

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Macquarie Futures USA LLC, 2022 ABASC 149

Date: 20221108

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 exchange contracts, including 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 (**Exchange Contracts**) 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* (a **Qualified Party**).

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

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 execute and clear Exchange Contracts (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) Subject to obtaining the Exemption Sought, the Filer is not in default of securities legislation in any jurisdiction of Canada.
- (d) The Filer proposes to trade in Exchange Contracts only 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) The Filer 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.
- (h) The Filer 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.
- (i) Exchange Contracts will be traded by the Filer with Alberta clients that are Qualified Parties only on exchanges located outside Canada (**Non-Canadian Exchanges**).
- (j) All Exchange Contracts 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-registered 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 in respect of trades in Exchange Contracts except the Affiliates.
- (k) 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-registered member in respect of trades in Exchange Contracts, including trades in Exchange Contracts 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 Exchange Contracts by the Filer for Alberta 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 Qualified Party when opening an account for 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 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 Exchange Contracts; and
- (d) the Filer notifies the Commission of:
 - (i) any restrictions or conditions placed on its registration with the CFTC as an FCM; and
 - (ii) any sanctions imposed on the Filer in connection with its activities as an FCM;

in each case 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 that affects registration of derivatives dealers.

For the Commission:

"original signed by"

Tom Cotter
Vice-Chair

"original signed by"

Kari Horn
Vice-Chair