



THE MANITOBA
SECURITIES
COMMISSION

THE COMMODITY FUTURES ACT)
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Subsection 66(1)

Order No. 6715

May 8, 2013

STATE STREET GLOBAL ADVISORS, LTD. and
SSgA FUNDS MANAGEMENT, INC.

WHEREAS:

(A) State Street Global Advisors, Ltd. (the **Principal Adviser**) and SSgA Funds Management, Inc. (the **Sub-adviser**) (collectively, the **Applicants**) have applied to the Manitoba Securities Commission (the Commission) for an order pursuant to subsection 66(1) of the Commodity Futures Act (Manitoba) (the **CFA**) that the Sub-adviser, and any individual engaging in or holding himself or herself out as engaging in, the business of advising others as to trading in Contracts (as defined below) on the Sub-Adviser's behalf (the **Representatives**), are not subject to the requirement under subsection 24(2) of the CFA to be registered as an adviser in connection with the Sub-adviser and its Representatives acting as an adviser to the Principal Adviser with respect to trades in commodity futures contracts and related products traded on commodity futures exchanges for the benefit of the Principal Adviser's portfolio managed clients resident in Manitoba (the **Clients**).

(B) For the purposes of this Order:

CFA Adviser Registration Requirement means the requirement under s. 24(2) of the CFA that prohibits a person or company from acting as an adviser unless the person or company is registered in the appropriate category of registration under the CFA;

CFTC means the United States Commodity Futures Trading Commission;

Contract has the meaning ascribed to that term in subsection 1(1) of the CFA;

OSA Sub-adviser Exemption means the exemption from the requirement under the *Securities Act* (Ontario) to be registered as an adviser, that is set out in section 7.3 of OSC Rule 35-502 *Non-Resident Advisers*;

SEC means the United States Securities and Exchange Commission; and

U.S. Advisers Act means the *United States Investment Advisers Act of 1940*.

(C) The Applicants have represented to the Commission that:

1. The Principal Adviser is a corporation incorporated under the federal laws of Canada with its head office located in Montreal, Quebec. The Principal Adviser is a wholly owned subsidiary of State Street Corporation.

2. The Principal Adviser is registered as an adviser under the CFA, and as a portfolio manager and exempt market dealer in all the provinces and territories. The Principal Adviser is also registered as an investment fund manager in Quebec, Ontario and Newfoundland, as a derivatives portfolio manager in Quebec and as a commodity trading counsel and manager under the *Commodity Futures Act* (Ontario) and as an adviser under the *Commodity Futures Act* (Manitoba).
3. The head office of the Sub-adviser is in Boston, Massachusetts, U.S.A and the Sub-adviser is indirectly owned by State Street Corporation. The Sub-adviser is registered as an Investment Adviser under the U.S Advisers Act and as a Commodity Trading Adviser with the CFTC and provides trading advice services in respect of futures, options on futures and swaps to its clients generally traded on a U.S. Exchange and/or with a U.S. counterparty to certain of its clients.
4. The Sub-adviser is not registered in any capacity under the CFA.
5. Neither the Principal Adviser nor the Sub-adviser are in default under the CFA.
6. The Sub-adviser may act as a sub-adviser to the Principal Adviser in the provinces of Quebec and Ontario in respect of securities in reliance on the general exemption from registration granted by the AMF on December 18, 2009, with effect on December 28, 2009, and on section 7.3 of OSC Rule 35-502 – *Non-Resident Advisers*.
7. The Principal Adviser is the investment manager of and/or provides discretionary portfolio management services to segregated accounts and pooled funds.
8. The portfolio management services provided by the Principal Adviser to its Clients include and will include acting as an adviser with respect to both securities and Contracts where such investments are part of the investment program of such Clients.
9. In connection with the Principal Adviser acting as an adviser to Clients in respect of the purchase or sale of securities, where the discretionary services to Clients include the buying and selling of Contracts, the Principal Adviser will retain, pursuant to a written agreement made between the Principal Adviser and the Sub-adviser, the Sub-adviser to act as a sub-adviser to the Principal Adviser by exercising discretionary authority to buy or sell Contracts for the Client (the **Proposed Sub-Advisory Services**).
10. In connection with the Proposed Sub-Advisory Services, the relationship among the Principal Adviser, the Sub-adviser and any Client will

satisfy the applicable requirements of the OSC Sub-adviser Exemption, namely that:

