

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Société Générale, 2016 ABASC 279

Date: 20161117

Société Générale

Background

1. Société Générale (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order under section 144 of the *Securities Act* (Alberta) (the **Act**) exempting the Filer from the dealer registration requirement of section 75(1)(a) of the Act (the **Exemption Sought**) in respect of its provision of trading services for futures contracts, options on futures contracts and options with respect to equity index, interest rate, energy, agricultural, foreign exchange (including foreign exchange indices), metals, weather and real estate products (collectively, **Derivatives**) to clients, each of which is a “qualified party” as defined in Commission Blanket Order 91-506 *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 decision unless otherwise defined herein.

Representations

3. This decision is based on the following representations made by the Filer to the Commission:
 - (a) The Filer is:
 - (i) a public limited company (société anonyme) established under French law with its head office located in Paris, France;
 - (ii) a French credit institution authorized and supervised by the European Central Bank and the Autorité de Contrôle Prudentiel et de Résolution, and regulated by the French Autorité des Marchés Financiers (collectively, the **European Regulatory Authorities**);
 - (iii) a member of the United States National Futures Association (**NFA**);
 - (iv) approved by the NFA as an exempt foreign firm;
 - (v) licensed by the New York State Superintendent of Financial Services under the New York banking law to maintain the New York branch of Société Générale (the **New York Branch**), which is regulated by the New

York State Department of Financial Services and the Board of Governors of the Federal Reserve System; and

- (b) The Filer is not registered under the securities legislation of any jurisdiction of Canada.
- (c) The Filer is not in default of securities legislation in any jurisdiction.
- (d) The Filer proposes to trade in Derivatives as principal with Qualified Parties through the New York Branch.
- (e) The Filer will not advertise its services by television, radio, newspaper, internet or other media of general circulation originating in Canada, other than financial-industry publications.
- (f) The Filer will not maintain an office, sales force or place of business in Canada, except for the offices of its bank branch, Société Générale (Canada Branch) (the **Canada Branch**), located in Calgary, Toronto and Montréal. The Canada Branch is a Schedule III bank established under the *Bank Act* (Canada) that conducts banking-related activities, including banking advisory and treasury activities, loan origination and marketing Société Générale products and services in Canada. No trades in Derivatives will be conducted by the Filer through the Canada Branch.
- (g) Derivatives will be traded by the Filer with Alberta clients only on exchanges located outside Canada (**Non-Canadian Exchanges**).
- (h) All Derivatives traded by the Filer with Qualified Parties will be subject to regulation by the European Regulatory Authorities, the Commodity Futures Trading Commission or other similar regulatory authorities. The Filer is required to adhere to regulations relating to a French regulated credit institution, bank or investment services provider and an NFA-registered member which, among other things, require the maintenance of minimum capital to cover the Filer's credit, market, counterparty and operational risks and the segregation and separate accounting of customer positions to protect customers in the event of the insolvency or financial instability of such an entity. The protections related to customer positions will extend to all Alberta clients of the Filer in respect of trades in Derivatives.
- (i) Derivatives trading by the Filer with Qualified Parties will be conducted by block trades, each party to which will be an Eligible Contract Participant (as that term is defined in section 1a(18) of the United States *Commodity Exchange Act*).
- (j) the Filer will perform execution functions for trades in Derivatives with Qualified Parties. The Filer will not perform clearing functions for Alberta clients with respect to such trades. The Filer's clearing broker will represent to the Filer, to the extent the Filer is not acting as its own clearing broker, that it is required to

comply with the rules of exchanges and any applicable regulatory requirements, including requirements under the Act. The Filer's clearing broker will also represent to the Filer that it is registered with the European Regulatory Authorities or similar regulatory authorities, as applicable.

- (k) The Filer will not take any collateral from Qualified Parties in connection with Derivatives traded by the Filer with Qualified Parties. Such Qualified Parties will post collateral to their own clearing brokers.

Decision

- 4. The Commission, considering that it would not be prejudicial to the public interest to do so, orders under section 144 of the Act that the Exemption Sought is granted provided that and for so long as:
 - (a) any trade in Derivatives by the Filer with Alberta clients is conducted only with a Qualified Party;
 - (b) all Derivatives are traded on a Non-Canadian Exchange;
 - (c) the Filer maintains in good standing its registrations, memberships and licences, as the case may be, with the European Regulatory Authorities, the New York State Superintendent of Financial Services and the NFA;
 - (d) the Filer provides to each client when opening an account for the client:
 - (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 registered under the Act and, accordingly, the protection available to clients of a dealer registered under the Act will not be available to clients of the Filer;
 - (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 Derivatives; and
 - (e) the Commission is in receipt from the Filer of a completed Submission to Jurisdiction and Appointment of Agent for Service in the form attached as an Appendix to this decision.

5. This decision will expire on the earlier of:
- (a) five years from the date of this decision; and
 - (b) 180 days after the coming into force of any change to Alberta securities laws regarding over-the-counter derivatives transactions and registration of derivatives dealers.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Stephen Murison
Vice-Chair

APPENDIX

Submission to Jurisdiction and Appointment of Agent for Service

Name of person or company (“International Firm”):
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 (the “Agent for Service”):
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 (a “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)