities) located outside Canada and that are listed in Appendix A (**Listed Exchanges**).
15. The Foreign Exchange Contracts to be traded by eligible derivatives parties will include, but will not be limited to, Exchange Contracts for equity index, interest rate, energy, agricultural, digital asset, and other commodity products.
16. A client of the Filer that is an eligible derivatives party will be able to execute trades in Foreign Exchange Contracts through the Filer by contacting the Filer's registered associated person or global execution desk. A client of the Filer may also be able to self-execute trades electronically in Foreign Exchange Contracts on Listed Exchanges via the Filer's proprietary trading platform and/or other electronic trading routing.
17. The Filer may execute a client's order or engage another broker to assist in the execution of orders on the relevant Listed Exchange in accordance with the rules and customary practices of the exchange. The Filer will remain responsible for the execution of each such trade; the Filer may perform both execution and clearing functions for trades of Foreign Exchange Contracts or may direct that a trade executed by it, be cleared through a carrying broker if the Filer is not a clearing member of the Listed Exchange on which the trade is executed. Alternatively, the client will be able to direct that trades executed by the Filer be cleared through clearing brokers not affiliated with the Filer in any way (each a **Non-Affiliated Clearing Broker**).
18. If the Filer performs only the execution of a client's Foreign Exchange Contract order and "gives-up" the transaction for clearance to a Non-Affiliated Clearing Broker, such clearing broker will also be required to comply with the rules of the relevant

Listed Exchange of which it is a member and any relevant regulatory requirements, including requirements under the Act as applicable. Each such Non-Affiliated Clearing Broker will represent to the Filer in a give-up agreement that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the Listed Exchange or clearing house on which the relevant client's Foreign Exchange Contract orders will be executed and cleared. The Filer will not enter into a give-up agreement with any Non-Affiliated Clearing Broker located in the United States unless such clearing broker is registered with the U.S. CFTC and/or U.S. SEC, as applicable.

19. As is customary for all trading in Exchange Contracts, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal central counterparty on all trades in Exchange Contracts. For each open position in a Foreign Exchange Contract resulting from a trade made by the Filer, the client is responsible for payment to the Filer, carrying broker or Non-Affiliated Clearing Broker, as applicable, of variation margin and/or proper margin to carry the open position and the Filer, the carrying broker or the Non-Affiliated Clearing Broker is in turn responsible to the clearing corporation/division for payment in accordance with the requirements of the clearing corporation/division.
20. Clients that direct the Filer to give up transactions in Foreign Exchange Contracts for clearance and settlement by Non-Affiliated Clearing Brokers will execute the give-up agreements described above; clients will pay commissions for trades to the Filer or the Non-Affiliated Clearing Broker or such commissions may be shared with the Non-Affiliated Clearing Broker.
21. As a futures commission merchant subject to regulatory oversight by the U.S. CFTC, the Filer is authorized to handle customer orders and receive and hold customer margin deposits and is required to ensure that customer positions and monies, including customer margin deposits, be separately accounted for and segregated from the positions and monies of the Filer. The U.S. CFTC regulations are designed to protect customers in the event of insolvency or financial instability of a futures commission merchant through which they clear their futures and futures options business. The Filer receives acknowledgements from those of its banks and brokers holding the Filer's client funds that such funds are to be separately held on behalf of the Filer's clients, with no right of set-off against the Filer's obligations or debts. All positions and monies of clients in the Jurisdictions will be subject to equivalent protection as positions and monies of customers resident in the US.
22. Where required by applicable law, all representatives of the Filer who trade Foreign Exchange Contracts on behalf of customers in a Jurisdiction have passed the futures and options proficiency examination (i.e., the National Commodity Futures Examination (Series 3)) administered by U.S. Financial Industry Regulatory Authority.

