Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue Queen Ouest, Toronto ON M5H 3S8

Citation: Macquarie Capital Markets Canada Ltd. (Re), 2018 ONSEC 12
Date: 2018-03-19
File No.: 2018-4

IN THE MATTER OF
MACQUARIE CAPITAL MARKETS CANADA LTD., FORMERLY KNOWN AS YORKTON SECURITIES INC.

REASONS AND DECISION
(Subsections 144(1) and (2) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	In writing	
Decision:	March 19, 2018	
Panel:	Robert P. Hutchison	Commissioner
Submissions by:	Derek Ferris	For Staff of the Commission
	Garth J. Foster	For Macquarie Capital Markets Canada Ltd., formerly known as Yorkton Securities Inc.

TABLE OF CONTENTS

REASONS AND DECISION

I. MACQUARIE'S APPLICATION

[1] This is an application made by Macquarie Capital Markets Canada Ltd., formerly Yorkton Securities Inc., (the **Applicant**) pursuant to section 144 of the *Securities Act*[1] (the **Act**), to vary an order made by the Ontario Securities Commission (the **Commission**) on December 19, 2001 (the **Order**).[2]

[2] The Order, among other things, approved a settlement agreement dated December 17, 2001 made between the Applicant and Staff of the Commission (**Staff**) in respect of trading conduct by officers and employees and compliance practices and procedures of the Applicant. The Order imposed a number of sanctions against the Applicant.

[3] The settlement and Order followed "lengthy and intensive Staff, CDNX and TSE investigations of Yorkton and individual registrants employed by Yorkton in respect of supervision and compliance, trading, personal investment and conflict of interest issues arising from Yorkton's business activities involving issuers and institutional and retail investors."[3] The misconduct was extensive and notorious at the time in terms of market and regulatory response. In this regard the Order referred specifically to compliance by the Applicant with proposed amendments to the Regulations of the Investment Dealers Association of Canada (now the Investment Industry Regulatory Organization of Canada (**IIROC**)) in respect of account supervision and related trading standards.

[4] Paragraph 5 of the Order required officers and employees of the Applicant to execute an undertaking that they would carry any trading accounts they may have (or have a beneficial interest in) at the Applicant. Paragraph 5 also required that the Applicant report any breaches of this undertaking to Staff.

[5] The purpose of this term was to ensure that the accounts and trading activities of officers and employees of the Applicant would be subject to appropriate supervision. The Applicant requests the Commission to vary the Order by removing the terms and conditions in paragraph 5 of the Order. The primary reason for the request is that the Applicant now only deals with institutional accounts and no longer has any retail clients, other than the accounts of its existing officers and employees. The Applicant proposes to transfer the accounts of its officers and employees to other IIROC Dealers. In addition, IIROC has requested that the Applicant no longer carry personal accounts of its officers and employees.

[6] The Applicant proposes that paragraph 5 be removed from the Order and that the variation provide for the manner in which officers and employees must transfer their accounts at the Applicant to other pre-approved IIROC dealers and include provisions as to how those accounts will be operated including reporting, confirmation of compliance and certain trade pre-approvals. In addition, the Applicant advised that it was in the process of implementing new policies and procedures in respect of account supervision.

---

[1] RSO 1990, c S.5
[2] *Yorkton Securities Inc. (Re),* (2001) 25 OSCB 1106 (***Yorkton***).
[3] *Yorkton*, Appendix, Settlement Agreement at para 114.

II. SUBMISSIONS OF THE PARTIES

[7] The hearing in this proceeding was conducted in writing in accordance with the Commission's *Rules of Procedure and Forms*[4] and with the consent of the parties.

[8] Apart from the initial application materials which included a copy of the Order and a supporting affidavit of the Chief Compliance Officer and Senior Vice President, Risk Management Group of the Applicant,[5] the Panel asked in writing two sets of questions of counsel for the Applicant and for Staff. Counsel provided helpful and prompt responses to the questions. A number of versions of the draft order varying the Order were developed and commented on by the parties. Ultimately, the parties consented to the form of an order to be issued by the Commission.

