

2.2.17 tpSEF Inc. – s. 147

**Headnote**

Application for an order that a swap execution facility registered with the United States Commodity Futures Trading Commission is exempt from the requirement to register as an exchange in Ontario – requested order granted.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 147.

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S. 5, AS AMENDED  
(THE ACT)**

**AND**

**IN THE MATTER OF  
tpSEF Inc.**

**ORDER  
(Section 147 of the Act)**

**WHEREAS** tpSEF Inc. (“**tpSEF**”) has filed an application dated September 30, 2013 (**Application**) with the Ontario Securities Commission (**Commission**) requesting an interim order pursuant to section 147 of the Act exempting tpSEF from the requirement to be recognized as an exchange under subsection 21(1) of the Act (**Exchange Relief**);

**AND WHEREAS** tpSEF has represented to the Commission that:

- 1.1 tpSEF is a corporation organized and existing under and by virtue of the provisions of the General Corporate Law of the State of Delaware with a principal place of business located 101 Hudson Street, Jersey City, NJ 07302; and tpSEF will provide execution services for swap transactions, including interest rate swaps, credit swaps, foreign exchange swaps, commodity swaps and equity swaps;
- 1.2 tpSEF is a wholly-owned subsidiary of Tullett Prebon Americas Corp. (“**TPAC**”). TPAC is a 75% owned subsidiary of Tullett Prebon (No. 1) (“**TP No. 1**”) and a 25% owned subsidiary of Tullett Prebon (Americas) Holdings Inc. (“**TPAHI**”). TP No. 1 is a 100% owned subsidiary of TPAHI, which is a 100% wholly-owned indirect subsidiary of Tullett Prebon plc, the ultimate parent company and a United Kingdom public company;
- 1.3 In the United States, tpSEF operates under the jurisdiction of the Commodity Futures Trading Commission (**CFTC**) (add any other regulator having jurisdiction) and has obtained (temporary) registration with the CFTC to operate a swap execution facility (**SEF**) (add any other registrations/recognitions or exemptions);
- 1.4 tpSEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace;
- 1.5 Because tpSEF regulates the conduct of its participants, it is considered by the Commission to be an exchange;
- 1.6 tpSEF has entered into a Regulatory Services Agreement with the National Futures Association to perform a number of regulatory services including, among other things, trading monitoring and surveillance;
- 1.7 tpSEF will provide an execution venue that will enable its participants to execute swaps in a full range of asset classes. tpSEF will provide execution services for interest rate swaps, credit swaps, foreign exchange swaps, commodity swaps and equity swaps. tpSEF will offer participants various methods for order execution including an order book and request for quote system;
- 1.8 tpSEF has entered into a clearing arrangement with LCH Clearent Limited;
- 1.9 Because tpSEF has participants located in Ontario, it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;

- 1.10 tpSEF has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above; and
- 1.11 tpSEF intends to file a full application to the Commission for a subsequent order exempting it from the requirement to be recognized as an exchange pursuant to section 147 of the Act (**Subsequent Order**);

**AND WHEREAS** the products traded on tpSEF are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and tpSEF is not considered to be carrying on business as a commodity futures exchange in Ontario;

**AND WHEREAS** the Commission will monitor developments in international and domestic capital markets and tpSEF's activities on an ongoing basis to determine whether it is appropriate for the Exchange Relief to continue to be granted subject to the terms and conditions set out in Schedule "A" to this order;

**AND WHEREAS** tpSEF has acknowledged to the Commission that the scope of the Exchange Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or tpSEF's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

**AND WHEREAS** based on the Application, together with the representations made by and acknowledgements of tpSEF to the Commission, the Commission has determined that the granting of the Exchange Relief would not be prejudicial to the public interest;

**IT IS HEREBY ORDERED** by the Commission that, pursuant to section 147 of the Act, tpSEF is exempt on an interim basis from recognition as an exchange under subsection 21(1) of the Act,

**PROVIDED THAT:**

1. This Order terminates on the earlier of (i) October 2, 2014 and (ii) the effective date of the Subsequent Order;
2. tpSEF complies with the terms and conditions contained in Schedule "A."; and
3. tpSEF shall file a full application to the Commission for the Subsequent Order by January 31, 2014.

**DATED** October 1<sup>st</sup>, 2013.

"James E. A. Turner"

"Mary G. Condon"

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Regulation and Oversight of tpSEF**

1. tpSEF will maintain its registration as a swap execution facility (**SEF**) with the Commodity Futures Trading Commission (**CFTC**) and will continue to be subject to the regulatory oversight of the CFTC.
2. tpSEF will continue to comply with the ongoing requirements applicable to it as a SEF registered with the CFTC.
3. tpSEF will notify the Commission if its registration as a SEF has been revoked, suspended, or amended by the CFTC, or the basis on which its registration as a SEF has been granted has significantly changed.
4. tpSEF must do everything within its control, which includes cooperating with the Commission as needed, to cause tpSEF to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

**Access**

5. tpSEF will not provide direct access to a participant in Ontario (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible contract participant" under the United States *Commodity Exchange Act*, as amended (**CEA**).
6. tpSEF may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
7. For each Ontario User provided direct access to its SEF, tpSEF will require, as part of its application documentation or continued access to the SEF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
8. tpSEF will require Ontario Users to notify tpSEF if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, tpSEF will promptly restrict the Ontario User's access to tpSEF if the Ontario User is no longer appropriately registered or exempt from those requirements.
9. tpSEF must make available to Ontario Users appropriate training for each person who has access to trade on tpSEF's facilities.

