

January 2, 2019

**In the Matter of
the Securities Legislation of
Nova Scotia
(the Jurisdiction)**

and

**In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions**

and

**In the Matter of
PGIM, Inc.
(the Filer)**

Decision

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting relief from the adviser registration requirement in connection with providing advice on:

- (a) a contract or instrument that is an option, swap, future, forward, or other financial or commodity contract or instrument whose market price, value, or delivery, payment or settlement obligations are derived from, referenced to or based on an underlying interest including a value, price, index, event, probability or thing that is not traded on an exchange (**OTC Derivatives**); and
- (b) exchange contracts including commodity futures contracts and options on commodity futures contracts (as that term is defined in Nova Scotia Blanket Order 91-501 *In the Matter of Over The Counter Trades in Derivatives*) (the **Nova Scotia Blanket Order**) (collectively, **Exchange Contracts**) that trade on certain exchanges located outside Canada (**Foreign Exchange Contracts**),

in both cases, for 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**) (such clients, **Permitted Clients**) (such relief sought, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Nova Scotia Securities Commission (**NSSC**) is the principal regulator for this Application; and

- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in each of Alberta and British Columbia (together with the Jurisdiction, the **Passport Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Nova Scotia Securities Commission is the principal regulator because the Filer is currently availing itself of the international adviser exemption in Section 8.26 of NI 31-103 (the **International Adviser Exemption**) in each of the Passport Jurisdictions, Ontario and Québec. The Filer is in the process of seeking relief similar to the Exemption Sought in Ontario, and outside of Ontario, Nova Scotia is the jurisdiction in which the Filer has the most significant client relationships for the activities described in this decision. The Filer does not require relief similar to the Exemption Sought in Québec.
2. The Filer is a company incorporated under the laws of the State of Delaware, United States. Its principal place of business is located in New Jersey, U.S.A.
3. The Filer is a subsidiary of Prudential Financial, Inc. (**Prudential**), a publicly-traded global insurance and financial services company listed on the New York Stock Exchange (symbol “PRU”) with assets under management of US\$1.33 trillion as of 30 June 2017. The Prudential group of companies comprises hundreds of companies in dozens of countries around the world. The Filer’s “affiliation” with these companies is solely through Prudential’s common parental ownership and not day-to-day business activities.
4. The Filer engages in the business of an adviser with respect to securities and with respect to Exchange Contracts and OTC Derivatives in the United States. The Filer provides investment management services on a fully discretionary basis to its clients through funds and separately managed accounts across multiple strategies and financial instruments.
5. The Filer is currently (a) registered with the Securities and Exchange Commission of the United States (the **SEC**) as an investment adviser; (b) registered with the Commodity Futures Trading Commission of the United States (the **CFTC**) as a commodity trading advisor and commodity pool operator; and (c) a member of the National Futures Association of the United States.
6. The Filer is not in default of securities legislation, commodity futures legislation or derivatives legislation in any jurisdiction where it carries on business.
7. The Filer is not registered in any of the Passport Jurisdictions, Ontario or Québec, and currently relies on the International Adviser Exemption for the purposes of advising Permitted Clients resident in each of the Passport Jurisdictions, Ontario and Québec.
8. The Filer seeks to act as a discretionary portfolio manager in the Passport Jurisdictions for institutional investors that are Permitted Clients. The proposed advisory services would

primarily involve the use of specialized investment strategies employing Foreign Exchange Contracts and/or OTC Derivatives.

9. The Filer will solicit business in the Passport Jurisdictions only from persons who qualify as Permitted Clients.
10. Were the proposed advisory services limited to securities, excluding Exchange Contracts or OTC Derivatives, the Filer could rely on the International Adviser Exemption and carry out such activities on behalf of Permitted Clients on a basis that would be exempt from the requirement to register as a portfolio manager under the legislation of each Passport Jurisdiction (the **Adviser Registration Requirement**).
11. There is currently no exemption in the Passport Jurisdictions from the Adviser Registration Requirement upon which the Filer can rely that is equivalent to the International Adviser Exemption for advising on Exchange Contracts and OTC Derivatives. Consequently, in order to advise Permitted Clients in Foreign Exchange Contracts and/or OTC Derivatives, in the absence of the Exemption Sought, the Filer would be required to satisfy the Adviser Registration Requirement and would have to obtain registration in the Passport Jurisdictions as an adviser in the category of portfolio manager.
12. The Filer is unable to rely on the registration exemption set forth in British Columbia Securities Commission Blanket Order 91-501 *Over-The-Counter Derivatives* (the **BC Blanket Order**) in respect of OTC Derivatives as the Filer is an international adviser advising on OTC Derivatives as an agent and therefore does not meet the requirements of paragraph (n) of the definition of “Qualified Party” in the BC Blanket Order.
13. The Filer does not require the Exemption Sought in respect of OTC Derivatives in either Nova Scotia or Alberta, as the Filer is able to rely on the Nova Scotia Blanket Order in Nova Scotia and on Alberta Securities Commission Blanket Order 91-507 *Over-the-Counter Trades in Derivatives* in respect of OTC Derivatives, as the definition of “Qualified Party” in these blanket orders is broad enough to encompass a firm relying on the International Adviser Exemption.
14. To the best of the Filer’s knowledge, the Filer confirms that there are currently no regulatory actions in respect of the type contemplated by the *Notice of Regulatory Action* attached as Appendix “B”, except as otherwise disclosed to the principal regulator in the Jurisdiction.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer provides advice in the Passport Jurisdictions as to trading in Foreign Exchange Contracts and OTC Derivatives only to Permitted Clients and does not advise any Permitted Client as to trading in contracts that are not Foreign Exchange Contracts or OTC Derivatives, unless providing such advice is incidental to its providing advice on Foreign Exchange Contracts and OTC Derivatives;

