

June 27, 2014

**In The Matter of
*The Securities Act, 1988,***

and

**In the Matter of
AQR Capital Management, LLC**

Decision

Background

The Financial and Consumer Affairs Authority of Saskatchewan (the Authority) has received an application from AQR Capital Management, LLC (the Applicant) for a decision under section 83 of *The Securities Act, 1988* (the Act) that the Applicant and its Representatives (defined below) be exempt from the requirement to be registered as an adviser in order to advise Permitted Clients (defined below) as to trading in over-the-counter (OTC) derivatives and exchange contracts, as those terms are defined under Saskatchewan securities laws (the Requested Relief).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and National Instrument 31-103 (*Registration Requirements Exemptions and Ongoing Registrant Obligations*) have the same meaning if used in this decision, unless otherwise defined.

The following terms shall have the following meanings:

“CFTC” means the U.S. Commodity Futures Trading Commission;

“EMD” means an exempt market dealer;

“GO 91-907” means General Order 91-907 *Over-the-Counter Derivatives*;

“IAE” means the international adviser exemption pursuant to section 8.26 of NI 31-103;

“MI 32-102” means Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*;

“NFA” means the National Futures Association in the U.S.;

“NI 31-103” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“NI 45-106” means National Instrument 45-106 *Prospectus and Registration Exemptions*;

“Permitted Client” means a client in Saskatchewan that is a “permitted client” as that term is defined in section 1.1 of NI 31-103;

“Representatives” means any individuals who, on the Applicant’s behalf, advise Permitted Clients as to trading in OTC derivatives and exchange contracts;

“Saskatchewan adviser registration requirement” means the provisions in the Act that prohibit a person or company from engaging in or holding himself, herself or itself out as engaging in the business of advising another as to the investing in or the buying or selling of securities or exchange contracts in Saskatchewan unless the person or company is registered in the appropriate category of registration under the Act;

“SEC” means the U.S. Securities and Exchange Commission;

“specified affiliate” has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*;

“U.S.” means the United States of America; and

“U.S. Advisers Act” means the U.S. *Investment Advisers Act of 1940*.

Representations

This Decision is based upon the following facts represented by the Applicant:

1. The Applicant is a limited liability company organized under the laws of the State of Delaware with its principal place of business located at Two Greenwich Plaza, 3rd Floor, Greenwich, CT, United States of America, 06830.
2. The Applicant is a specialized portfolio manager that manages investments for investment companies and institutional investors across multiple strategies and financial instruments. As at January 1, 2014, the Applicant had over US\$98.8 billion in assets under management.
3. The Applicant is currently registered with the SEC as an investment adviser under the U.S. Advisers Act. The Applicant is also registered with the CFTC as a commodity pool operator and commodity trading advisor and is an approved member of the NFA.
4. The Applicant is not resident in any province or territory of Canada.
5. The Applicant is registered as an EMD in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec and relies on the IAE in British Columbia, Alberta, Saskatchewan, Ontario and Québec. The Applicant also relies on the investment fund manager registration exemption pursuant to Part 2 of MI 32-102 in Ontario, Newfoundland and Labrador and Québec.

6. The Applicant seeks to act as a discretionary investment manager on behalf of prospective institutional investors that are Permitted Clients who seek to engage the Applicant as a discretionary investment manager for purposes of implementing certain specialized investment strategies (the Proposed Advisory Services).
7. The Proposed Advisory Services will consist of providing discretionary portfolio management services in Saskatchewan to Permitted Clients, including acting as an adviser with respect to OTC derivatives and exchange contracts where such investments are part of the investment program of such Permitted Clients.
8. The Proposed Advisory Services may include the use of specialized investment strategies employing (i) OTC derivatives that are traded outside of Canada and either cleared through one or more clearing corporations that are located outside of Canada or not cleared through any clearing corporations, and (ii) exchange contracts that are traded on one or more organized exchanges that are located outside of Canada and cleared through one or more clearing corporations that are located outside of Canada (collectively, the Foreign Derivatives), and the Applicant would not advise in Saskatchewan on OTC derivatives or exchange contracts that are not Foreign Derivatives, unless providing such advice is incidental to its providing advice on Foreign Derivatives.
9. In connection with the Proposed Advisory Services, the Applicant will exercise discretionary authority on behalf of Permitted Clients in respect of all or a portion of the assets of the investment portfolios of such Permitted Clients. The Applicant will ensure that its exercise of discretionary authority is consistent with the investment objectives and strategies of each Permitted Client.
10. Under the Act, the term “adviser” means “a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising another as to the investing in or the buying or selling of securities or exchange contracts”.
11. Under the Act, the terms “exchange contract”, “futures contract” and “security” are defined as follows:

