

# ALBERTA SECURITIES COMMISSION

## ORDER

**Citation: Re TULLETT PREBON AMERICAS CORP., 2021 ABASC 182 Date: 20211215**

### **Tullett Prebon Americas Corp. and PVM Futures, Inc.**

#### **Background**

1. Tullett Prebon Americas Corp. (**TPAC**) and PVM Futures, Inc. (**PVM**) (together, the **Filers**) have applied to the Alberta Securities Commission (the **Commission**) for an order under section 144(1) of the *Securities Act* (Alberta) (the **Act**) exempting the Filers from the dealer registration requirement of section 75(1)(a) of the Act (the **Exemption Sought**) in respect of trades in exchange contracts to clients in Alberta who are "qualified parties" as defined in Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives (Qualified Parties)*.

#### **Interpretation**

2. Terms defined in National Instrument 14-101 *Definitions* or in the Act have the same meaning if used in this order unless otherwise defined herein.

#### **Representations and Covenants**

3. This order is based on the following representations and covenants made by each of the Filers to the Commission:
  - (a) TPAC is:
    - (i) incorporated under the laws of the State of Delaware, with its head office located in New York, New York;
    - (ii) registered as an introducing broker (**IB**) with the United States (**US**) Commodity Futures Trading Commission (**CFTC**);
    - (iii) a member of the US National Futures Association (**NFA**); and
    - (iv) relying on the international dealer exemption under section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in Ontario, which exemption does not apply to trades in exchange contracts in Alberta.
  - (b) PVM is:
    - (i) incorporated under the laws of the State of New Jersey, with its head office in New York, New York;

- (ii) registered as an IB with the CFTC; and
  - (iii) a member of the NFA.
- (c) The Filers are indirect subsidiaries of TP ICAP Group plc., an interdealer broker and public limited company organized under the laws of Jersey and listed on the London Stock Exchange.
  - (d) Each Filer is a General Participant on the Intercontinental Exchange Inc. Block and an Eligible Participant on the Chicago Mercantile Exchange.
  - (e) The Filers act as IBs for Eligible Contract Participants, as that term is defined in the US *Commodity Exchange Act*, as amended.
  - (f) The Filers are not registered under the securities legislation of any jurisdiction of Canada.
  - (g) The Filers are not in default of securities legislation in any jurisdiction of Canada.
  - (h) The Filers propose to trade in exchange contracts only on behalf of Qualified Parties.
  - (i) The Filers will not advertise their services by television, radio, newspaper, internet or other media of general circulation originating in Canada, other than financial industry publications.
  - (j) The Filers will not maintain an office, sales force or place of business in Alberta.
  - (k) The Filers shall file with the Executive Director of the Commission any information the Executive Director may require in a form that is acceptable to the Executive Director.
  - (l) Exchange contracts will be traded by the Filers for Qualified Parties only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
  - (m) Qualified Parties will be able to execute orders for exchange contracts by contacting a Filer's client order handling desk.
  - (n) All exchange contracts traded by the Filers on behalf of Qualified Parties will be subject to regulation by the CFTC or other similar regulatory authorities.
  - (o) Pursuant to their registrations and memberships, the Filers are authorized to handle customer orders, to effect trades in large quantities of exchange contracts (**Block Trades**), and introduce customers to an executing broker registered as a futures commission merchant (**FCM**), and otherwise act as an IB. Rules of the CFTC and the NFA require the Filers to maintain specified types of records relating to

customer transactions, and to comply with other customer protection rules. With respect to transactions made on exchanges in the US, these rules require the Filers to treat Qualified Parties consistently with the Filers' US customers.

