

THE COMMODITY FUTURES ACT)

Order No. 7487

)

Section 66(1))

June 27, 2019

SG AMERICAS SECURITIES, LLC

WHEREAS:

- A. SG Americas Securities, LLC (the **Applicant**) has applied to the Manitoba Securities Commission (the **Commission**) for an order pursuant to subsection 66(1) of the *Commodity Futures Act* (Manitoba) (the **CFA**) granting relief from the requirement in section 24(1) of the CFA for the Applicant to be registered as a dealer in connection with trades, including, for greater certainty, clearing or facilitating the clearing of trades (**Futures Trades**) in commodity futures contracts and options on commodity futures contracts (collectively, **Futures Contracts**) that trade on certain exchanges located outside Canada (**Exchange-Traded Futures**) with residents of Manitoba that fall within the category of investors defined as "permitted clients" in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (**Permitted Clients**) (the **CFA International Dealer Relief**).
- B. The Applicant has represented to the Commission that:
- (1) The Applicant is a Delaware limited liability company, with its head office located in New York, New York;
 - (2) The Applicant is a wholly owned subsidiary of SG Americas Securities Holdings, LLC (**SGASH**), a Delaware limited liability company. SGASH is a wholly owned subsidiary of Société Générale, a public limited company (*société anonyme*) headquartered Paris, France;
 - (3) The Applicant provides futures commission merchant (**FCM**) services. FCM services include commodity clearing and execution services to various institutional customers, including affiliates of the Applicant and customers of such affiliates;
 - (4) The Applicant is a registered broker and dealer under the *Securities Exchange Act of 1934* and an FCM registered with the Commodity Futures Trading Commission (**CFTC**). The Applicant is regulated by the Securities and Exchange Commission (**SEC**), the Financial Industry Regulatory Authority (FINRA), the National Futures Association (**NFA**), the CFTC and the Chicago Mercantile Exchange (**CME**);

- (5) The Applicant is a member of the principal U.S. securities and commodity exchanges and clearing houses, including the New York Stock Exchange, NASDAQ, and all major U.S. futures exchanges and clearing organizations, including the Intercontinental Exchange and the CME Group Exchanges;
- (6) The Applicant currently relies on the registration exemption available in section 8.18 of NI 31-103 (the **International Dealer Exemption**) for the purposes of trading in "securities" with "permitted clients" resident in the provinces of Alberta, British Columbia, Manitoba, Ontario, Québec and Saskatchewan;
- (7) Pursuant to its registrations and memberships, the Applicant is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the U.S. Rules of the CFTC, SEC and NFA require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules, including rules respecting: know-your-customer obligations, account-opening requirements, anti-money laundering checks, credit checks, delivery of confirmation statements, clearing deposits and initial and maintenance margins. These rules require the Applicant to treat Permitted Clients consistently with the Applicant's U.S. customers with respect to transactions made on U.S. or non-U.S. exchanges. With respect to transactions made on U.S. and non-U.S. exchanges, in order to protect customers in the event of the insolvency or financial instability of the Applicant, the Applicant is required to ensure that customer securities and monies be separately accounted for, segregated at all times from the securities and monies of the Applicant and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the *U.S. Commodity Exchange Act (CEA)* and the rules promulgated by the CFTC thereunder (collectively, the **Applicant Approved Depositories**). The Applicant is further required to obtain acknowledgements from any Applicant Approved Depository holding customer funds or securities that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against the Applicant's obligations or debts;
- (8) The Applicant proposes to offer certain of its clients in Manitoba that are Permitted Clients the ability to trade in Exchange-Traded Futures through the Applicant;
- (9) The Applicant will execute and clear trades in Exchange-Traded Futures on behalf of Permitted Clients in Manitoba in the same manner that it executes and clears trades on behalf of its U.S.

clients, all of which are "Eligible Contract Participants" as defined in the CEA. The Applicant will follow the same know-your-customer and segregation of assets procedures that it follows in respect of its U.S. clients. Permitted Clients will be afforded the benefits of compliance by the Applicant with the requirements of the CEA and the regulations thereunder, and the Exchange Act and the regulations thereunder, as applicable. Permitted Clients in Manitoba will have the same contractual rights against the Applicant as U.S. clients of the Applicant.