(s.2) “exchange contract” means a futures contract or an option that:

- (i) has its performance guaranteed by a clearing agency; and
- (ii) is traded on an exchange pursuant to standardized terms and conditions set forth in the bylaws, rules or regulations of that exchange at a price agreed on when the futures contract or option is entered into on the exchange;

and includes any instrument or class of instruments that meets the requirements mentioned in subclauses (i) and (ii);

...

(t.1) “futures contract” means:

(i) a contract to make delivery or take delivery on a specified date or during a specified period of a specified asset or of a specified cash equivalent of the subject-matter of that contract; or

(ii) a contract designated to be a futures contract in an order made pursuant to section 11.1.

...

(ss) “security” includes:

- (i) any document, instrument or writing commonly known as a security;
- (i) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;
- (ii) any document constituting evidence of an interest in an association of legatees or heirs;
- (iii) any document constituting evidence of an option, subscription or other interest in or to a security;
- (iv) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of a share or interest, preorganization certificate or subscription other than:
 - (A) a contract of insurance issued by an insurance company licensed pursuant to *The Saskatchewan Insurance Act*; or
 - (B) an evidence of deposit issued by a bank to which the *Bank Act* (Canada) applies, by a trust corporation or loan corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997*, by a credit union or by Credit Union Central of Saskatchewan;
- (v) any agreement pursuant to which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets;
- (vi) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company;
- (vii) any certificate of share or interest in a trust, estate or association;
- (viii) any profit-sharing agreement or certificate;
- (ix) any certificate of interest in an oil, a natural gas or a mining lease, a claim or a royalty voting trust certificate;
- (x) any oil or natural gas royalties or leases or any fractional or other interest in them;
- (xi) any collateral trust certificate;

- (xii) any income or annuity contract not issued by an insurance company licensed pursuant to The Saskatchewan Insurance Act;
- (xiii) any investment contract; and
- (xiv) any document constituting evidence of an interest in a scholarship or educational plan or trust;
- (xv) any item or thing not mentioned in subclauses (i) to (xv) that is a futures contract or option but is not an exchange contract;

whether any of the foregoing relate to an issuer or proposed issuer.

12. GO 91-907 provides an exemption from the registration requirement in section 27 of the Act and the prospectus requirement in section 58 of the Act with respect to a trade in an “over-the-counter or OTC derivative,” provided that certain prescribed conditions are satisfied.
13. Under GO 91-907, the term “over-the-counter or OTC derivative” is defined to mean “a futures contract or an option that is not an exchange contract”. The exemption provided under GO 91-907 is limited to a trade in an “over-the-counter or OTC derivative.” GO 91-907 does not provide an exemption from the Saskatchewan adviser registration requirement with respect to either an “over-the-counter or OTC derivative” or an exchange contract.
14. Additionally, there is currently no exemption in the Act from the Saskatchewan adviser registration requirement with respect to OTC derivatives or exchange contracts that is equivalent to the IAE. Consequently, in the absence of an exemption from the Saskatchewan adviser registration requirement, the Applicant is required to be registered as an adviser in order to carry out the Proposed Advisory Services.
15. The proposed amendments to the Act contained in Bill 65, *The Securities Amendment Act, 2012 (No. 2)* would not, upon proclamation, change the circumstances described in paragraph 14 above. Consequently, when the proposed amendments come into force, the Applicant would still be required to be registered as an adviser in order to carry out the Proposed Advisory Services.

Decision

The Authority is satisfied that it would not be prejudicial to the public interest to make the decision.

