



THE MANITOBA
SECURITIES
COMMISSION

THE COMMODITY FUTURES ACT)
)
Section 66(1))
) Order No. 6608
) October 31, 2012

MACQUARIE CAPITAL MARKETS CANADA LTD.

WHEREAS:

(A) Macquarie Capital Markets Canada Ltd. (the “Applicant”) has applied to The Manitoba Securities Commission (the “Commission”) for an order pursuant to section 66(1) of *The Commodity Futures Act* (the “CFA”) exempting the Applicant from the requirements of sections 44 and 45 of the CFA to deliver certain confirmations and statements of trades to customers (the “Delivery Requirements”) in connection with acting as a executing broker for Give-Up Transactions.

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

(1) The Applicant is a corporation amalgamated under the laws of Ontario. The head office of the Applicant is located in Toronto, Ontario.

(2) The Applicant 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 Applicant 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 Quebec; a participating organization or member of the TSX, TSX Venture Exchange and Montreal Exchange and other electronic markets; and a member of the Canadian Derivatives Clearing Corporation.

(4) The Applicant intends to launch a new business in Canada (the “Subject Business”) which will trade in, among other things, 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 Applicant has been informed by Macquarie that, pursuant to the rules of the APRA, the Applicant 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 Applicant intends to act as executing broker in Give-Up Transactions (as defined below) involving Futures Contracts and Securities. As well, the Applicant intends, at some point, to act as a clearing broker for "institutional clients" as defined in IIROC Dealer Member Rule 1.1 ("Institutional Customers").

(6) The Applicant will provide trading services only to Institutional Customers.

(7) A Give-Up Transaction is a purchase or sale of Futures Contracts or Securities by an Institutional Customer that has an existing relationship as a client with a clearing broker, but wishes to use the trade executions 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 will execute the Subject Transactions as directed by the 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 will remain subject to the applicable Delivery Requirements 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 Applicant 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 an execution-only Institutional Customer. Such Account Services remain the responsibility of those Institutional Customers' clearing broker.

(10) The Applicant 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 Applicant 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 Applicant 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 Applicant prepares a monthly or transaction-by-transaction invoice detailing all Give-Up Transactions (including the amount of any commission to the Applicant for execution thereof) that the Applicant conducted during the month for each Institutional Customer under a Give-Up Agreement. The Applicant 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 Applicant is 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) Section 44(1) of the CFA requires that a registered dealer that has acted as an agent in respect of a trade in a commodity futures contract or commodity futures option, including a trade upon the exercise of a commodity futures option, shall, without delay, provide a written confirmation of the transaction to, among others, the customer.

(15) Section 45(1) of the CFA requires that a registered dealer that has acted as agent in respect of a liquidating trade in a commodity futures contract or commodity futures option shall, without delay, provide, in addition to a written trade confirmation, a prescribed form of written statement of the purchase and sale to, among others, the customer.

(16) Section 45(2) of the CFA provides that where a commodity futures contract or commodity futures option transaction has been effected during a month, or there remains outstanding an unexpired and unexercised commodity futures option, or an open commodity futures contract, in a customer's account, the dealer must send a prescribed form of written monthly statement to, among others, the customer.

(17) Application of the Delivery Requirements to the Applicant when it provides only trade execution services in respect of Give-Up Transactions would:

- (a) be duplicative and confusing because delivery of the required confirmations and statements of accounts to execution-only Institutional Customers would capture only some, not all, of the information that would be captured by the confirmations and 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 Applicant and a clearing broker.

(18) The Applicant 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 Applicant in compliance with the APRA Transfer Requirement and operates the Subject Business in a manner consistent with the representations of the Applicant made herein;

- (b) is, at the time of operating the Subject Business, a member of IIROC, in compliance with all IIROC requirements;
- (c) together with the Applicant, 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 facts 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.

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


IT IS ORDERED:

1. **THAT** pursuant to section 66(1) of the CFA the Applicant and any Complying Affiliate are exempt from the requirements of sections 44(1) and 45(1)(2) of the CFA for the purposes of acting as executing broker for Give-Up Transactions provided that:

- (a) the Applicant, or the Complying Affiliate, as applicable, provides trade execution services in respect of Give-Up Transactions only for Institutional Customers;
- (b) the Applicant, 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 Transaction; and
- (d) in the case of the exemption granted to a Complying Affiliate, the Applicant and the Complying Affiliate have filed the notice and undertaking referred to in paragraph 18 above.

2. **THAT** the fee for this order is \$650.00.

BY ORDER OF THE COMMISSION



Director - Legal