III. ANALYSIS

[9] Under section 144 of the Act the Commission is authorized to vary a previous decision of the Commission on the application of, among others, a person affected by such decision if, in the opinion of the Commission, the order would not be prejudicial to the public interest. In addition, pursuant to subsection 144(2) the Commission may impose terms and conditions in making a variation order.

[10] The Panel has determined for the reasons that follow that it would not be prejudicial to the public interest to make the order described below and which has been consented to by the parties. However, in view of the fact that the order made differs substantially from the language in the order initially requested by the Applicant some further comment is in order.

[11] The conduct and circumstances that paragraph 5 of the Order pertained and responded to occurred approximately 20 years ago. Since that time it is apparent from the submissions of the Applicant—and without any objection by Staff—that the nature of the Applicant and the regulatory environment to which it is subject have changed considerably. First, the ownership (now foreign institutional), senior management and nature of business (no retail accounts, with the exception of its existing officer and employee accounts) have substantially changed. Second, the relevant regulatory requirements to which the Applicant is subject relating to account supervision have changed, including those in the course of development by IIROC's predecessor at the time of the Order. Finally, there has been no evidence adduced to suggest that the culture of non-compliance which characterized the Applicant 20 years ago is present today.

[12] In view of the foregoing, the Panel finds that it is no longer necessary nor in the public interest for the Order to include the terms and conditions in paragraph 5. In addition, the terms and conditions and conditions to be included in an amended Order as initially proposed by the applicant appear to be generally duplicative of the relevant statutory and IIROC requirements. To the extent that the Applicant believes that more rigorous policies and procedures are in order for any reason including the nature of its business, it is free to implement them—in fact, IIROC requirements invite such an approach.

[13] In addition, the order to be made will include a term requiring the Applicant to report to Staff within 90 days of the date of the order to confirm that its

[4] (2017), 40 OSCB 8988.
[5] Marked as Exhibit #1 in the written hearing.

proposed new policies and procedures have been finalized and implemented. To the extent that there may be perceived deficiencies in such policies and procedures, they can be addressed by Commission Staff or IIROC, or both.

[14] The Commission in its general statutory mandate and, in the present context, under section 144 is required to act in the public interest or in a manner that is not prejudicial to the public interest. In carrying out its responsibilities it has identified and adopted certain principles and priorities, one of which is the reduction of regulatory burden.[6] It is worth noting that this application invites consideration of that objective in at least two ways. First and as indicated above, the Panel does not see any reason why the Applicant should be subject to regulatory requirements that may be duplicative of, or additive to, other requirements imposed by order rather than pursuant to compliance with securities law requirements of general application to all comparable registrants. Second, regulatory burden not only affects registrants and other market participants, but also the regulator as well. In this application, there does not seem to be any reason why (1) the authority of the Commission should be invoked in continuing to impose terms on the registration of the Applicant, or (2) the resources of the Staff of the Commission should be spent on monitoring, or potentially enforcing as appropriate, an outstanding order.

[15] Lastly, the Panel would like to make clear that its approach to this application and its decision is not to be construed as critical of the Applicant in any way or that the Applicant's implied deference to the outstanding Order is not recognized. However, it would appear that the Applicant's interests and the public interest are best served by the variation to the Order described below.

IV. CONCLUSION

[16] For the reasons above, a separate order shall be issued giving effect to the reasons, and the Order is varied as follows:

1. pursuant to subsection 144(1) of the Act, the Order is varied by removing the terms and conditions in paragraph 5 of the Order; and

2. pursuant to subsection 144(2) of the Act, Macquarie shall adopt new policies and procedures in accordance with applicable Ontario securities laws, including the IIROC Dealer Member Rules and Universal Market Integrity Rules to deal with the supervision of the accounts of officers and employees of Macquarie that will be transferred from Macquarie to, or otherwise established at, other IIROC dealers, and Macquarie shall confirm in writing to Staff of the Commission within 90 days of the date of this order that these new policies and procedures have been finalized and implemented.

Dated at Toronto this 19th day of March, 2018.

"Robert P. Hutchison"

Robert P. Hutchison

[6] See paragraph 6 of section 2.1 of the Act.