- (a) the obligations and duties of the Sub-adviser will be set out in a written agreement with the Principal Adviser;
- (b) the Principal Adviser will contractually agree with the Client to be responsible for any loss that arises out of the failure of the Sub-adviser:
 - i. to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Principal Adviser and the Client; or
 - ii. to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (the **Assumed Obligations**); and
- (c) the Principal Adviser cannot be relieved by the Client from its responsibility for any loss that arises out of the failure of the Sub-adviser to meet the Assumed Obligations.

11. The Sub-adviser and its Representatives shall only provide the Proposed Sub-Advisory Services as long as the Principal Adviser is, and remains, registered under the CFA as an adviser.

12. The Principal Adviser will deliver to the Clients all applicable reports and statements under applicable securities, commodity futures and derivatives legislation.

13. A Client must obtain all advice and information and give all instructions and directions through the Principal Adviser and may meet with the Sub-adviser only if the Principal Adviser is present at all times.

14. By providing the Proposed Sub-Advisory Services, the Sub-adviser and its Representatives will be engaging in, or holding himself, herself or itself out as engaging in, the business of advising others in respect of Contracts and, in the absence of being granted the requested relief, would be required to register as an adviser, or a representative of an adviser, as the case may be, under the CFA.

(D) Based on the foregoing, the Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

1. **THAT**, pursuant to subsection 66(1) of the CFA for a period of five years from the date of this Order, the CFA Adviser Registration Requirement shall

not apply to the Sub-adviser and its Representatives with respect to its activities in providing the Proposed Sub-Advisory Services for the benefit of the Principal Adviser and its Clients provided that:

- (a) the Principal Adviser is registered under the CFA as an adviser;
- (b) the Sub-adviser and its Representatives are appropriately registered or licensed to provide the Proposed Sub-Advisory Services to the Clients pursuant to the applicable legislation of the principal jurisdiction of the Sub-adviser;
- (c) the obligations and duties of the Sub-adviser are set out in a written agreement with the Principal Adviser;
- (d) the Sub-adviser shall not act as a sub-adviser to the Principal Adviser unless the Principal Adviser has contractually agreed with each Client to be responsible for any loss that arises out of any failure of the Sub-adviser to meet the Assumed Obligations and cannot be relieved by any of its Clients from its responsibility for any loss that arises out of any failure of the Sub-adviser to meet the Assumed Obligations;
- (e) the offering document, if any, for each Client for which the Principal Adviser engages the Sub-adviser to provide the Proposed Sub-Advisory Services will include the following disclosure:
 - (i) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-adviser to meet the Assumed Obligations; and
 - (ii) a statement that if the Client has legal rights against the Sub-adviser, there may be difficulty in enforcing any legal rights against the Sub-adviser (or any of its Representatives) because the Sub-adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada;
- (f) in circumstances where a Client for which the Principal Adviser engages the Sub-adviser to provide the Proposed Sub-Advisory Services does not prepare an offering document for delivery to prospective purchasers, the Client and, if applicable, all investors of the Client who are Manitoba residents will receive written disclosure prior to the purchasing of any Contracts for such Client that includes:
 - (i) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-adviser to meet the Assumed Obligations; and

(ii) a statement that if the Client has legal rights against the Sub-adviser, there may be difficulty in enforcing any legal rights against the Sub-adviser (or any of its Representatives) because the Sub-adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

(g) the relief from the CFA Adviser Registration Requirement is available to the Sub-adviser so long as it is not registered in any Canadian jurisdiction.

2. THAT the fee for the Order is \$650.00.

BY ORDER OF THE COMMISSION


Director