- (10) The Applicant will solicit business in Manitoba only from persons that are qualified Permitted Clients;
- (11) Clients of the Applicant that are Permitted Clients will only be offered the ability to trade Exchange-Traded Futures trading on contracts that trade on exchanges located outside Canada (**Recognized Exchanges**);
- (12) The Exchange-Traded Futures to be traded by Permitted Clients may include, but will not be limited to, Futures Contracts for equity index, interest rate, energy, agricultural and other commodity products;
- (13) Permitted Clients will be able to execute trades in Exchange-Traded Futures through the Applicant by contacting the Applicant's exchange floor staff or global execution desk. Permitted Clients may also be able to self-execute trades electronically in Exchange-Traded Futures via an independent service vendor and/or other electronic trading routing. Permitted Clients may also be able to execute Exchange-Traded Futures orders through third party brokers and then "give up" the transaction for clearance through the Applicant;
- (14) The Applicant may execute a client's order on the relevant Recognized Exchange in accordance with the rules and customary practices of the exchange, or engage another broker to assist in the execution of orders. The Applicant will remain responsible for the execution of each such trade; the Applicant may perform both execution and clearing functions for Futures Trades or may direct that a trade executed by it be cleared through a carrying broker if the Applicant is not a member of the Recognized Exchange on which the trade is executed. Alternatively, the client will be able to direct that trades executed by the Applicant be cleared through clearing brokers not affiliated with the Applicant in any way (each a **Non-SG Clearing Broker**);
- (15) If the Applicant performs only the execution of a client's Futures Contract order and "gives-up " the transaction for clearance to a

Non-SG Clearing Broker, such clearing broker will also be required to comply with the rules of the exchanges of which it is a member and any relevant regulatory requirements, including requirements under the CFA as applicable. Each such Non-SG Clearing Broker will represent to the Applicant in a give-up agreement that it will perform its obligations 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 client's Futures Contract orders will be executed and cleared. The Applicant will not enter into a give-up agreement with any Non-SG Clearing Broker located in the United States unless such clearing broker is registered with the CFTC and/or SEC, as applicable;

- (16) As is customary for all trading in Exchange-Traded Futures, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in Futures Contracts and client orders are submitted to the exchange in the name of the Non-SG Clearing Broker or the Applicant or, on exchanges where the Applicant is not a member, in the name of another carrying broker. The client is responsible to the Applicant for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Applicant, the carrying broker or the Non-SG Clearing Broker is in turn responsible to the clearing corporation/division for payment;
- (17) Clients that direct the Applicant to give up transactions in Exchange-Traded Futures for clearance and settlement by Non-SG Clearing Brokers will execute the give-up agreements described above. Clients will pay commissions for trades to the Applicant or the Non-SG Clearing Broker or such commissions may be shared with the Non-SG Clearing Broker;
- (18) As a futures commission merchant subject to regulatory oversight by the CFTC, Applicant is required to ensure that customer positions and monies are separately accounted for and segregated from the positions and monies of the Applicant. The CFTC regulations are designed to protect customers in the event of insolvency or financial instability of a futures commission merchant through which they clear their futures and futures options business. The Applicant receives acknowledgements from those of its banks and brokers holding the Applicant's client funds that such funds are to be separately held on behalf of the Applicant's clients, with no right of set-off against the Applicant's obligations or debts;
- (19) All representatives of the Applicant who trade options in the United States have passed the futures and options proficiency examination

(i.e., the National Commodity Futures Examination (Series 3) administered by FINRA; and

- (20) Except with respect to the matters covered by this Application, the Applicant is not in default of the securities or commodities legislation in Manitoba.

- C. Based on the foregoing, the Commission is of the opinion that it would not be prejudicial to the public interest to grant this order.