The decision of the Authority is that the Requested Relief is granted provided that:

- (a) the Applicant provides advice to Permitted Clients only as to trading in Foreign Derivatives and does not advise any Permitted Client as to trading in OTC derivatives and exchange contracts that are not Foreign Derivatives, unless providing such advice is incidental to its providing advice on Foreign Derivatives;

- (b) the Applicant's head office or principal place of business remains in the United States;
- (c) the Applicant remains:
 - (i) registered with the SEC as an investment adviser under the U.S. Advisers Act;
 - (ii) registered with the CFTC as a commodity pool operator and commodity trading advisor; and
 - (iii) an approved member of the NFA on a basis which permits it to carry on the activities in the U.S. that registration under the CFA as an adviser in the category of commodity trading manager or commodity trading counsel or both would permit it to carry on in Saskatchewan;
- (d) the Applicant continues to engage in the business of giving advice in the U.S. as defined in the Act;
- (e) in respect of providing advice to a Permitted Client as to trading in Foreign Derivatives:
 - (i) as at the end of the Applicant's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the Applicant, its affiliates and its affiliated partnerships (excluding the gross revenue of an affiliate or affiliated partnership of the Applicant that is registered under securities legislation, commodities legislation or derivatives legislation in a jurisdiction of Canada) is derived from the portfolio management activities of the Applicant, its affiliates and its affiliated partnerships in Canada (which, for greater certainty, includes both securities-related and derivatives-related activities);
 - (ii) before advising a Permitted Client as to trading in Foreign Derivatives, the Applicant notifies each Permitted Client of all of the following:
 - (A) the Applicant is not registered in Saskatchewan to provide the advice described under paragraph (a) above;
 - (B) the foreign jurisdiction in which the Applicant's head office or principal place of business is located;
 - (C) all or substantially all of the Applicant's assets may be situated outside of Canada;
 - (D) there may be difficulty enforcing legal rights against the Applicant because of the above; and

- (E) the name and address of the Applicant's agent for service of process in Saskatchewan;
- (iii) the Applicant shall, if it ceases to be a registrant in Saskatchewan, submit to the Authority a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A";
- (iv) the Applicant shall, if it ceases to be a registrant in Saskatchewan, submit to the Authority a copy of any Form 33-109F5 *Change of Information* that relates to changes of information in Part 7 *Regulatory Action* of the Form 33-109F6 *Firm Registration* that is required to be submitted in another jurisdiction of Canada;
- (v) the Applicant shall, if it ceases to be a registrant in every jurisdiction of Canada, submit to the Authority a completed *Notice of Regulatory Action* in the form attached as Appendix "B" (the Regulatory Action Form);
- (vi) the Applicant shall, if it is required to submit to the Authority a Regulatory Action Form, notify the Authority of any regulatory action initiated after the date that the most recent Regulatory Action Form is filed in respect of the Applicant, or any predecessors or specified affiliates of the Applicant, by completing and filing the Regulatory Action Form within ten (10) days of the commencement of such action; and
- (vii) by December 1 of each year, the Applicant shall notify the Authority of its continued reliance on the exemption from the Saskatchewan adviser registration requirement.
- (f) this Decision shall expire five (5) years after the date hereof.



Dave Wild
Chair

APPENDIX “A”

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM

REGISTRATION UNDER *THE SECURITIES ACT, 1988*

1. Name of person or company (“International Firm”):
2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:
3. Jurisdiction of incorporation of the International Firm:
4. Head office address of the International Firm:
5. The name, e-mail address, phone number and fax number of the International Firm’s individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

Name:

E-mail address:

Phone:

Fax:

6. The International Firm is relying on an exemption order under section 83 of *The Securities Act, 1988* (Saskatchewan) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the “Relief Order”):

Section 8.18 [*international dealer*]

Section 8.26 [*international adviser*]

Other [specify]:

7. Name of agent for service of process (the “Agent for Service”):
8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.
11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator
 - a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and
 - b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.
12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

(Signature of the International Firm or authorized signatory)

(Name of signatory)

(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____
[Insert name of International Firm] under the terms and conditions of the foregoing
Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

(Signature of the Agent for Service or authorized signatory)

(Name of signatory)

(Title of signatory)

This form is to be submitted to the following address:

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601
1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Legal, Securities Division
Telephone: (306) 787-5879
email: sonne.udemgba@gov.sk.ca

APPENDIX “B”

Notice of Regulatory Action

1. Has the firm, or any predecessors or specified affiliates¹ of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, 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:

	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 any registration, licensing 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 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,		

¹ In this Appendix, the term “specified affiliate” has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g., cease trade order)?		
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If yes, provide the following information for each action:

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

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates 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:
Financial and Consumer Affairs Authority of Saskatchewan
Suite 601
1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Legal, Securities Division
Telephone: (306) 787-5879
email: sonne.udemgba@gov.sk.ca