

In the Matter of
the Securities Legislation of
Alberta, Saskatchewan, Ontario and Newfoundland and Labrador

and

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

and

In the Matter of
Macquarie Capital Markets Canada Ltd. (the **Filer**)
Decision

Background

The securities regulatory authority or regulator in each of Alberta and Ontario (the **Dual Exemption Decision Makers**) has received an application from the Filer for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-Up Transactions (as defined below), from the requirement (the **Statement of Account Requirement**) that a dealer must deliver a statement of account to each client at least once every three months, or at the end of a month if the client has requested statements on a monthly basis or if a transaction was effected in the client's account during the month (the **Dual Exemption**).

The securities regulatory authority or regulator in each of Alberta, Saskatchewan, Ontario and Newfoundland and Labrador (the **Coordinated Exemption Decision Makers**) has received an application from the Filer for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-Up Transactions, from the requirement (the **Trade Confirmation Requirement**) that every registered dealer who has acted as principal or agent in connection with a purchase or sale of a security shall promptly send by pre-paid mail or deliver to the customer a written confirmation of the purchase or sale (the **Coordinated Exemption**).

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

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice under section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* that the Dual Exemption is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon;

- (c) the decision with respect to the Dual Exemption evidences the decision of the principal regulator and the securities regulatory authority or regulator in Ontario; and
- (d) the decision with respect to the Coordinated Exemption evidences the decision of each Coordinated Exemption Decision Maker.

Interpretation

Terms defined in MI 11-102 or National Instrument 14-101 *Definitions* have the same meaning if used in this decision unless otherwise defined herein.

Representations

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

1. The Filer is a corporation amalgamated under the laws of Ontario. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is a wholly-owned indirect subsidiary of Macquarie Group Limited (**Macquarie**). Macquarie is a bank holding company subject to the regulation and oversight of the Australian Prudential Regulatory Authority (**APRA**).
3. The Filer is: a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**); registered as an investment dealer in British Columbia, Alberta, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon, an investment dealer and a futures commission merchant in Ontario and Manitoba, and an investment dealer and derivatives dealer in Québec; a participating organization or member of the TSX, TSX Venture Exchange and Montreal Exchange and certain electronic markets; and a member of the Canadian Derivatives Clearing Corporation.
4. The Filer intends to launch a new business in Canada (the **Subject Business**) which will trade in commodity futures contracts and commodity futures options (collectively, **Futures Contracts**) and in options on equities or indexes (collectively, **Securities**) that are listed or traded on one or more marketplaces, and in the context of such launch is seeking the relief described below. The Filer has been informed by Macquarie that, pursuant to the rules of the APRA, the Filer will be required to transfer the Subject Business after its launch within a prescribed period (expected to be approximately 18 months) to another existing or new wholly-owned indirect subsidiary of Macquarie (the **APRA Transfer Requirement**).
5. The Filer intends to act as an executing broker in Give-Up Transactions (as defined below) involving Futures Contracts and Securities. As well, the Filer intends, at some point, to act as a clearing broker for “institutional customers” as defined in IIROC Dealer Member Rule 1.1 (**Institutional Customers**).
6. The Filer will provide trading services only to Institutional Customers.

