

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Macquarie Futures USA LLC, 2017 ABASC 91

Date: 20170523

Macquarie Futures USA LLC

Background

1. Macquarie Futures USA LLC (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order under section 144(1) 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 and options on futures contracts with respect to equity index, interest rate, foreign exchange (including foreign exchange indices), bond, energy, agricultural and other commodity products (collectively, **Derivatives**) to clients in Alberta, each of which is a “qualified party” 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 in this order unless otherwise defined herein.

Representations

3. This order is based on the following representations made by the Filer to the Commission:
 - (a) The Filer is:
 - (i) a limited liability company formed under the laws of the state of Delaware with its head office located in New York, New York;
 - (ii) a wholly-owned indirect subsidiary of Macquarie Group Limited, which has wholly-owned indirect subsidiaries with offices and personnel in Calgary, Alberta, for whom the Filer wishes to trade in Derivatives (the **Affiliates**);
 - (iii) not registered as a broker-dealer with the United States (**US**) Securities and Exchange Commission (the **SEC**) and does not conduct a securities business in the US;
 - (iv) registered as a futures commission merchant (**FCM**) with the US Commodity Futures Trading Commission (the **CFTC**);
 - (v) a member of the US National Futures Association (the **NFA**); and
 - (vi) a clearing member of all major US commodity futures exchanges.

- (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 in Canada.
- (d) The Filer proposes to trade in Derivatives on behalf of Qualified Parties.
- (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.
- (g) Derivatives will be traded by the Filer for Alberta clients only on exchanges located outside Canada (each a **Non-Canadian Exchange**).
- (h) All Derivatives traded by the Filer on behalf of Qualified Parties will be subject to regulation by the CFTC or other similar regulatory authorities. The Filer is required to adhere to regulations relating to a CFTC-registered FCM and an NFA member which, among other things, require 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 Filer, except the Affiliates, in respect of trades in Derivatives.
- (i) The Affiliates will not receive the same segregation and separate accounting of customer positions and money as all other Alberta clients of the Filer due to CFTC regulation. The Filer will adhere to the regulations relating to a CFTC-registered FCM and an NFA member in respect of trades in Derivatives, including in trades in Derivatives with the Affiliates.

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) any trade in Derivatives by the Filer for clients is conducted only on behalf of a Qualified Party and on a Non-Canadian Exchange;
 - (b) the Filer maintains in good standing its registration as an FCM with the CFTC and its membership with the NFA;
 - (c) 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
- (d) the Filer notifies the Commission of:
- (i) any restrictions or conditions placed on its registration with the CFTC as an FCM; or
 - (ii) any sanctions imposed on the Filer in connection with its activities as an FCM;
- under a settlement agreement entered into with the CFTC or an order issued by the CFTC; 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 order.

5. This order will expire on the earlier of:

- (a) five years from the date of this order; 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"

Stan Magidson
Chair & CEO

"original signed by"

Tom Cotter
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)