

THE COMMODITY FUTURES ACT)
)
 Subsection 66(1))

Order No. 7563

October 27, 2021

SOCIÉTÉ GÉNÉRALE CAPITAL CANADA INC.

(A) The application (the **Application**) of the Filer to the Manitoba Securities Commission (the **Commission**) for an order under subsection 66(1) of the *Commodity Futures Act*, R.S.M. 1988, c. C152 (the **CFA**) that the Designated Foreign Affiliate Employees (as defined below) of the Filer are not subject to the dealer registration requirement in the CFA when conducting Extended Hours Activities (as defined below) on the Bourse de Montréal Inc. (the **MX**), subject to the terms and conditions set out below (the **Exemption Sought**).

(B) The Commission granted a decision dated October 19, 2018 (the **Original Decision**) providing relief in connection with certain Extended Hours Activities in respect of SGIL (as defined below). The Filer has also applied for an Order pursuant to subsection 66(1) of the CFA to revoke the Original Decision as of the date hereof.

(C) The Filer has represented to the Commission that:

AND UPON the Filer having represented to the Commission and the Director as follows:

The Filer

1. The Filer is a corporation formed under the laws of Canada. The head office of the Filer is located in Montréal, Québec.
2. The Filer is registered as an investment dealer under the securities legislation of all the provinces of Canada; is registered as a futures commission merchant under the commodity futures legislation of Ontario and Manitoba; and is registered as a derivatives dealer under the derivatives legislation of Québec.
3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (IIROC) and an approved participant of the MX.
4. The Filer is not in default of securities, derivatives or commodity futures legislation in any jurisdiction of Canada.
5. Société Générale International Limited (**SGIL**) is a private limited company incorporated in England and Wales. The head office of SGIL is located in London, England.
6. Société Générale Securities Australia Pty Ltd (**SGSAPL** and, together with SGIL, the **Designated Foreign Affiliates**) is a private limited company incorporated in Australia. The head office of SGSAPL is located in Sydney, Australia.
7. The Filer, SGIL and SGSAPL are each a direct wholly-owned subsidiary of Société Générale S.A. (**Société Générale**).
8. Société Générale carries on business in the United Kingdom through its branch, known as Société Générale (London Branch) (**SGLB**).

9. SGIL is a United Kingdom-based investment firm, which is authorised and regulated by the Financial Conduct Authority (**FCA**).
10. SGSAPL is:
 - (a) an Australian financial services licensee (Licence No. 289791) regulated by the Australian Securities and Investments Commission (**ASIC**);
 - (b) a trading participant on the futures market operated and regulated by the Australian Securities Exchange Limited (**ASX24**); and
 - (c) a clearing participant of the clearing and settlement facility operated and regulated by ASX Clear (Futures) Pty Ltd (**ASX Clear (Futures)**).
11. SGSAPL provides a range of services including clearing services, prime services, and financial services in relation to equity derivatives, over-the-counter derivatives, ASX24 futures and options.
12. Each of SGIL and SGSAPL holds memberships and/or has third-party clearing relationships with commodity and financial futures exchanges and clearing associations, including the London Stock Exchange (in the case of SGIL) and ASX24 and AX Clear Futures (in the case of SGSAPL). They each also carry positions reflecting trades executed on other exchanges through affiliates and/or third-party clearing brokers.
13. Through a services agreement between SGIL and SGLB, employees of SGLB may be loaned to SGIL and may render services to SGIL, in particular trading activities. The Filer wishes to make use of certain designated employees working under this arrangement as well as certain designated employees of SGIL and SGSAPL (**Designated Foreign Affiliate Employees**) to handle trading requests on the MX from the Filer's clients and the Filer on a proprietary basis during the MX's extended trading hours from 4:30 p.m. ET (t-1) to 6:00 a.m. ET each day on which the MX is open for trading (the **Extended Hours Activities**).

