



THE COMMODITY FUTURES ACT )  
 )  
Section 66(1) )

Order No. 7498

January 22, 2020

**MORGAN STANLEY & CO. LLC**

**WHEREAS:**

(A) Morgan Stanley & Co. LLC (the "Applicant") has applied to The Manitoba Securities Commission (the "Commission") for an order, pursuant to subsection 66(1) of *The Commodity Futures Act (Manitoba)* (the "CFA"), granting relief from:

- (1) the requirement in subsection 24(1) of the CFA for the Applicant to be registered as a dealer under the CFA (the "CFA dealer registration requirement"); and
- (2) the contract trading restrictions in section 40 of the CFA (the "CFA contract trading restrictions"), respectively,

in connection with trades ("Futures Trades") in commodity futures contracts and options on commodity futures contracts (collectively, "Futures Contracts") that trade on certain exchanges located outside of Canada ("Exchange-Traded Futures") with or for its own account as principal, and as agent for residents of Manitoba ("Permitted Clients") that fall within the category of investors defined as "permitted clients" in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") (the "CFA International Dealer Relief");

(B) The Applicant has represented to the Commission that:

- (1) The Applicant is a limited liability company formed under the laws of the State of Delaware in the United States of America. The Applicant's head office is located in New York, New York, United States of America;
- (2) the Applicant is currently a wholly-owned direct subsidiary of Morgan Stanley ("MS"). MS is a publicly-traded Delaware corporation with its shares listed on the New York Stock Exchange (the "NYSE") under the trading symbol 'MS' and a financial holding company subject to the regulation and oversight of the Board of Governors of the Federal Reserve System;
- (3) the Applicant is registered with the Federal Reserve Bank of New York as a primary dealer in United States ("U.S.") government securities. The Applicant is a market maker for U.S. agency securities and acts as a broker for customers buying and selling equity and/or debt securities, and as a broker for futures and options on futures contracts. The Applicant's clients include financial institutions, institutional money managers, corporations, mutual funds, pension funds, and other institutional investors;

- (4) the Applicant is registered as a broker-dealer with the U.S. Securities and Exchange Commission and a futures commission merchant with the U.S. Commodity Futures Trading Commission (the "CFTC"), and is a member of the U.S. Financial Industry Regulatory Authority ("FINRA") and the U.S. National Futures Association ("NFA");
- (5) the Applicant is a member of major securities exchanges, including the NYSE. The Applicant is also a foreign approved participant of the Montréal Exchange, a clearing member of the Chicago Mercantile Exchange (including the Chicago Board of Trade, and the New York Mercantile Exchange), the Options Clearing Corporation, ICE Clear Europe and ICE Clear U.S. (as well as a member of ICE Futures Europe and ICE Futures U.S.), and trades through affiliated or unaffiliated member firms on all other exchanges, including exchanges in Mexico, the United Kingdom, France, Italy, Greece, Spain, Germany, Austria, Japan, Korea, Singapore, Hong Kong, Taiwan, and Australia;
- (6) the Applicant is not registered in any capacity under the CFA or *The Securities Act* (Manitoba) (the "MSA");
- (7) the Applicant is not a reporting issuer in any Canadian jurisdiction;
- (8) the Applicant is not currently in default of securities or commodity futures legislation except for a brief period where the Applicant unintentionally and unknowingly contravened the CFA dealer registration requirement by trading in Exchange-Traded Futures with and for a pre-existing institutional client in Manitoba. Promptly upon discovering this regulatory gap in August 2008, the Applicant remedied this default by advising the client that it was unable to provide futures brokerage and clearing services any longer and closed the client's futures accounts;
- (9) the Applicant currently relies on the registration exemption available in Section 8.18 of NI 31-103 (the "International Dealer Exemption") for the purposes of trading in "securities" with "permitted clients" resident in all of the provinces and territories of Canada;
- (10) pursuant to its registrations and memberships, the Applicant is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the U.S. Rules of the CFTC and the NFA require the Applicant to maintain adequate capital levels, make and keep specified types of records relating to customer accounts and transactions, and comply with other forms of customer protection rules. In order to protect customers in the event of the insolvency or financial instability of the Applicant, the Applicant is required to ensure that customer securities and monies are separately accounted for and segregated from the securities and monies of the Applicant, and custodied exclusively with such banks, trust companies, clearing organizations, or other registered/licensed futures brokers and intermediaries as may be approved for such purposes under the U.S. *Commodity Exchange Act* and the rules promulgated by the CFTC thereunder (the "MS&Co. Approved Depositories"). The Applicant is also required to obtain acknowledgements from any MS&Co. Approved Depository holding customer funds or securities that such funds and

securities are to be separately held on behalf of such customers, with no right of set-off against the Applicant's obligations or debts;