IT IS ORDERED:

1. **THAT**, pursuant to section 66(1) of the CFA, the CFA International Dealer Relief is granted provided that:

- (a) at the time trading activity is engaged in:
- (i) the Applicant is permitted to trade in Futures Contracts in the United States and is registered with the CFTC as a futures commission merchant and is a member of the NFA in good standing;
 - (ii) the Applicant's representatives are permitted to trade Futures Contracts in the United States and are registered with the CFTC and NFA; and (iii) the Applicant has filed a submission to jurisdiction and appointment of service in the form of Form 31-103F2 Submission to Jurisdiction and Appointment of Agent for Service (F2) with the Manitoba Securities Commission except that the Applicant must delete from the F2 title "(sections 8.18 [international dealer] and 8.26 [international adviser])", and the Applicant must delete paragraph 6 of the F2 referring to the section of NI 31-103 relied on, and in paragraph 11 of the F2 the Applicant must replace the phrase, "ceases to rely on section 8.18 [international dealer] or section 8.26 [international adviser]" with the phrase, "ceases to rely on the exemption from s. 24(1) of the *Commodity Futures Act* (Manitoba) granted by the Manitoba Securities Commission on [insert date of this order]".
- (b) each client in Manitoba effecting Futures Trades through the Applicant is a Permitted Client and, if using a Non-SG Clearing Broker, such clearing broker has represented and covenanted that it is or will be appropriately registered or exempt from registration under the CFA;
- (c) the Applicant only executes Futures Trades on the Recognized Exchanges for clients in Manitoba that are Permitted Clients;

- (d) the Applicant provides each client in Manitoba effecting Futures Trades through the Applicant with disclosure upon entering into the agreement by which it establishes an account with the Applicant that includes:
- (i) a statement that there may be difficulty in enforcing any legal rights against the Applicant or any of its directors, officers or employees because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada;
 - (ii) a statement of the jurisdiction of the Applicant's head office or principal place of business;
 - (iii) a statement that the Applicant is not registered as a dealer under the CFA and, accordingly, the protection available to clients of a futures commission merchant registered under the CFA will not be available to clients of the Applicant;
 - (iv) the name and address of the agent for service in Manitoba; and
 - (v) a risk disclosure statement providing substantially similar disclosure to the disclosure in Form 13 Risk Disclosure Statement for Futures and Options Under *Commodity Futures Act* (Manitoba);
- (e) the Applicant notifies the Manitoba Securities Commission of any Regulatory Action after the date of this decision in respect of the Applicant by completing and filing Appendix A within 30 days of the Applicant becoming aware of such action;
- (f) the CFA International Dealer Relief is available to the Applicant so long as it is not registered in any Canadian Jurisdiction; and
- (g) this Order will expire five years after the date of this decision.

2. **THAT** the fee for this order is \$650.

BY ORDER OF THE COMMISSION



Director

APPENDIX A

NOTICE OF REGULATORY ACTION

1. The firm has entered into a settlement agreement with a financial services regulator, securities or derivatives exchange, SRO or a similar agreement with a financial services regulator, securities or derivatives exchange, SRO or similar organization.

Provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. A financial services regulator, securities or derivatives exchange, SRO or similar organization has:

	Yes
(a) determined that the firm violated securities regulations or rules of a securities or derivatives exchange, SRO or similar organization	
(b) determined that the firm made a false statement or omission	
(c) issued a warning or requested an undertaking by the firm	
(d) suspended or terminated a registration, license or membership of the firm	
(e) imposed terms or conditions on any registration or membership of the firm	
(f) conducted a proceeding or investigation involving the firm	
(g) issued an order (other than an exemption order) or a sanction to the firm for securities or derivatives-related activity (e.g. cease trade order)	

Provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. The firm is aware of an ongoing investigation of which the firm is the subject

Provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted to the following address:

The Manitoba Securities Commission
500-400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Attention: Director - Registration and Compliance
Telephone: (204) 945-2561
Email: Chris.Besko@gov.mb.ca