

2.2.19 TW SEF LLC – 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
TW SEF LLC**

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

WHEREAS TW SEF LLC (“**TW SEF**”) has filed an application dated September 18, 2013 (the “**Application**”) with the Ontario Securities Commission (the “**Commission**”) requesting an interim order pursuant to section 147 of the Act exempting TW SEF from the requirement to be recognized as an exchange under subsection 21(1) of the Act (the “**Exchange Relief**”); and

WHEREAS TW SEF has represented to the Commission that:

- a. TW SEF is a Delaware-organized limited liability company that is an indirect wholly-owned subsidiary of Tradeweb Markets LLC;
- b. TW SEF provides an electronic platform for trading interest rate swaps and credit default swap indices that operates as a disclosed request-based market;
- c. In the United States, TW SEF operates under the jurisdiction of the Commodity Futures Trading Commission (the “**CFTC**”) and has obtained (temporary) registration with the CFTC to operate a swap execution facility (a “**SEF**”);
- d. TW SEF 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, and TW SEF has retained the National Futures Association as a regulatory services provider;
- e. Because TW SEF regulates the conduct of its participants, it is considered by the Commission to be an exchange;
- f. In the event that TW SEF has participants located in Ontario, it would be considered by the Commission to be carrying on business as an exchange in Ontario and would be required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;
- g. TW SEF has no physical presence in Ontario and does not otherwise carry on business in Ontario, except as described above; and
- h. TW SEF 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 (a “**Subsequent Order**”); and

WHEREAS the products traded on TW SEF are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario), and TW SEF 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 TW SEF’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 TW SEF 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 TW SEF'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 TW SEF 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, TW SEF 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. TW SEF complies with the terms and conditions contained in Schedule "A;" and
3. TW SEF shall file a full application to the Commission for the Subsequent Order by January 1, 2014.

DATED: October 1st, 2013.

"Mary G. Condon"

James E. A. Turner"

SCHEDULE "A"

TERMS AND CONDITIONS

Regulation and Oversight of TW SEF

1. TW SEF LLC ("**TW SEF**") will maintain its registration as a swap execution facility (a "**SEF**") with the Commodity Futures Trading Commission (the "**CFTC**") and will continue to be subject to the regulatory oversight of the CFTC.
2. TW SEF will continue to comply with the ongoing requirements applicable to it as a SEF registered with the CFTC.
3. TW SEF 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. TW SEF must do everything within its control, which includes cooperating with the Ontario Securities Commission (the "**Commission**") as needed, to cause TW SEF 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. TW SEF will not provide direct access to a participant in Ontario (an "**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 (the "**CEA**").
6. TW SEF 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, TW SEF 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 exempt from those requirements.
8. TW SEF will require Ontario Users to notify TW SEF 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, TW SEF will promptly restrict the Ontario User's access to TW SEF if the Ontario User is no longer appropriately registered or exempt from those requirements.
9. TW SEF must make available to Ontario Users appropriate training for each person who has access to trade on TW SEF's facilities.

Trading by Ontario Users

10. TW SEF 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 TW SEF in Ontario, TW SEF will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
12. TW SEF 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 TW SEF's activities in Ontario.

Disclosure

13. TW SEF will provide to its Ontario Users disclosure that states that:

Decisions, Orders and Rulings

- (a) rights and remedies against TW SEF 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 TW SEF may be governed by the laws of the U.S., rather than the laws of Ontario; and
- (c) TW SEF is regulated by the CFTC, rather than the Commission.

Filings with the CFTC

- 14. TW SEF will promptly provide staff of the Commission copies of all rules of TW SEF, and amendments to those rules, that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
- 15. TW SEF will promptly provide staff of the Commission copies of all amendments to TW SEF's Form SEF (including Exhibits to Form SEF) that it files with the CFTC.
- 16. TW SEF will promptly provide to the Commission copies of all product specifications and amended product specifications that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
- 17. TW SEF 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 TW SEF;
 - (c) details of any material legal proceeding instituted against TW SEF;
 - (d) notification that TW SEF has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate TW SEF 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. TW SEF 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 TW SEF;
 - (iii) the access model, including eligibility criteria, for Ontario Participants;
 - (iv) systems and technology; and
 - (v) the clearing and settlement arrangements for TW SEF;
 - (b) any change in TW SEF 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 TW SEF 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, TW SEF by the CFTC or any other regulatory authority to which it is subject;
 - (e) any matter known to TW SEF 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 TW SEF participant known to TW SEF or its representatives that may have a material, adverse impact upon TW SEF, a clearing agency or any Ontario Participant.
19. TW SEF will promptly file with staff of the Commission copies of any Rule Enforcement Review report regarding TW SEF once issued as final by the CFTC.

Quarterly Reporting

20. TW SEF 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 TW SEF, or, to the best of TW SEF's knowledge, by the CFTC or SEC with respect to such Ontario Users' activities on TW SEF;
 - (c) a list of all investigations by TW SEF relating to Ontario Users;
 - (d) a list of all Ontario applicants for status as a participant who were denied such status or access to TW SEF 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 TW SEF 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. TW SEF will arrange to have the annual report and annual audited financial statements of TW SEF filed with the Commission promptly after their issuance.
22. TW SEF will arrange to have the annual "Service Organization Controls 1" report prepared for TW SEF filed with the Commission promptly after the report is issued as final by its independent auditor.

Information Sharing

23. TW SEF 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.