- (11) the Applicant proposes to:
  - (a) offer certain of its Permitted Clients the ability to trade, through the Applicant, Exchange-Traded Futures that trade on exchanges based outside of Canada (the "Recognized Exchanges"), unless such trades are routed through an agent that is a dealer registered in Manitoba under the CFA as a futures commission merchant; and
  - (b) provide execution, clearing, and settlement services with or for Permitted Clients with respect to Exchange-Traded Futures that are primarily traded on one or more Recognized Exchanges;
- (12) the Applicant will not provide advice regarding Exchange-Traded Futures except to the extent such advice is solely incidental to the Applicant trading such Exchange-Traded Futures on an agency basis with or for Permitted Clients;
- (13) the Applicant will solicit business in Manitoba only from persons that qualify as Permitted Clients;
- (14) the Exchange-Traded Futures to be traded by Permitted Clients will include, but will not be limited to, Futures Contracts for equity index, interest rate, foreign exchange, energy, metals, agricultural, and other commodity products;
- (15) Permitted Clients will be able to execute trades in Exchange-Traded Futures through the Applicant by contacting the Applicant's voice brokerage execution desk or accessing global electronic trading operations. Permitted Clients may also be able to self-execute trades in Exchange-Traded Futures electronically via an independent service vendor and/or other electronic trading routing services;
- (16) the Applicant may execute a Permitted Client's order, by either voice or electronic means, on the relevant Recognized Exchange in accordance with the rules and customary practices of the exchange, or engage another broker/dealer (which may be an affiliate of the Applicant) to assist in the execution of such orders. The Applicant will remain responsible for the execution of each such order. The Applicant may perform both execution and clearing functions for Exchange-Traded Futures or may direct that a trade executed by the Applicant be cleared through a carrying broker/dealer (which may be an affiliate of the Applicant) if the Applicant is not a member of the Recognized Exchange or clearing house on which the trade is executed and cleared. Alternatively, the Permitted Client will be able to direct that trades executed by the Applicant be cleared through clearing brokers/dealers that are not affiliated with the Applicant (each, a "Non-MS Clearing Broker"). In addition, the Applicant may, from time to time, act as a clearing broker/dealer under give-up arrangements entered into with futures brokers/dealers that will execute trades in Exchange-Traded Futures for the Applicant's Permitted Client on a Recognized Exchange;

- (17) if the Applicant performs only the execution of a Permitted Client's order for Exchange-Traded Futures and "gives-up" the transaction for clearance to a Non-MS Clearing Broker, such clearing broker/dealer will also be required to comply with the rules of the exchanges of which it is a member and any relevant regulatory requirements, including requirements under the CFA as applicable. Each such Non-MS Clearing Broker will represent to the Applicant in a give-up agreement that it will perform its obligations in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange, and clearing house rules, and the customs and usages of the exchange and clearing house on which the Permitted Client's order for Exchange-Traded Futures will be executed and cleared. The Applicant will not enter into a give-up agreement with any Non-MS Clearing Broker located in the United States unless such clearing broker is registered with the CFTC and/or SEC, as applicable;
- (18) as is customary for all trading in Exchange-Traded Futures, a clearing corporation appointed by the exchange, or clearing division of the exchange, is substituted as a universal counterparty on all trades in Exchange-Traded Futures and Permitted Client orders will be submitted to the exchange in the name of the Non-MS Clearing Broker or the Applicant or, on exchanges where the Applicant is not a member, in the name of another carrying broker/dealer. The Permitted Client will be responsible to the Applicant for payment of daily mark-to-market variation margin and/or proper margin to carry open positions, and the Applicant, the carrying broker/dealer, or the Non-MS Clearing Broker will be, in turn, responsible to the clearing corporation/division for payment;
- (19) Permitted Clients that direct the Applicant to give up transactions in Exchange-Traded Futures for clearance and settlement by Non-MS Clearing Brokers will execute the give-up agreements described above. Permitted Clients will pay commissions for trades in Exchange-Traded Futures to the Applicant or the Non-MS Clearing Broker, or such commissions may be shared by the Applicant with the Non-MS Clearing Broker;
- (20) as a futures commission merchant subject to regulatory oversight by the CFTC, the Applicant is required to ensure that customer positions and monies be separately accounted for and segregated from the positions and monies of the Applicant. The CFTC regulations are designed to protect customers in the event of insolvency or financial instability of a futures commission merchant through which they clear their futures and futures options business. The Applicant will receive acknowledgements from any MS&Co. Approved Depository holding a Permitted Client's positions and monies that such positions and monies are to be separately held on behalf of such Permitted Client, with no right of set-off against the Applicant's obligations or debts;
- (21) all representatives of the Applicant who trade for customers in the U.S. in futures and options on futures, or who solicit customers in the U.S. to trade in futures and options on futures have passed the futures and options proficiency examination (i.e., the National Commodity Futures Examinations (Series 3)) administered by FINRA; and