- (b) the Filer's head office or principal place of business remains in the United States;
- (c) the Filer is permitted to advise on Foreign Exchange Contracts and OTC Derivatives in the United States and is appropriately authorized by the SEC and/or the CFTC to carry out those activities;
- (d) as at the end of the Filer's most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the Filer, its affiliates and its affiliated partnerships (excluding the gross revenue of an affiliate or affiliated partnership of the Filer if the affiliate or affiliated partnership is registered under securities legislation, commodity futures legislation or derivatives legislation of a jurisdiction in Canada) was derived from the portfolio management activities of the Filer, its affiliates and its affiliated partnerships in Canada (which, for greater certainty, includes both securities-related, commodity-futures-related and derivatives-related activities);
- (e) before advising a Permitted Client with respect to Foreign Exchange Contracts or OTC Derivatives, the Filer provides the Permitted Client in a Passport Jurisdiction with written account agreement disclosure that includes all of the following:
 - (i) that the Filer is not registered in the relevant Passport Jurisdiction to provide the advice described in paragraphs (a) and (b) of this Decision and, accordingly, the protection available to clients of an adviser registered under the Legislation (or the equivalent legislation in the other Passport Jurisdictions) will not be available to clients of the Filer;
 - (ii) the foreign jurisdiction in which the Filer's head office or principal place of business is located;
 - (iii) that all or substantially all of the Filer's assets may be situated outside of Canada;
 - (iv) that there may be difficulty enforcing legal rights against the Filer because of the above; and
 - (v) the name and address of the Filer's agent for service of process in the relevant Passport Jurisdiction;
- (f) the Filer provides each Permitted Client with the same reports and information that is required to be provided to its clients that are "Qualified Eligible Persons" as that term is defined in Rule 4.7 of the *Commodity Exchange Act* (United States);
- (g) before advising a Permitted Client with respect to Foreign Exchange Contracts or OTC Derivatives, the Filer has submitted to the securities regulatory authority in the relevant Passport Jurisdiction a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A";
- (h) the Filer notifies the principal regulator of any regulatory action initiated after the date of this Decision with respect to the Filer or, to the best of the Filer's knowledge and belief after reasonable inquiry, any predecessors or specified affiliates of the Filer by completing and filing Appendix "B" within 10 days of the commencement of each such

action, provided that the Filer may also satisfy this condition by filing with the principal regulator,

- (i) within 10 days of the date of this Decision, a notice making reference to and incorporating by reference the disclosure made by the Filer pursuant to federal securities laws of the United States that is identified on the Investment Adviser Public Disclosure website, and
 - (ii) after 10 days from the date of this Decision, promptly, a notification of any Form ADV amendment and/or filing with the SEC that relates to legal and/or regulatory actions; and
- (i) this Order will expire five years after the date of this decision.

(signed) "Paul E. Radford"

Paul E. Radford, Q.C.

Chair

Nova Scotia Securities Commission

(signed) "Shirley P. Lee"

Shirley P. Lee, Q.C.

Vice-chair

Nova Scotia Securities Commission

APPENDIX "A"
SUBMISSION TO JURISDICTION AND
APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER
EXEMPTED FROM REGISTRATION

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 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;

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; and

c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

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 addresses (as applicable):

Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Halifax, NS B3J 1P3
Attention: Manager of Registration
Telephone: (902) 424-7768
Email: nsscexemptions@novascotia.ca

Alberta Securities Commission
Suite 600, 250-5th Street SW
Calgary, AB T2P 0R4
Attention: Market Regulation
Telephone: (403) 297-6454
Email: legalapplications@asc.ca

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Capital Markets Regulation
Telephone: (604) 899-6854
Email: CFLegal@bcsc.bc.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, self-regulatory organization (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 or similar 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, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity
Type of Action

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*.

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 affiliate 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:

Nova Scotia Securities Commission

Suite 400, 5251 Duke Street

Halifax, NS B3J 1P3

Attention: Manager of Registration

Telephone: (902) 424-7768

Email: nsscexemptions@novascotia.ca