7. A **Give-Up Transaction** is a purchase or sale of Futures Contracts or Securities by a Institutional Customer that has an existing relationship as a client with a clearing broker, but wishes to use the trade execution services of one or more other executing brokers for the purpose of executing such purchases or sales (**Subject Transactions**) on one or more markets, whether domestic or global. Under these circumstances the executing broker executes the Subject Transactions as directed by the Institutional Customer and “give up” such trades to the clearing broker for clearing, settlement and custody. The service provided by the executing broker will be limited to trade execution only.
8. The clearing broker remains subject to the applicable Trade Confirmation Requirement and Statement of Account Requirement in respect of its Institutional Customers in Give-Up Transactions. The clearing broker will maintain an account for the Institutional Customer that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the Institutional Customer. For a Give-Up Transaction, the Institutional Customer will not sign account documentation with the executing broker, nor will the executing broker receive monies, securities, margin or collateral from the Institutional Customer. The Institutional Customer, however, will enter into an agreement with the executing broker and the clearing broker that governs their “give-up” relationship (a **Give-Up Agreement**).
9. Although the Filer is responsible for its own record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own Institutional Customers, it does not provide Account Services for execution-only Institutional Customers. Such Account Services remain the responsibility of those Institutional Customers' clearing broker.
10. The Filer does, however, record in its own books and records and accounting system all Give-up Transactions that it executes, which generally comprise those Securities and Futures Contract positions held by it that are not allocated to any of its own accounts. The Filer communicates these unallocated positions to the relevant clearing brokers who either accept or reject the positions so allocated on behalf of their clients based on existing Give-Up Agreements. If a clearing broker rejects a proposed allocation, the Filer contacts the person who executed the trade to obtain clarifying instructions and then allocates the position in accordance with the instructions so received.
11. The Filer prepares a monthly or transaction-by-transaction invoice detailing all Give-up Transactions (including the amount of any commission to the Filer for execution thereof) that the Filer conducted during the month for each Institutional Customer under a Give-up Agreement. The Filer delivers such invoice to the clearing broker who then reconciles the Give-up Transactions with its own records.
12. The clearing broker will have the primary relationship with the Institutional Customers and is contractually responsible for trade and risk monitoring as well as reporting trade confirmations and sending out monthly statements.

13. The Filer is, to the best of its knowledge, in compliance with all IIROC requirements relating to the maintenance of records of executed transactions and all applicable securities, futures or derivatives legislation in any jurisdiction.
14. Application of the Statement of Account Requirement to the Filer when it provides only trade execution services in respect of Give-Up Transactions would:
 - (a) be duplicative and confusing because delivery of the required statements of account to execution-only Institutional Customers would capture only some, but not all, of the information that would be contained in the statements of account delivered to the same Institutional Customers by their clearing brokers; and
 - (b) not be required to establish an audit trail or to facilitate reconciliation of Give-Up Transactions as between the Filer and a clearing broker.
15. The Filer has further requested that the exemptive relief be granted in favour of any Canadian subsidiary (within the meaning of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*) of Macquarie (a **Complying Affiliate**) which:
 - (a) acquires the Subject Business from the Filer in compliance with the APRA Transfer Requirement, and operates the Subject Business in a manner consistent with the representations of the Filer made herein;
 - (b) is, to the best of its knowledge, at the time of operating the Subject Business, a member of IIROC, in compliance with all IIROC requirements;
 - (c) together with the Filer, as applicable, has filed a notice with the securities regulatory authority or regulator in each of the jurisdictions and with IIROC (i) setting out the identity of the Complying Affiliate, (ii) confirming that the transfer of the Subject Business has occurred, and (iii) confirming that the representations set out in paragraphs 5 to 12 above continue to apply to the business of the Complying Affiliate; and
 - (d) undertakes to comply with the conditions of the exemptive relief granted in this order.

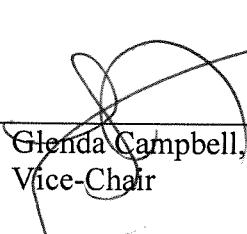
Decision

Each Coordinated Exemption Decision Maker is satisfied that the decision meets the test set out in the legislation of the jurisdiction for the relevant regulator or securities regulatory authority to make the decision.


The decision of the Dual Exemption Decision Makers under the legislation of Dual Exemption Decision Makers is that the Dual Exemption is granted, and the decision of the Coordinated Exemption Decision Makers under the legislation of the Coordinated Exemption Decision Makers, is that the Coordinated Exemption is granted, in respect of the Filer and in respect of any Complying Affiliate, provided that:

- (a) the Filer, or the Complying Affiliate, as applicable, provides trade execution services in respect of Give-Up Transactions only for Institutional Customers;
- (b) the Filer, or the Complying Affiliate, as applicable, enters into a Give-Up Agreement with the clearing broker and the Institutional Customer;
- (c) the clearing broker has agreed to provide each Institutional Customer with written trade confirmations and statements of account that include information for any Subject Transactions; and
- (d) in the case of the Dual Exemption and the Coordinated Exemption granted to a Complying Affiliate, the Filer and the Complying Affiliate have filed the notice and undertaking referred to in paragraph 14 above.

For the Commission:



Glenda Campbell, QC
Vice-Chair



Stephen Murison
Vice-Chair