- (22) transactions in non-US futures contracts (and options thereon) by Permitted Clients of the Applicant shall be subject to Part 30 of the Regulations of the CFTC which provides for certain asset protection standards for customers transacting in non-U.S. futures (and options thereon) to which the Applicant must adhere in its capacity as a futures commission merchant registered with the CFTC.

(C) Based on the foregoing, the Commission is of the opinion that it would not be prejudicial to the public interest to grant this order;

**IT IS ORDERED:**

1. **THAT**, pursuant to subsection 66(1) of the CFA, the CFA International Dealer Relief is granted, provided that:

- (a) at the time trading activity is engaged in:
  - (i) the Applicant is permitted to trade in Futures Contracts in the U.S. and is registered with the CFTC as a futures commission merchant and is a member of the NFA in good standing;
  - (ii) the Applicant's representatives are permitted to trade Futures Contracts in the U.S. and are registered with the CFTC and NFA; and
  - (iii) the Applicant has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* substantially in the form attached at Appendix A (the "F2");
- (b) each client in Manitoba effecting Futures Trades through the Applicant is a Permitted Client and, if using a Non-MS Clearing Broker, such clearing broker/dealer has represented and covenanted that it is or will be appropriately registered or exempt from registration under the CFA;
- (c) the Applicant only executes Futures Trades on the Recognized Exchanges for clients in Manitoba that are Permitted Clients;
- (d) the Applicant provides each client in Manitoba effecting Futures Trades through the Applicant with disclosure upon entering into the agreement by which it establishes an account with the Applicant that includes:
  - (i) a statement that there may be difficulty in enforcing any legal rights against the Applicant or any of its directors, officers or employees because they are resident outside of Canada and all or substantially all of their assets are situated outside of Canada;
  - (ii) a statement of the jurisdiction of the Applicant's head office or principal place of business;
  - (iii) a statement that the Applicant is not registered as a dealer under the CFA and, accordingly, the protection available to clients of a

futures commission merchant registered under the CFA will not be available to clients of the Applicant;

- (iv) the name and address of the Applicant's agent for service in Manitoba; and
- (v) a risk disclosure statement providing substantially similar disclosure to the disclosure in Form 13 *Risk Disclosure Statement for Futures and Options Under Commodity Futures Act* (Manitoba) attached at Appendix B (the "Risk Disclosure Statement");
- (e) the Applicant notifies The Manitoba Securities Commission of any Regulatory Action after the date of this order in respect of the Applicant by completing and submitting Appendix C within 30 calendar days of the Applicant becoming aware of such action;
- (f) the CFA International Dealer Relief is available to the Applicant so long as the Applicant is not registered in any Canadian jurisdiction; and
- (g) this order will expire five years after the date on which it is granted.

2. THAT the fee for this order is \$650.

**BY ORDER OF THE COMMISSION**



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Name: Chris Besko  
Title: Director and General Counsel  
The Manitoba Securities Commission

APPENDIX A

THE F2

**SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE**

1. Name of person or company ("International Firm"): Morgan Stanley & Co. LLC
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.: 2490
3. Jurisdiction of incorporation of the International Firm: State of Delaware in the United States of America
4. Head office address of the International Firm: 1585 Broadway  
New York, New York  
10036 United States of America
5. The name, e-mail address, phone number and fax number of the International Firm's chief compliance officer.  
  
