

Headnote

Multilateral Instrument 11-102 – Passport System – Securities Act s. 48 Dealer – Exemption from s. 34(a) requirement to be registered as a dealer to trade exchange contracts - A person who resides outside of BC wants to advise BC residents - A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer – The person is registered or qualified as a dealer in the jurisdiction in which they reside or carry on business; the person will only trade exchange contracts with sophisticated investors.

Applicable Legislative Provisions

Securities Act, R.S.B.C 1996, c. 418, ss. 34(a) and 48

June 3, 2019

**In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)**

and

**In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions**

and

**In the Matter of
Marex North America LLC
(the Filer)**

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation), in particular, under section 48 of the Securities Act (British Columbia) (the Act), granting relief from the requirement in section 34(a) of the Act for the Filer to be registered as dealer in connection with trades in contracts or instruments, including futures contracts and options, that have their performance guaranteed by a clearing agency and that are traded on an exchange pursuant to standardized terms and conditions set out in that exchange's bylaws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange (Exchange Contracts) that trade on certain exchanges located outside Canada (Foreign Exchange Contracts) with the Jurisdiction's residents that fall within the definition of "Qualified Party" in section 1.1 of BC Blanket Order 91-501 *Over-The-Counter Derivatives* (BC 91-501) or for clients resident in Saskatchewan, within the definition of "Qualified Party" as set forth in General Order 91-

908 Over-The-Counter Derivatives (SK 91-908)(referred to herein as Qualified Party) (the Exemption Sought).

Under the *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

1. the British Columbia Securities Commission is the principal regulator for this decision; and
2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and Saskatchewan (the Non-Principal Jurisdictions and, together with the Jurisdiction, the Jurisdictions).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:

1. The Filer has chosen the British Columbia Securities Commission as the principal regulator because British Columbia is the jurisdiction in which the Filer expects to have the most significant client relationships for the activities described in this decision.
2. The Filer is a limited liability company organized under the laws of the state of Delaware. Its main office is located at 360 Madison Avenue, 3rd Floor, New York, New York, 10017 U.S.
3. The Filer is a privately held entity owned directly by Marex Spectron Group Limited.
4. The Filer is a futures brokerage company and provides execution and clearing services in the United States. The Filer services a network of introducing broker offices, as well as financial, industrial and agricultural institutions.
5. The Filer is registered as a futures commission merchant with the U.S. Commodity Futures Trading Commission (U.S. CFTC) and is a member of the U.S. National Futures Association (U.S. NFA).
6. The Filer is a clearing member of ICE Futures U.S., Inc., CME Group, Inc. (including Chicago Board of Trade, Chicago Mercantile Exchange and New York Mercantile Exchange), and Minneapolis Grain Exchange.
7. The Filer is not in default of securities legislation in any jurisdiction.

8. The Filer proposes to offer certain of its clients in the Jurisdictions that are Qualified Parties the ability to trade in Foreign Exchange Contracts through the Filer.
9. The Filer will solicit business in the Jurisdictions only from persons who qualify as Qualified Parties.
10. Clients of the Filer that are Qualified Parties will only be offered the ability to trade Foreign Exchange Contracts trading on exchanges located outside Canada and that are listed in BCI 21-501 – *Recognition of exchanges, self regulatory bodies, and jurisdictions*, as amended from time to time (Recognized Exchanges).
11. The Foreign Exchange Contracts to be traded by Qualified Parties will include, but will not be limited to, Exchange Contracts for equity index, interest rate, energy, agricultural and other commodity products.
12. Qualified Parties will be able to execute trades in Foreign Exchange Contracts through the Filer by contacting the Filer’s exchange floor staff or global execution desk. Qualified Parties may also be able to self-execute trades electronically in Foreign Exchange Contracts on Recognized Exchanges via the Filer’s proprietary trading platform and/or other electronic trading routing.
13. The Filer may execute a client’s order or engage another broker to assist in the execution of orders on the relevant Recognized Exchange in accordance with the rules and customary practices of the exchange. The Filer will remain responsible for the execution of each such trade; the Filer may perform both execution and clearing functions for trades of Foreign Exchange Contracts or may direct that a trade executed by it be cleared through a carrying broker if the Filer is not a clearing member of the Recognized Exchange on which the trade is executed. Alternatively, the client will be able to direct that trades executed by the Filer be cleared through clearing brokers not affiliated with the Filer in any way (each a Non-Marex Clearing Broker).
14. If the Filer performs only the execution of a client’s Foreign Exchange Contract order and “gives-up” the transaction for clearance to a Non-Marex Clearing Broker, such clearing broker will also be required to comply with the rules of the relevant Recognized Exchange of which it is a member and any relevant regulatory requirements, including requirements under the Act as applicable. Each such Non-Marex Clearing Broker will represent to the Filer 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 Recognized Exchange or clearing house on which the relevant client’s Foreign Exchange Contract orders will be executed and cleared. The Filer will not enter into a give-up agreement with any Non-Marex Clearing Broker located in the United States unless such clearing broker is registered with the U.S. CFTC and/or U.S. Securities and Exchange Commission, as applicable.