#### **Decision**

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) at the time trading activity is engaged in:
  - (i) the Filer's head office or principal place of business remains in the United States;
  - (ii) the Filer is permitted to trade in Exchange Contracts in the U.S. and is registered with the U.S. CFTC as a futures commission merchant and is a member of the U.S. NFA in good standing;
  - (iii) the Filer's representatives are permitted to trade Exchange Contracts in the U.S. and are registered with the U.S. CFTC and U.S. NFA; and
  - (iv) the Filer has filed a submission to jurisdiction and appointment of service in the form of Form 31-103F2 *Submission To Jurisdiction And Appointment Of Agent For Service* (F2) with the Jurisdictions except that the Filer must delete from the F2 title "(sections 8.18 [international dealer] and 8.26 [international adviser])", and the Filer must delete paragraph 6 of the F2 referring to the section of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* relied on, and in paragraph 11 of the F2 the Filer must replace the phrase, "ceases to rely on section 8.18 [international dealer] or section 8.26 [international adviser]" with the phrase, "ceases to rely on the exemption from the requirement to register as a dealer in the Jurisdictions dated February 7, 2025".
- (b) each client effecting trades in Foreign Exchange Contracts in the Jurisdictions through the Filer is an eligible derivatives party and, if using a Non-Affiliated Clearing Broker, such clearing broker has represented and covenanted that it is or will be appropriately registered or exempt from registration under the Act;
- (c) the Filer only executes trades in Foreign Exchange Contracts on Listed Exchanges for clients that are eligible derivatives parties;
- (d) the Filer provides each client that is executing trades in Foreign Exchange Contracts through the Filer, that is in the Jurisdictions, with disclosure upon entering into the agreement by which it establishes an account with the Filer that includes:
  - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers or employees because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada;
  - (ii) a statement of the jurisdiction of the Filer's head office or principal place of business;

- (iii) a statement that the Filer is not registered as a dealer under the Act (or the equivalent legislation in the other Jurisdictions) and, accordingly, the protection available to clients of a dealer registered under the Act (or the equivalent legislation in the other Jurisdictions), including the protection available by applicable Canadian investor compensation funds, will not be available to clients of the Filer;
- (iv) the name and address of the agent for service in each of the Jurisdictions;
- (e) the Filer notifies each Jurisdictions' securities regulatory authority of any regulatory action after the date of this decision in respect of the Filer, or any predecessors, or specified affiliates of the Filer, by completing and filing Appendix B within 10 days of the Filer becoming aware of such action;
- (f) the Filer will, for each client in the Jurisdictions that would not qualify as an eligible contract participant as defined in the U.S. *Commodity Exchange Act*, obtain the information and provide the disclosure required to be provided to customers of U.S. NFA members that are not eligible contract participants, including the disclosure required under U.S. NFA Rule 2-30;
- (g) this decision will expire the sooner of five years after the date of this decision or upon the implementation in the applicable Jurisdiction(s) of a rule, regulation, other instrument, or material amendments under the securities legislation that governs persons dealing in Foreign Exchange Contracts.

*"Mark Wang"*

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Mark Wang  
Director, Capital Markets Regulation  
British Columbia Securities Commission



**Appendix A**  
**Listed Exchanges**  
**(and any successor entities)**

**United States**

Chicago Board of Trade (CBOT)  
Chicago Mercantile Exchange (CME)  
New York Mercantile Exchange (NYMEX)  
Commodity Exchange Inc. (COMEX)  
CBOE Futures Exchange  
ICE Futures U.S.  
Bitnomial Exchange

**Outside the United States**

Dubai Mercantile Exchange (DME)  
Eurex Exchange  
ICE Futures Europe  
ICE Endex  
ICE Abu Dhabi  
London Metal Exchange (LME)  
Osaka Exchange, Inc.  
Tokyo Commodity Exchange, Inc. (TOCOM)  
Singapore Exchange (SGX)  
Hong Kong Futures Exchange Limited (HKFE)  
Sydney Futures Exchange (SFE)  
Bursa Malaysia  
Italian Derivatives Market (IDEM)  
Euronext  
New Zealand Futures and Options

## Appendix B

### Notice of Regulatory Action

1. Has the firm, or any predecessors or specified affiliates of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, self regulatory organization ("SRO") or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, **SRO** or similar organization has:

	Yes	No
(a) determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) determined that the firm, or any predecessors or specified affiliates of the firm, made a false statement or omission?		
(c) issued a warning or requested an undertaking by the firm or any predecessors or specified affiliates of the firm?		
(d) suspended or terminated a registration, license or membership of the firm, or any predecessors or specified affiliates of the firm?		

(e) imposed terms or conditions on any registration or membership of the firm, or any predecessors or specified affiliates of the firm?		
(f) conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) issued an order (other than an exemption order) or a sanction to the firm or any predecessors or specified affiliates of the firm, for securities or		

If yes, provide the following information for each action:

Name of entity	
Type of Action	
Regulator/organization	
Date of settlement (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any predecessors or specified affiliates of the firm is the subject?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner
_____
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

***Witness***

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted to the following address:

British Columbia Securities Commission

701 West Georgia Street

P.O. Box 10142, Pacific Centre

Vancouver, B.C. V7Y 1L2

Attention: Manager, Registration

[Email: registration@bcsc.bc.ca](mailto:registration@bcsc.bc.ca)