Name: \_\_\_\_\_  
E-mail address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_
6. Name of agent for service of process (the "Agent for Service"): Thompson Dorfman Sweatman  
LLP
7. Address for service of process on the Agent for Service: 201 Portage Avenue, Suite 2200,  
Winnipeg, Manitoba, R3B 3L3  
Attn: Barry MacTavish
8. 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.
9. 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.
10. Until 6 years after the International Firm ceases to rely on the exemption from s. 24(1) and s. 40 of *The Commodity Futures Act* (Manitoba) granted by The Manitoba Securities Commission on \_\_\_\_\_ [insert date of this order], the International Firm must submit to the securities regulatory authority:

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- 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.
11. 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: \_\_\_\_\_, 2019

\_\_\_\_\_  
(Signature of the International Firm or authorized signatory)

\_\_\_\_\_  
(Name and Title of authorized 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: \_\_\_\_\_, 2019

\_\_\_\_\_  
(Signature of Agent for Service or authorized signatory)

\_\_\_\_\_  
(Name and Title of authorized signatory)



**APPENDIX B**  
**RISK DISCLOSURE STATEMENT**



Form 13

Risk Disclosure Statement for Futures and Options

*The Commodity Futures Act*

**RISK DISCLOSURE STATEMENT FOR FUTURES AND OPTIONS**

This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

**FUTURES**

**(1.) Effect of Leverage or Gearing**

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are leveraged or geared. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit; this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed your position may be liquidated at a loss and you will be liable for any resulting deficit.

**(2.) Risk-reducing Orders or Strategies**

The placing of certain orders (i.e., stop-loss order, where permitted under local law, or stop-limit orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as spread and straddle positions may be as risky as taking simple long or short positions.

**Options**

**(3.) Variable Degree of Risk**

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e., put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must

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increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling (writing or granting) an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the option is "covered" by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

### ADDITIONAL RISKS COMMON TO FUTURES AND OPTIONS

#### (4.) Terms and Conditions of Contracts

You should ask the firm with which you deal about the terms and conditions of the specific futures or options which you are trading and associated obligations (i.e., the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

#### (5.) Suspension or Restriction of Trading and Pricing Relationships

Market conditions (i.e., illiquidity) and/or the operation of the rules of certain markets (i.e., the suspension of trading in any contract or contract month because of price limits or circuit breakers) may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures

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contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge fair value.

### (6.) Deposited Cash and Property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be prorated in the same manner as cash for purposes of distribution in the event of a shortfall.

### (7.) Commission and Other Charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit, if any, or increase your loss.

### (8.) Transactions in Other Jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation that may offer different or diminished investor protection. Before you trade you should inquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

### (9.) Currency Risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

### (10.) Trading Facilities

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearinghouse and/or member firms. Such limits may vary; you should ask the firm with which you deal for details in this respect.

### (11.) Electronic Trading

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your

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order is either not executed according to your instructions or is not executed at all. Your ability to recover certain losses which are particularly attributable to trading on a market using an electronic trading system may be limited to less than the amount of your total loss.

### (12.) — Off-exchange Transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counter-party to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks.

Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules.

**APPENDIX C**  
**NOTICE OF REGULATORY ACTION**

1. The firm has entered into a settlement agreement with a financial services regulator, securities or derivatives exchange, SRO or a similar agreement with a financial services regulator, securities or derivatives exchange, SRO or similar organization.

Provide the following information for each settlement agreement:

Name of entity	
Regulator/organization	
Date of settlement (yyyy/mm/dd)	
Details of settlement	
Jurisdiction	

2. A financial services regulator, securities or derivatives exchange, SRO or similar organization has:

	Yes
(a) determined that the firm violated securities regulations or rules of a securities or derivatives exchange, SRO or similar organization	
(b) determined that the firm made a false statement or omission	
(c) issued a warning or requested an undertaking by the firm	
(d) suspended or terminated a registration, license or membership of the firm	
(e) imposed terms or conditions on any registration or membership of the firm	
(f) conducted a proceeding or investigation involving the firm	
(g) issued an order (other than an exemption order) or a sanction to the firm for securities or derivatives-related activity (e.g. cease trade order)	

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. The firm is aware of an ongoing investigation of which the firm is the subject

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:

The Manitoba Securities Commission  
500-400 St. Mary Avenue  
Winnipeg, Manitoba R3C 4K5  
Attention: Director - Registration and Compliance  
Telephone: (204) 945-2561  
Email: [Chris.Besko@gov.mb.ca](mailto:Chris.Besko@gov.mb.ca)