15. As is customary for all trading in Exchange Contracts, a clearing corporation appointed by the exchange or clearing division of the exchange is substituted as a universal counterparty on all trades in Exchange Contracts and client orders are submitted to the exchange in the name of the Non-Marex Clearing Broker or the Filer or, on exchanges where the Filer is not a member, in the name of another carrying broker. The client is responsible to the Filer for payment of daily mark-to-market variation margin and/or proper margin to carry open positions and the Filer, the carrying broker or the Non-Marex Clearing Broker is in turn responsible to the clearing corporation/division for payment.
16. Clients that direct the Filer to give up transactions in Foreign Exchange Contracts for clearance and settlement by Non-Marex Clearing Brokers will execute the give-up agreements described above; clients will pay commissions for trades to the Filer or the Non-Marex Clearing Broker or such commissions may be shared with the Non-Marex Clearing Broker.
17. As a futures commission merchant subject to regulatory oversight by the U.S. CFTC, the Filer is authorized to handle customer orders and receive and hold customer margin deposits and is required to ensure that customer positions and monies, including customer margin deposits, be separately accounted for and segregated from the positions and monies of the Filer. The U.S. 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 Filer receives acknowledgements from those of its banks and brokers holding the Filer's client funds that such funds are to be separately held on behalf of the Filer's clients, with no right of set-off against the Filer's obligations or debts. All positions and monies of clients in the Jurisdictions will be subject to equivalent protection as positions and monies of customers resident in the US.
18. All representatives of the Filer who trade Exchange Contracts in the United States have passed the futures and options proficiency examination (i.e., the National Commodity Futures Examination (Series 3) administered by U.S. FINRA.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.
- ¶ 5 The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:
- (a) at the time trading activity is engaged in:
 - (i) the Filer's head office or principal place of business remains in the United States;

- (ii) the Filer is permitted to trade in Exchange Contracts in the U.S. and is registered with the U.S. CFTC as a futures commission merchant and is a member of the U.S. NFA in good standing;
 - (iii) the Filer's representatives are permitted to trade Exchange Contracts in the U.S. and are registered with the U.S. CFTC and U.S. NFA; and
 - (iv) the Filer 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 Jurisdictions except that the Filer must delete from the F2 title "(sections 8.18 [*international dealer*] and 8.26 [*international adviser*])", and the Filer 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 Filer 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 the requirement to register as a dealer in the Jurisdictions dated May X, 2019".
- (b) each client effecting trades in Foreign Exchange Contracts in the Jurisdictions through the Filer is a Qualified Party and, if using a Non-Marex Clearing Broker, such clearing broker has represented and covenanted that it is or will be appropriately registered or exempt from registration under the Act;
- (c) the Filer only executes trades in Foreign Exchange Contracts on Recognized Exchanges for clients that are Qualified Parties;
- (d) the Filer provides each client that is executing trades in Foreign Exchange Contracts through the Filer, that is in the Jurisdictions, with disclosure upon entering into the agreement by which it establishes an account with the Filer that includes:
 - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer 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 Filer's head office or principal place of business;
 - (iii) a statement that the Filer is not registered as a dealer under the Act (or the equivalent legislation in the other Jurisdictions) and, accordingly, the protection available to clients of a dealer registered under the Act (or the equivalent legislation in the other Jurisdictions), including the protection available by applicable

Canadian investor compensation funds, will not be available to clients of the Filer;

- (iv) the name and address of the agent for service in each of the Jurisdictions;
- (e) the Filer notifies each Jurisdictions' securities regulatory authority of any regulatory action after the date of this decision in respect of the Filer, or any predecessors, or specified affiliates of the Filer, by completing and filing Appendix A within 10 days of the Filer becoming aware of such action;
- (f) the Filer will, for each client in the Jurisdictions that would not qualify as an eligible contract participant as defined in the U.S. *Commodity Exchange Act*, obtain the information and provide the disclosure required to be provided to customers of NFA members that are not eligible contract participants, including the disclosure required under NFA Rule 2-30;
- (g) this decision will expire the sooner of five years after the date of this decision or upon the implementation in the applicable Jurisdiction(s) of a rule, regulation, other instrument, or material amendments under the securities legislation that governs persons dealing in Foreign Exchange Contracts.

Mark Wang
Director, Capital Markets Regulation
British Columbia Securities Commission

Appendix A

Notice of Regulatory Action

1. Has the firm, or any predecessors or specified affiliates of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, self regulatory organization (“SRO”) or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No

If yes, provide the following information for each settlement agreement:

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

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

	Yes	No
(a) determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) determined that the firm, or any predecessors or specified affiliates of the firm, made a false statement or omission?		
(c) issued a warning or requested an undertaking by the firm or any predecessors or specified affiliates of the firm?		
(d) suspended or terminated a registration, license or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) imposed terms or conditions on any registration or membership of the firm, or any predecessors or specified affiliates of the firm?		

(f) conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) issued an order (other than an exemption order) or a sanction to the firm or any predecessors or specified affiliates of the firm, for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

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

3. Is the firm aware of any ongoing investigation of which the firm or any predecessors or specified affiliates of the firm is the subject?

Yes _____ No _____

If yes, 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:

British Columbia Securities Commission

701 West Georgia Street

P.O. Box 10142, Pacific Centre

Vancouver, B.C. V7Y 1L2

Attention: Manager, Registration

Email: registration@bcsc.bc.ca