

**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

April 3, 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  
Duneland Commodities Inc. dba DLC Risk Management  
(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 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 corporation incorporated under the laws of the State of Indiana, U.S.A. Its head office is located at 2212 Longspur Dr, Aledo, TX 76008.
3. The Filer is not a reporting issuer in any jurisdiction of Canada.
4. The Filer provides futures brokerage services to agricultural producers in connection with executing on risk management strategies intended to reduce producers' exposure to volatility in commodity prices.
5. The Filer is registered as an introducing broker and swap firm 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**).
6. The Filer, as an introducing broker, is able to execute trades and exchanges operated by the CME Group (including the Chicago Mercantile Exchange (CME), the Chicago Board of Trade (CBOT), the New York Mercantile Exchange (NYMEX) and the Commodity Exchange (COMEX), and by the ICE Futures U.S. (ICUS).
7. The Filer is not registered pursuant to securities or commodity futures legislation in any jurisdiction of Canada.
8. 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.
9. The Filer will solicit business in the Jurisdictions only from persons who qualify as an eligible derivatives party.
10. 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) designated as designated contract markets by the U.S. CFTC (**U.S. Exchanges**).
11. 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 and other commodity products.
12. Pursuant to its registration and membership, the Filer is authorized to solicit, accept, and execute customer orders, and otherwise act as an introducing broker in the United States. The Filer is also authorized to solicit and accept customer orders and introduce them to an executing broker registered as a futures commission merchant in the United States. Rules of the U.S. CFTC and U.S. NFA require the Filer to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions including confirmations and statements, and

comply with other forms of customer protection rules, including rules respecting: know your customer obligations, account opening requirements, suitability requirements, anti-money laundering checks and best execution. These rules do not permit the Filer to treat an eligible derivatives party materially differently from the Filer's customers in the United States. In respect of Foreign Exchange Contracts, the Filer does not provide clearing services nor it is authorized to receive or hold client money in any jurisdiction.

13. Before the Filer accepts an order from an eligible derivatives party in the Jurisdictions for trades in Foreign Exchange Contracts on a U.S. Exchange, the eligible derivatives party will need to have arrangements in place with another broker that is registered or exempted from registration in the applicable jurisdictions and that can provide execution and clearing services. The eligible derivatives party must enter into a separate agreement with that broker.
14. The Filer may execute a client's order on a U.S. Exchange in accordance with the rules and customary practices of the exchange, or engage an executing broker registered as a futures commission merchant to assist in the execution of orders. The Filer will remain responsible for all executions. As the Filer will only perform the execution of an eligible derivatives party's Foreign Exchange Contract order and "give-up" the transaction for clearance to the eligible derivatives party's carrying broker or clearing broker (each, a **Clearing Broker**), such Clearing Broker will also be required to comply with the rules of the relevant U.S. Exchange of which it is a member and any relevant regulatory requirements, including requirements under the Act as applicable.
15. Each Clearing Broker will represent to the Filer in an industry standard 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 U.S. Exchange or clearing house on which the relevant eligible derivatives party's Foreign Exchange Contract orders will be executed and/or cleared. The Filer will not enter into a give-up agreement with any Clearing Broker located in the United States unless such Clearing Broker is registered with the U.S. CFTC and/or U.S. Securities and Exchange Commission, as applicable.
16. 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 and client orders are submitted to the U.S. Exchange in the name of the Clearing Broker or the Filer or, on exchangers where the Filer is not a member, in the name of another carrying broker. The client of the Filer is responsible to the Clearing Broker for payment of daily mark to market variation margin and/or proper margin to carry open positions and the Clearing Broker is in turn responsible to the clearing corporation/division for payment in accordance with the requirements of the clearing corporation/division.
17. Clients that direct the Filer to give up transactions in Foreign Exchange Contracts for clearance and settlement by Clearing Brokers will execute the give-up agreements described above; clients will pay commissions for trades to the Filer or the Clearing Broker or such commissions may be shared with the Clearing Broker.

18. Except in respect of the determination as to whether a prospective client is an eligible derivatives party, the Filer will follow the same know your customer procedures and order handling that it follows in respect of its United States clients. Eligible derivatives parties will be afforded the benefits of compliance by the Filer with the statutory and other requirements of applicable securities and commodity futures regulators, self-regulatory organizations and exchanges located in the United States. Eligible derivatives parties will have the same contractual rights against the Filer as the Filer's clients in the United States.
19. All representatives of the Filer who trade Exchange Contracts in the United States have passed the futures and options proficiency examination (i.e., the National Commodity Futures Examination (Series 3)) administered by U.S. FINRA.

### **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 an introducing broker 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 April 3, 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 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 a U.S. Exchange 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 A 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

### 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		
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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)