The MX Extended Trading Hours Amendments

14. The MX, based in Montréal, Québec, operates an exchange for options, commodity futures contracts and commodity futures options, and offers access to trading in those to market participants in Canada.
15. In 2018, the MX extended its trading hours to allow commencement of trading of certain products commencing at 2:00 a.m. ET rather than 6:00 a.m. ET (**the Initial Extended Hours Initiative**). As set out in MX Circular 111-18, in order to accommodate such earlier trading, the MX amended its rules to allow participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or the MX participant on a proprietary basis. In furtherance of the Initial Extended Hours Initiative, the Filer sought and obtained the Original Decision from the principal regulator.
16. On March 17, 2020, the MX announced that it had approved non-material amendments to its rules and procedures in order to accommodate the further extension of the MX's trading hours. As a result of these amendments, it is anticipated

that, following the self-certification process under the *Derivatives Act* (Québec) applicable to self-regulatory organizations such as the MX, trading of certain products on the MX will commence at 8:00 p.m. ET (t-1) rather than the current 2:00 a.m. ET (the **Asian Trading Hours Initiative**). These amendments are considered non-material insofar as the framework put in place in connection with the Initial Extended Hours Initiative will apply to the Asian Trading Hours Initiative, allowing participants on the MX to have employees of affiliated corporations, including foreign affiliates, become an approved person of the MX participant and thus be able to handle trading requests originating from the MX participant's clients or the MX participant on a proprietary basis. See MX Circular 135-20. On February 4, 2021, the MX announced a proposed launch date of May 30, 2021 for the Asian Trading Hours Initiative, which has since been rescheduled to September 19, 2021. See MX Circulars 024-21 and 063-21.

17. The IIROC Relief (as defined below) allows for trading to commence at 4:30 p.m. ET(t-1) rather than 8 p.m. ET (t-1) as contemplated by the Asian Trading Hours Initiative, subject to the MX trading rules being modified. The Exemption Sought accordingly conforms to the IIROC Relief with respect to Extended Hours Activities.

Application of the dealer registration requirement in the CFA to Designated Foreign Affiliate Employees

18. The Filer is an MX approved participant and SGIL, SGLB and SGSAPL are affiliated entities. The Filer wishes to make use of the Designated Foreign Affiliate Employees to conduct the Extended Hours Activities.
19. The dealer registration requirement in the CFA requires an individual to be registered to act as a dealing representative on behalf of a registered firm. The Exemption Sought is intended to provide the Filer with an exemption from (i) the requirement that the Filer use only registered dealing representatives to conduct the Extended Hours Activities; and (ii) the requirement that the Designated Foreign Affiliate Employees who will be conducting the Extended Hours Activities be registered as dealing representatives of the Filer.
20. The Filer seeks an exemption from the dealer registration requirement in the CFA because, in the absence of such exemption, each Designated Foreign Affiliate Employee who was to trade on behalf of the Filer would be required to become individually registered and licensed in Canada. The Filer believes this is duplicative since the Designated Foreign Affiliate Employees are certified or authorized under applicable laws of the United Kingdom or Australia, will be supervised by the Filer's Designated Supervisors (as defined below) and are otherwise subject to the conditions set forth below. The Filer believes the dealer registration requirement is unduly onerous in light of the limited trading activities the Designated Foreign Affiliate Employees will be conducting and only during the period from 4:30 p.m. ET (t-1) to 6:00 a.m. ET.
21. The Filer has also applied to, and obtained from, IIROC an exemption from the registered representative requirements that are found in IIROC Dealer Member Rules 18.2, 18.3 and 500.2 and the requirement to enter into an employee or agent relationship with the person conducting securities related business on its behalf that is found in IIROC Dealer Member Rule 39.3 (the **IIROC Relief**).