- (p) In the case of a Block Trade, where a Filer is acting on behalf of a Qualified Party, the Filer, as an IB, will match the Qualified Party in a privately negotiated trade, which will be executed apart from the public auction market established by the applicable Non-Canadian Exchange and submitted for public reporting to the Non-Canadian Exchange within the required time period applicable for Block Trades. Once the Filer submits a trade to a Non-Canadian Exchange, the Qualified Party's FCM will attend to the clearing and settlement of the trade, in accordance with the rules and customary practices of the exchange, without the Filer's further involvement in the transaction.
- (q) In the case of an exchange trade that is not a Block Trade, where a Filer is acting on behalf of a Qualified Party, the Filer will perform only an introducing broker and execution function and will direct that the trade be delivered and cleared through the Qualified Party's carrying broker (**Carrying Broker**) on the Non-Canadian Exchange on which the trade is executed.
- (r) The Carrying Broker may opt to perform only an execution function in relation to a trade by giving up the trade for clearing to a clearing broker (**Clearing Broker**).
- (s) Each Carrying Broker and Clearing Broker is required to be registered as an FCM with the CFTC and will be a member of the NFA or exempt from NFA membership in accordance with applicable law. Each Carrying Broker and each Clearing Broker will be required to adhere to regulations relating to a CFTC-registered FCM and an NFA member, as applicable, which require, among other things, the segregation and separate accounting of customer positions and money to protect customers in the event of the insolvency or financial instability of an FCM. This protection will extend to all Alberta clients of the Filers in respect of trades in exchange contracts.
- (t) The Filers will only deal with Carrying Brokers who enter into an industry-standard give-up agreement, with a Qualified Party that requires the Carrying Broker to perform its obligations in relation to the execution and clearing of trades in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange and clearing house rules and the customs and usages of the exchange or clearing house on which the relevant Qualified Party's exchange contract order will be executed and cleared and that the Carrying Broker is permitted to do business with the Qualified Party in accordance with applicable laws. The Qualified Party will also execute such give-up agreement.

**Order**

4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 144(1) of the Act that the Exemption Sought is granted, provided that, and for so long as:
- (a) the representations herein remain true;
  - (b) each Filer continues to satisfy the covenants herein;
  - (c) any trade in exchange contracts by either Filer is conducted only on behalf of a Qualified Party;
  - (d) such exchange contracts are traded only on a Non-Canadian Exchange;
  - (e) each Filer maintains in good standing its registration as an IB with the CFTC and its membership with the NFA;
  - (f) when opening an account for a Qualified Party, each Filer provides to the Qualified Party:
    - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers, employees or agents because they are resident outside Alberta, and all or substantially all of their assets are situated outside Alberta;
    - (ii) a statement that the Filer is not a registrant and, accordingly, the protection available to clients of a dealer registered under the Act will not be available to the Qualified Party;
    - (iii) the name and address of the Filer's agent for service in Alberta; and
    - (iv) a statement providing risk disclosure substantially similar to that required under the Act for registered dealers trading in exchange contracts;
  - (g) each Filer notifies the Commission promptly of:
    - (i) any restrictions or conditions placed on its registration with the CFTC as an IB; or
    - (ii) any sanctions imposed on the Filer in connection with its activities as an IB under a settlement agreement entered into with the CFTC, pursuant to an order issued by the CFTC, or as otherwise required by the CFTC;
  - (h) each Filer delivers to the regulator, for the financial year 2021, financial information that it files annually with the NFA, at the same time that it files with the NFA such financial information, prepared pursuant to CFTC requirements, in

accordance with US Generally Accepted Accounting Principles as detailed in the Financial Accounting Standards Board's Accounting Standard Codification, on a consolidated basis, including Form 1-FR-IB; and

- (i) each Filer has provided to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as an Appendix to this order.

5. This order will take effect on December 15, 2021 and expire on the earlier of:

- (a) December 15, 2026; and
- (b) 180 days after the coming into force of any change to Alberta securities laws regarding over-the-counter derivatives transactions that affects registration of derivatives dealers.

**For the Commission:**

*"original signed by"*  
\_\_\_\_\_  
Tom Cotter  
Vice-Chair

*"original signed by"*  
\_\_\_\_\_  
Kari Horn  
Vice-Chair

## Appendix

### Submission to Jurisdiction and Appointment of Agent for Service

Name of person or company ( <b>International Firm</b> ):
If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number for the firm:
Jurisdiction of Incorporation for the International Firm:
Head office address of the International Firm:

The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:
E-mail address:
Phone:
Fax:

The International Firm is relying on an exemption order under section 144 of the *Securities Act* (Alberta) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Relief**):

\_\_\_\_\_ Section 8.18 [international dealer]  
 \_\_\_\_\_ Section 8.26 [international adviser]  
 \_\_\_\_\_ Other [specify]:

Name of agent for service of process ( <b>Agent for Service</b> ):
Address for service of process on the Agent for Service:

The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (**Proceeding**) arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

Until 6 years after the International Firm ceases to rely on the Relief, the International Firm must submit to the regulator

- a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and
- an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated:
(Signature of the International Firm or authorized signatory)
(Name of signatory)
(Title of signatory)

The undersigned accepts the appointment as Agent for Service of [*Insert name of International Firm*] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated:
(Signature of the Agent for Service or authorized signatory)
(Name of signatory)
(Title of signatory)