

2.4 Rulings

2.4.1 RBC Dominion Securities Inc. – ss. 38(1), 78(1) of the CFA

Headnote

Application for a ruling pursuant to section 38 of the Commodity Futures Act granting relief from the dealer registration requirement in section 22 of the CFA to allow the Filer, an investment dealer and member of the Investment Industry Regulatory Organization of Canada (IIROC), to use employees of certain Designated Foreign Affiliates for “after-hours trading” in commodity futures contracts and commodity futures options on the Bourse de Montréal Inc. – Relief granted, subject to terms and conditions.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1), 38(1) and 78(1).

December 24, 2021

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C. 20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
RBC DOMINION SECURITIES INC.
(the Filer)

RULING
(Subsection 38(1) and 78(1) of the CFA)

UPON the application (the **Application**) of the Filer to the Ontario Securities Commission (the **Commission**) for a ruling of the Commission, pursuant to subsection 38(1) of the CFA, that 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**);

AND WHEREAS the Commission granted exemptive relief to the Filer in a decision dated November 30, 2018 (the **Original Decision**), pursuant to subsection 38(1) of the CFA, in respect of the dealer registration requirement in the CFA when conducting after hours trading for the period from 2:00 a.m. to 6:00 a.m. Eastern Time (**ET**) each day on the MX, and the Filer has also applied for an order pursuant to subsection 78(1) of the CFA to revoke the Original Decision as of the date hereof;

AND WHEREAS for the purposes of this ruling (the **Decision**):

- (i) “**dealer registration requirement in the CFA**” means the provisions of section 22 of the CFA that prohibit a person or company from trading in commodity futures contracts or commodity futures options (as those terms are defined in subsection 1(1) of the CFA) unless the person or company satisfies the applicable provisions of subsection 22(1)(a) of the CFA; and
- (ii) terms used in this Decision that are defined in the *Securities Act* (Ontario) (**OSA**), and not otherwise defined in this Decision or in the CFA, shall have the same meaning as in the OSA, unless the context otherwise requires;

AND UPON considering the Application and the recommendation of staff of the Commission;

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 Toronto, Ontario.
2. The Filer is registered as an investment dealer under the securities legislation of all the provinces and territories 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. RBC Capital Markets LLC (**RBCCM**) is a limited liability company formed under the laws of the State of Minnesota. The head office of RBCCM is located in New York, New York, United States.
6. RBC Europe Limited (**RBCEL**, and together with RBCEL, the **Designated Foreign Affiliates**) is a limited company formed under the laws of England and Wales. The head office of RBCEL is located in London, England.
7. The Filer and the Designated Foreign Affiliates are each a wholly-owned indirect subsidiary of The Royal Bank of Canada.
8. RBCCM is registered as a broker-dealer with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority. RBCCM is a registered futures commission merchant with the U.S. Commodity Futures Trading Commission and approved as a swap firm and a member of the National Futures Association.
9. RBCEL is a United Kingdom-based broker dealer in securities and dealer in derivatives. RBCEL is authorized by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority.
10. The Designated Foreign Affiliates together hold memberships and/or have third-party clearing relationships with commodity and financial futures exchanges and clearing associations, including the CME Group. The Designated Foreign Affiliates may also carry positions reflecting trades executed on other exchanges through affiliates and/or third-party clearing brokers.
11. The Filer wishes to make use of certain designated employees of the Designated Foreign Affiliates (the **Designated Foreign Affiliate Employees**) certified under applicable laws of the United States (**US**) or the United Kingdom (**UK**), as applicable, in a category that permits trading the types of products which they would be trading on the MX to handle trading requests on the MX from the Filer's clients and clients of the Filer's affiliated corporations or subsidiaries during the MX's extended trading hours, including from 4:30 p.m. (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

12. 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.
13. On July 9, 2018, the MX announced that the MX had approved amendments to its rules and procedures in order to accommodate the extension of the MX's trading hours (the **Initial Extended Hours Initiative**). As a result of these amendments, starting October 9, 2018, trading of certain products on the MX commenced at 2:00 a.m. ET rather than the previous 6:00 a.m. ET.
14. As set out in MX Circular 111-18, in order to accommodate this 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.
15. On March 17, 2020, the MX announced that the MX had approved non-material amendments to its rules and procedures in order to accommodate the further extension of the MX's trading hours (the Asian Trading Hours Initiative). As a result of these amendments, trading of certain products on the MX now commences at 8:00 p.m. ET (T-1) rather than 2:00 a.m. ET. These amendments are considered non-material insofar as the framework put in place in connection with the Initial Extended Hours Initiative applies 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, 024-21 and 063-21.
16. 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

17. The Filer is an MX approved participant and each of the Designated Foreign Affiliates is an affiliate of the Filer. The Filer wishes to make use of the Designated Foreign Affiliate Employees to conduct the Extended Hours Activities.
18. 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.

19. 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 under applicable US or UK law, 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 in the CFA is unduly onerous in light of the limited trading activities the Designated Foreign Affiliate Employees will be conducting on behalf of the Filer, namely only handling client orders, and only during the period from 4:30 p.m. ET (T-1) to 6:00 a.m. ET.
20. 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 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**).
21. 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 US or UK 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 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 (T1) 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 Employees 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 the 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 authorized 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.
 - (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.

AND UPON the Commission being satisfied that it would not be prejudicial to the public interest to do so;

IT IS RULED pursuant to subsection 78(1) of the CFA that the Original Decision is revoked;

AND IT IS RULED pursuant to subsection 38(1) of the CFA that the Exemption Sought is granted, so long as:

- (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 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 21(g) and such agreement remains in effect; and
- (f) the Filer remains in compliance with the terms and conditions of the IIROC Relief.

“Craig Hayman”
Commissioner
Ontario Securities Commission

“Cathy Singer”
Commissioner
Ontario Securities Commission

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