

ALBERTA SECURITIES COMMISSION

DESIGNATION ORDER

Citation: Re Designation of certain investment contracts and options to be derivatives,
2016 ABASC 15

Date: 20160122

Definitions and interpretations

1. Unless otherwise defined or interpreted herein, terms defined in the *Securities Act* (Alberta) (the **Act**) have the same meaning in this Designation Order.
2. In this Designation Order, a person or company is an affiliated entity of another person or company if one of them controls the other or if each of them is controlled by the same person or company.
3. In this Designation Order, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:
 - (a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party unless the first party holds the voting securities only to secure an obligation;
 - (b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;
 - (c) the second party is a limited partnership and the general partner of the limited partnership is the first party;
 - (d) the second party is a trust and a trustee of the trust is the first party.

Background

4. Under Multilateral Instrument 91-101 *Derivatives: Product Determination (MI 91-101)*, a "specified derivative is a "derivative" as defined in the securities legislation of Alberta that is not excluded by section 2 of MI 91-101.
5. The definition of "derivative" in the Act excludes a contract or instrument that is a security, but includes a security or class of securities that has been designated by the Commission to be a derivative.
6. In the absence of this Designation Order, certain contracts or instruments that, for certain purposes, are appropriately regulated as derivatives would be securities and not derivatives.

Order

7. Subject to section 8 of this Designation Order, the Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 10 of the Act that a contract or instrument to which both of the following apply is designated to be a derivative and is designated not to be a security for the purpose of MI 91-101:
- (a) it is a contract or instrument referred to under subclause (i) of the definition of "derivative" in the Act;
 - (b) it is a security solely by reason of being an investment contract or an option.
8. Section 7 of this Designation Order does not apply to a contract or instrument to which all of the following apply:
- (a) it is issued by any of the following:
 - (i) an issuer;
 - (ii) a control person of an issuer;
 - (iii) an insider of an issuer;
 - (b) the underlying interest of the contract or instrument is a security of the issuer or an affiliated entity of the issuer;
 - (c) it is used for either or both of the following:
 - (i) to compensate or incent the performance of a director, employee or service provider of the issuer or an affiliated entity of the issuer;
 - (ii) as a financing instrument in connection with the raising of capital for the issuer or an affiliated entity of the issuer or the acquisition of a business or property by the issuer or an affiliated entity of the issuer.
9. This Designation Order takes effect on 1 May 2016.

For the Commission:*"original signed by"*

 Tom Cotter
 Vice Chair
"original signed by"

 Stephen Murison
 Vice Chair