

2010 BCSECCOM 646

Settlement Agreement

Mackie Research Capital Corporation

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Mackie Research Capital Corporation agree as follows:

Agreed Statement of Facts

1. Mackie Research Capital Corporation, formerly Research Capital Corporation, (Research) is registered as an investment dealer under the Securities Act, RSBC 1996, c. 418 (the Act), and is a member of the Investment Industry Regulatory Organization of Canada.
2. Research's head office is in Toronto, Ontario and it has a branch office in Vancouver, British Columbia.
3. On February 27, 2004, the Commission issued a decision in which it found that, between February 2000 and February 2002, Research had executed trades in contravention of a cease trade order issued under the Act.
4. The Commission ordered, among other things, that Research make changes to its systems and procedures to prevent further trading in contravention of cease trade orders.
5. Research complied with the order and, in August 2004, it implemented a new compliance system (the CTO System) to prevent trades in securities subject to cease trade orders.
6. Certain aspects of the CTO System broke down in mid-2005. The result was that Research was unable to detect and prevent trades in securities quoted on the United States over the counter markets that were subject to cease trade orders.
7. Research could have detected the breakdown if it had implemented rigorous testing procedures, ensured that its compliance staff were familiar with all aspects of the CTO system, and described all aspects of the CTO System in its compliance manual.
8. Research became aware of the deficiency in the CTO System, and took steps to address that deficiency, only after Commission staff detected it and notified

2010 BCSECCOM 646

Research in October 2007 that it had executed certain trades in contravention of a cease trade order.

Misconduct

9. From mid-2005 to September 2007, Research executed 46 trades that, collectively, contravened eight cease trade orders issued under section 164 of the Act.
10. Research failed to establish and apply adequate written procedures to ensure that it was not executing trades for its clients in cease traded securities, contrary to section 44(1) of the Securities Rules, B.C. Reg. 194/97 (the Rules).

Undertakings

¶ 2 Research undertakes to:

11. Comply fully with the Act, the Rules and any applicable regulations.
12. Pay \$225,000 to the Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.
13. Engage an independent monitor (Monitor), approved by the Executive Director, to review Research's compliance system and written procedures relating to cease trade orders. The purpose of the reviews will be to determine whether, in the Monitor's opinion, Research has an effective compliance system and adequate written procedures to ensure compliance with cease trade orders issued under Act. The Monitor will perform an initial review within 12 months after the date of this settlement agreement, and a follow up review 12 months after the completion of the initial review.
14. Co-operate fully with the Monitor in every respect.
15. Require the Monitor to provide a written report to the Executive Director within thirty days after completion of each review.
16. Rectify any deficiencies detected by the Monitor as soon as practicable, and inform the Executive Director of the remedial action taken.
17. Pay all costs associated with the reviews and the engagement of the Monitor.

Waiver

¶ 3 Research waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

2010 BCSECCOM 646

Counterpart

¶ 4 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 5 November 22, 2010

¶ 6 “Andrew Selbie, CFO”
Mackie Research Capital Corporation
(Signing Authority)

“Mark Censale”)
Witness Signature)
Mark Censale)
Witness Name (please print))
3120 Kirwin Ave)
)
)
Mississauga, Ont L5A 3R2)
Address)
Chief Compliance Officer)
Occupation)

¶ 7 November 26, 2010

Paul C. Bourque

¶ 8 Paul C. Bourque, Q.C.
Executive Director