22. The IIROC Relief obtained by the Filer is subject to certain conditions, including:
- (a) the Designated Foreign Affiliate Employees must be registered, licensed, certified or authorized and subject to equivalent regulatory supervision in the United Kingdom or Australia in a category that permits trading the types of products which they will be trading on the MX;
 - (b) the Designated Foreign Affiliate Employees may only accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (t-1) to 6:00 a.m. ET, subject to the MX trading rules being modified to allow for trading to commence at 4:30 p.m. ET (t-1) rather than 8:00 p.m. ET (t-1) as contemplated by the Asian Trading Hours Initiative, and are not permitted to give advice;
 - (c) the actions of the Designated Foreign Affiliate Employees must be supervised by Canadian based registered supervisors qualified to supervise trading in futures contracts, futures contract options and options (the **Designated Supervisors**);
 - (d) The Filer must establish and maintain written policies and procedures that address the performance and supervision requirements relating to this extended trading hours arrangement;
 - (e) The Filer and each Designated Foreign Affiliate must jointly and severally undertake to ensure IIROC has, upon request, prompt access to the audit trail of all trades, wherever located, that relate to Extended Hours Activities at each Designated Foreign Affiliate, and records evidencing the supervision of such activities;
 - (f) The Filer retains all responsibilities for its client accounts;
 - (g) The Filer and each Designated Foreign Affiliate Employee must enter into an agency agreement pursuant to which the Filer would assume all responsibility for the actions of the Designated Foreign Affiliate Employee and of the Designated Foreign Affiliates that relate to the Filer's clients and the Filer would be liable under IIROC rules for such actions;
 - (h) All MX trading rules will apply to orders entered by the Designated Foreign Affiliate Employees;
 - (i) All other existing Canadian regulatory requirements continue to apply, including:
 - (i) the Filer's client accounts would continue to be carried on the books of the Filer;
 - (ii) all communications with the Filer's clients will continue to be in the name of the Filer; and
 - (iii) the Filer's client account monies, security and property will continue to be held by the Filer;

- (j) The Filer must disclose this extended trading hours arrangement to its clients and provide specific instructions concerning the placement of orders relating to the extended trading hours arrangement;
- (k) The Filer must provide, in writing to IIROC, the names of the foreign affiliate(s) and all Designated Foreign Affiliate Employees authorised to accept and enter orders from the Filer's clients on behalf of the Filer under the extended trading hours arrangement. Such individuals are subject to IIROC's "fit and proper" review and IIROC Registration staff may refuse their participation in this extended trading hours arrangement; and
- (l) The Filer must provide, in writing to IIROC, timely updates to the list of Designated Foreign Affiliate Employees, and confirm any changes on at least an annual basis.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the Exemption Sought requested.

IT IS ORDERED:

1. **THAT**, under subsection 66(1) of the CFA that the Original Decision is revoked.

2. **THAT**, under subsection 66(1) of the CFA, the Filer is hereby exempt from the dealer registration requirement under subsection 24(1)(a) of the CFA, provided that:

- (a) the Designated Foreign Affiliates and the Designated Foreign Affiliate Employees are registered, licensed, certified or authorized under the applicable laws of the foreign jurisdiction in which the head office or principal place of business of the applicable Designated Foreign Affiliate is located in a category that permits trading the type of products which the Designated Foreign Affiliate Employees will be trading on the MX;
- (b) the Designated Foreign Affiliate Employees are permitted to accept and enter orders from clients of the Filer or orders from the Filer on a proprietary basis during the period from 4:30 p.m. ET (t-1) to 6:00 a.m. ET, and will not be permitted to give advice;
- (c) the Filer retains all responsibilities for its client accounts;
- (d) the actions of the Designated Foreign Affiliate Employees will be supervised by the Designated Supervisors, each of whom is qualified to supervise trading in futures contracts, futures contract options and options;
- (e) the Filer and the Designated Foreign Affiliate Employees enter into an agency agreement substantially as described in paragraph 22(g), and such agreement remains in effect; and
- (f) the Filer remains in compliance with the terms and conditions of the IIROC Relief.

3. THAT, the fee for this Order is \$650.00.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to be "C. S. H.", written above a horizontal line.

Director