**Trading by Ontario Users**

10. tpSEF will not provide access to an Ontario User to trading in products other than swaps and security-based swaps, as defined in section 1a of the CEA, without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of tpSEF in Ontario, tpSEF will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
12. tpSEF will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission's regulation and oversight of tpSEF's activities in Ontario.

**Disclosure**

13. tpSEF will provide to its Ontario Users disclosure that states that:
  - (a) rights and remedies against tpSEF may only be governed by the laws of the U.S., rather than the laws of Ontario and may be required to be pursued in the U.S. rather than in Ontario;

- (b) the rules applicable to trading on tpSEF may be governed by the laws of the U.S., rather than the laws of Ontario; and
- (c) tpSEF is regulated by the CFTC, rather than the Commission.

**Filings with the CFTC**

- 14. tpSEF will promptly provide staff of the Commission copies of all rules of tpSEF, and amendments to those rules, that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
- 15. tpSEF will promptly provide staff of the Commission copies of all amendments to tpSEF's Form SEF (including Exhibits to Form SEF) that it files with the CFTC.
- 16. tpSEF will promptly provide to the Commission copies of all product specifications and amended product specification specifications that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
- 17. tpSEF will promptly provide staff of the Commission the following information to the extent it is required to provide to or file such information with the CFTC:
  - (a) the annual Board of Directors' report regarding the activities of the board and its committees;
  - (b) the annual unaudited financial statements of tpSEF;
  - (c) details of any material legal proceeding instituted against tpSEF;
  - (d) notification that tpSEF has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate tpSEF or has a proceeding for any such petition instituted against it; and
  - (e) the appointment of a receiver or the making of any voluntary arrangement with creditors.

**Prompt Notice or Filing**

- 18. tpSEF will promptly notify staff of the Commission of any of the following:
  - (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
    - (i) changes to the regulatory oversight by the CFTC;
    - (ii) the corporate governance structure of tpSEF;
    - (iii) the access model, including eligibility criteria, for Ontario Participants;
    - (iv) systems and technology; and
    - (v) the clearing and settlement arrangements for tpSEF;
  - (b) any change in tpSEF regulations or the laws, rules and regulations in the U.S. relevant to futures and options where such change may materially affect its ability to meet the criteria set out in Appendix 1 to this schedule;
  - (c) any condition or change in circumstances whereby tpSEF is unable or anticipates it will not be able to continue to meet the SEF Core Principles established by the CFTC or any other applicable requirements of the *Commodity Exchange Act* or CFTC regulations;
  - (d) any known investigations of, or disciplinary action against, tpSEF by the CFTC or any other regulatory authority to which it is subject;
  - (e) any matter known to tpSEF that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
  - (f) any default, insolvency, or bankruptcy of tpSEF participant known to tpSEF or its representatives that may have a material, adverse impact upon tpSEF, a clearing agency or any Ontario Participant.

19. tpSEF will promptly file with staff of the Commission copies of any Rule Enforcement Review report regarding tpSEF once issued as final by the CFTC.

**Quarterly Reporting**

20. tpSEF will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users;
  - (b) a list of all Ontario Users against whom disciplinary action has been taken in the last quarter by tpSEF, or, to the best of tpSEF's knowledge, by the CFTC or SEC with respect to such Ontario Users' activities on tpSEF;
  - (c) a list of all investigations by tpSEF relating to Ontario Users;
  - (d) a list of all Ontario applicants for status as a participant who were denied such status or access to tpSEF during the quarter, together with the reasons for each such denial;
  - (e) a list of all products available for trading during the quarter, identifying any additions, deletions, or changes since the prior quarter;
  - (f) for each product,
    - (i) the total trading volume and value originating from Ontario Users, presented on a per Ontario User basis, and
    - (ii) the proportion of worldwide trading volume and value on tpSEF conducted by Ontario Users, presented in the aggregate for such Ontario Users; and
  - (g) a list outlining each incident of a material systems failure, malfunction or delay that occurred at any time during the quarter for any system relating to trading activity, including trading, routing or data, specifically identifying the date, duration and reason for the failure, malfunction or delay, and noting any corrective action taken.

**Annual Reporting**

21. tpSEF will arrange to have the annual report and annual audited financial statements of tpSEF filed with the Commission promptly after their issuance.
22. tpSEF will arrange to have the annual "Service Organization Controls 1" report prepared for tpSEF filed with the Commission promptly after the report is issued as final by its independent auditor.

**Information Sharing**

23. tpSEF will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.