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22nd Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue Queen ouest  
Toronto ON M5H 3S8

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Citation: *Royal Bank of Canada (Re)*, 2023 ONCMT 40  
Date: 2023-11-03  
File No. 2023-32

**IN THE MATTER OF  
ROYAL BANK OF CANADA**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT  
(Section 127(1) of the *Securities Act*, RSO 1990, c S.5)**

**Adjudicators:** Tim Moseley (chair of the panel)  
Russell Juriansz  
M. Cecilia Williams

**Hearing:** By videoconference, November 3, 2023

**Appearances:** Mark Bailey For Staff of the Ontario Securities  
Commission  
David Hausman For Royal Bank of Canada  
Jonathan Wansbrough

## ORAL REASONS FOR APPROVAL OF A SETTLEMENT

*The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.*

- [1] Staff of the Ontario Securities Commission alleges that Royal Bank of Canada did not account properly for costs incurred for software that it developed internally, using Royal Bank's staff and other internal resources, as opposed to being purchased from third-party vendors. Staff says that this improper accounting is a breach of s. 19(1) of the *Securities Act*,<sup>1</sup> which requires market participants such as Royal Bank to maintain proper books and records.
- [2] Staff and Royal Bank have entered into a "no-contest" settlement agreement, in which Royal Bank neither admits nor denies the truth of Staff's allegations. The parties jointly submit that it is in the public interest for us to approve this settlement. We agree. We reach that conclusion for the following reasons, in which we summarize the factual background that is set out in more detail in the settlement agreement.
- [3] Staff's allegations relate to two categories of internal software projects.
- [4] The first category includes smaller projects. For many years, and for the sake of expediency, Royal Bank adopted a particular accounting practice for these smaller projects. It aggregated the costs of the projects into a single pool and capitalized a percentage of those costs by applying one capitalization rate to all projects in the pool.
- [5] A pooling approach is not inherently problematic. However, Staff alleges that the way in which Royal Bank implemented the pooling approach was improper, in three ways:
  - a. Royal Bank included projects in the pool that were ineligible for capitalization;

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<sup>1</sup> RSO 1990, c S.5

- b. Royal Bank applied a capitalization rate that was an estimate, without sufficient supporting analysis; and
  - c. there were flaws in a review that Royal Bank did of its estimated capitalization rate.
- [6] The second category includes larger projects, which Royal Bank reviewed individually to determine eligibility for capitalization. For these larger projects, Staff alleges that Royal Bank carried capitalized assets on its balance sheet at full book value, when in some instances those assets should have been amortized or written off.
- [7] Staff does not allege that any of these deficiencies had any material impact on Royal Bank's financial statements. However, Staff submits that if its allegations were proven in an enforcement proceeding, Royal Bank's failure to keep accurate books and records as they relate to internal software would constitute a breach of s. 19(1) of the *Securities Act*.
- [8] These allegations are serious. Accurate financial disclosure is a cornerstone of Ontario securities law. Reporting issuers must prepare and maintain their books and records in accordance with applicable accounting standards. The conduct that Staff alleges, if it were proven, would warrant significant sanctions.
- [9] We note as a mitigating factor that Royal Bank undertook corrective measures to address the deficiencies in its books and records and controls relating to internal software cost capitalization. It did so before it was notified of an investigation relating to this issue.
- [10] To resolve Staff's allegations, Royal Bank has agreed to make a voluntary payment of \$2,000,000 to the OSC. Arising out of the same conduct alleged in this proceeding, but outside this proposed settlement, Royal Bank has also agreed to pay \$2,000,000 to Québec's Autorité des Marchés Financiers. Royal Bank has further agreed to pay \$8,000,000 to the United States Securities and Exchange Commission, although from that \$8,000,000, Royal Bank will receive an offset credit to reflect the amounts paid to the Autorité des Marchés Financiers and to the OSC.

- [11] The Capital Market Tribunal’s role at a settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to make the order requested. We have reviewed this settlement in detail, and we conducted a confidential settlement conference with counsel for both parties. We asked questions of counsel and heard their submissions.
- [12] We recognize that the agreement is the product of negotiation between Staff and Royal Bank. We respect the negotiation process. We accord significant deference to the resolution reached by the parties. We do have to be particularly mindful of our role to ensure that a settlement is in the public interest, when it is a “no-contest” settlement in which the respondent neither admits nor denies the truth of Staff’s allegations.
- [13] It is more difficult for parties to secure approval of no-contest settlements. However, in this case, we have considered section 17 of OSC Staff Notice 15-702, the *Revised Credit for Co-operation Program*, and we have taken into account the following factors:
- a. Staff alleged no dishonest or abusive conduct;
  - b. Royal Bank provided prompt, detailed and candid cooperation during the investigation;
  - c. there was no evidence of harm to investors;
  - d. Royal Bank is making the voluntary payments totaling \$8,000,000; and
  - e. Royal Bank implemented corrective measures before the OSC, the AMF or the SEC notified it of the investigation.
- [14] The parties submit that this proposed settlement adequately addresses the important principle of deterrence. We agree.

[15] In our view, therefore, it is in the public interest to approve this no-contest settlement. We will issue an order substantially in the form of the draft order attached to the settlement agreement.

Dated at Toronto this 3<sup>rd</sup> day of November, 2023

*"Tim Moseley"*

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Tim Moseley

*"Russell Juriansz"*

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Russell Juriansz

*"M. Cecilia Williams"*

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M. Cecilia Williams