



Via Email to comments@osc.gov.on.ca

January 10, 2022

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario
M5H 3S8

Re: OSC Staff Notice 33-753: OSC Consultation on Tied Selling and other Anti-Competitive Practices in the Capital Markets

Paradigm Capital commends the initiative being taken by the Honourable Minister of Finance in requesting that the Ontario Securities Commission undertake an analysis of questions regarding the practice of tied selling raised by the Capital Markets Modernization Taskforce. To repeat a message from the Chair of that Taskforce: *"A vibrant economy needs vibrant capital markets, driven by innovation, competition and diversity."* Tied selling does nothing to advance these three critical components. Instead, tied selling restricts a competitive process which should allow those who can deliver valued products and/or services to a client to be engaged over those who deliver a less valued product or service.

When forming the Taskforce, the Ontario government identified that 70% of capital market participants are small and medium-sized businesses (SMBs), and that the regulatory framework of the capital markets must be responsive to SMBs to encourage competitiveness and innovation. As an independent investment dealer, Paradigm Capital has more than twenty years of working with competitive, innovative entrepreneurs and observing the key capital market issues affecting them. We are at the intersection of the deployment of capital by sophisticated investors (primarily institutions) to growing Canadian SMBs, a critical juncture in the life cycle of those companies.

The Canadian chartered banks perform many services extremely well, but their accomplishments in supporting SMBs through significant phases of their development – usually coincident with a critical need for patient capital and advisory support – are more difficult to document.

Independent agents in our capital markets see no shortage of imaginative business initiatives. Independents have a long history of marrying entrepreneurs to the capital necessary to nurture their ventures. Independents, however, are forced to contend with commonplace anti-competitive practices that are employed by the Canadian banks. The banks deploy an array of measures to limit competitive threats to their oligopoly. Tied selling, as identified by the Taskforce, is one of them.

Tied selling stunts the growth of Canadian companies by pressuring them too often to accept financial services from the banks, thereby restricting their options for access to capital and diminishing their access to experienced and objective advice from like-minded advisers.

Each of the four recommendations made by the Taskforce in its Final Report to address tied selling could be an effective start to remedying this pervasive problem. That the Commission has been instructed by the



Minister to seek industry input before any of the recommendations (or other solutions) are implemented is understandable. The process to seek industry input, though, has its limitations. The participants involved in tied selling (the banks who engage in the practice and the issuer corporations subjected to it) will not be naturally incented to be forthcoming in this public process. The Commission has broad powers to fully investigate the problem and those powers may need to be exercised if a complete picture of tied selling is to be achieved.

We emphasize that thorough consultation with issuers will be a critical component of the analysis being undertaken by the Commission, not only because issuers will have evidence of offending practice but equally important so that any contemplated changes do not produce any unintended consequences on this critical group of the Canadian economy.

Paradigm Capital participated vigorously during the Capital Markets Modernization Taskforce process. We appreciate the opportunity to provide the following comment on some of the questions posed by the Commission.

Is there evidence of commercial lenders requesting issuer clients to retain the services of a dealer or adviser affiliated with the commercial lender to assist with the issuer's capital raising and/or advisory needs, or vice versa? If yes, please provide particulars.

From information shared with us over two decades of providing services to issuer corporations, the answer is “yes”. We hear about tied selling repeatedly from corporations. It is prevalent especially where the corporation is not operating from a position of financial strength. We have been advised that it usually involves discussions around credit availability and the suggestion that the issuer would be well served to use investment banking services offered by an affiliate of the lender.

To the extent there is evidence of commercial lenders requesting issuer clients to retain the services of an affiliated dealer or adviser, please explain the nature of the request.

Paradigm Capital is not privy to the conversations between corporations and commercial lenders. It is good that the Commission is seeking input directly from those parties. The Commission should further consider the option to investigate the practice more directly with those participants.

Some commenters have suggested that, if improper tied selling is occurring, this should be addressed through existing enforcement mechanisms such as the Competition Act, the Bank Act and/or NI 31-103. Do you feel this is an effective way to deal with the potential concerns outlined in this Notice? If not, why not?

If those enforcement mechanisms were used, they could be an effective way to deal with tied selling.

The Taskforce recommended that the Commission work with the Canadian Securities Administrators (the CSA) to amend National Instrument 33-105 Underwriting Conflicts and/or through the adoption of a local rule to require an independent underwriter in prospectus offerings in circumstances where the issuer would be considered a "connected issuer" to one or more of the underwriters involved in the offering by virtue of any commercial lending relationship between an affiliate of the underwriter and the issuer. Do you agree or disagree with this recommendation? Please explain.



Paradigm Capital is supportive of a system that provides a level playing field. Issuer clients should have autonomy to choose which capital market participants it engages to provide the best services, free of undue pressure or coercion. If undue pressure or coercion exists and the current federal and provincial measures to stamp out those practices are proving to be ineffective, we fully support the initiative of the Taskforce to identify solutions within the purview of the Ontario government that might be effective to cease this anti-competitive practice. The focus should be, however, to eradicate the offending practices.

In sum, Paradigm Capital supports the investigations being undertaken by the Commission at the direction of the Minister of Finance. For the sake of vibrant capital markets, driven by innovation, competition and diversity, any initiative to curb anti-competitive practices of the banks in Canada is a good initiative, and one which will improve the health and prosperity of the Ontario and Canadian economies.

We remain available for any follow up the Commission or the office of the Minister of Finance may have in relation to this topic or any other touching on the health of the capital markets.

Sincerely,

David Roland
Chief Executive Officer