



Via Email

March 8, 2013

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, ON M5H 3S8
email: jstevenson@osc.gov.on.ca

Dear Mr. Stevenson,

Re: OSC Staff Consultation Paper 45-710 – Considerations for New Capital Raising Prospectus Exemptions

This comment letter is being submitted on behalf of RBC Dominion Securities Inc. and RBC Philips Hager & North Investment Counsel Inc. (collectively "RBC" or "we"). We are writing in response to the Ontario Securities Commission's ("OSC") request for comment on OSC Staff Consultation Paper 45-710 – *Considerations for New Capital Raising Prospectus Exemptions* (the "Consultation Paper") published on December 14, 2012. We welcome the opportunity to provide comments to the OSC in relation to the concept ideas for new capital raising exemptions as outlined in the Consultation Paper.

General Comments

We understand that the Consultation Paper has been published as part of the OSC's broadened scope to review whether new exemptions are required to facilitate capital raising for business enterprises in Ontario. Prior to implementing some of the proposed exemptions outlined in the Consultation Paper, and in particular the crowdfunding exemption, we believe it is important for the OSC to consider the experience and developments in other jurisdictions. In this regard, it will be critical to determine whether the proposed exemptions enhanced the capital raising mechanisms for small or medium enterprises in those jurisdictions and/or whether these exemptions have raised any adverse effects on investor protection.

Since the publication of the OSC's Consultation Paper, we note that several jurisdictions have proposed changes to the exemptions available within the exempt market. For example, the British Columbia Securities Commission ("BCSC") has published amendments to revoke the Northwest (NW) exemption as outlined in BC Instrument 32-513 – *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions*. Furthermore, the CSA, with the exception of the OSC and the BCSC, published Multilateral CSA Notice 45-311- *Exemptions from Certain Financial Statement Related Exemption to Facilitate Access to Capital by Small Businesses* which provides an offering memorandum-form exemption from having to file audited financial statements provided that the issuer meets certain conditions. Where possible and without jeopardizing investor protection, we strongly encourage the CSA to harmonize the various exemptions available under National Instrument 45-106 *Prospectus and Registration Exemptions*

("NI-45-106"). We continue to believe that a fully harmonized and consistent set of requirements across all jurisdictions will reduce confusion for both investors and market participants.

Specific Comments

We have outlined below our specific comments on the proposed new capital raising exemptions.

1. Family, Friends, and Business Associates Exemption

We do not believe that the OSC should adopt a family, friends or business associate exemption, which would allow securities to be issued to an unlimited number of family members, friends or business associates of the directors, executive officers or control persons of the issuer or its affiliates. We agree with the OSC's current position that this exemption is not appropriate in that it permits an issuer to distribute to a wider group of individuals who may not be accredited investors. We believe that the financial qualification criteria of the accredited investor exemption provides a bright line test and demonstrates, to a certain extent, the investor's ability to tolerate financial risk in the exempt market. Given that there is no limit to the amount of capital that could be raised under this exemption, investors may be putting themselves in a position of a greater risk. Furthermore, the lack of clear definitions for "close personal friends" and "close business associate" is problematic and increases the risk of non-compliance with the exemption.

2. Crowdfunding Exemption

The prospect of introducing a crowdfunding exemption in Ontario, or in any other Canadian jurisdiction, raises general investor protection concerns. In our view, a crowdfunding exemption would provide a large number of unsophisticated investors with access to the exempt market. Furthermore, non-accredited investors may not understand that investing in the exempt market may carry a significantly higher risk, and might even result in the distinct possibility that the investor loses all of his/her investment. We also have concerns with non-compliance by issuers using the crowdfunding exemption, specifically as it relates to risk disclosure. As an example, the BCSC conducted sample compliance reviews and learned that 74% of issuers relying on the Northwest exemption failed to provide purchasers with the necessary risk disclosure required under the exemption¹.

We believe that the involvement of a registrant helps to mitigate the risks associated with the exempt market since registrants are subject to stringent rules and regulations when recommending products to clients, including know-your-client and suitability obligations. While the OSC's crowdfunding proposal includes some investor protection safeguards, such as establishing limits on the amount of securities sold to an investor and requiring that the funding portal be a registrant, we believe that investors may be more vulnerable to fraud under this exemption.

If the OSC or CSA were to adopt the crowdfunding exemption, we believe that investor education would be a critical component to ensure that investors understand the risks associated with crowdfunding. We note that the OSC will be conducting investor research to determine whether the proposed exemptions outlined in the Consultation Paper are appropriate. To that end, we believe that the OSC should seek specific feedback on whether investors would understand investing in companies relying on the crowdfunding exemption, whether they would do so, and whether they have any underlying concerns with the offering of securities over the internet. Furthermore, we encourage the OSC to observe the experience in the United States prior to adopting a crowdfunding exemption in Ontario.

¹ Proposed Revocation of BC Instrument 32-513 *Registration Exemption for Trades in Connection with Certain Prospectus-Exempt Distributions* and BC Instrument 32-517 *Exemption from Dealer Registration Requirements for Trades in Securities of Mortgage Investment Entities*

3. Offering Memorandum Exemption

We do not object to the introduction of the Offering Memorandum (OM) exemption in Ontario. We believe harmonization of the exempt market is important to ensure that both investors and market participants have equal access to the exempt market regardless of the jurisdiction in which they reside. Nevertheless, we do not believe that harmonization should come at the expense of investor protection. As such, we agree with the OSC's proposal that limits should be established as part of the OM exemption for both investors and private issuers and that investment thresholds are necessary to provide investor protection for less sophisticated investors who do not qualify as accredited investors and who might not be able to withstand such a loss.

4. Prospectus exemption based on investment knowledge

In our view, an exemption based on investment knowledge would be used only in limited circumstances. However, we believe that the proposed exemption would allow distributions to a class of "sophisticated" investors who do not meet the minimum income or bright line tests of the accredited investor or minimum amount exemptions, respectively. We also believe that the accredited investor and minimum amount exemptions provide better protection with respect to risk exposure while an exemption based on investment knowledge would not.

5. Prospectus Exemption Based on Registrant Advice

We note that one of the conditions of the prospectus exemption based on registrant advice is that the investment dealer has contractually agreed that it has a fiduciary duty to act in the investor's best interest. We submit that a fiduciary duty should not be based on the type of product being recommended to a client. In our view, a separate consultation process on the standard of conduct of dealers and advisers has already taken place that we consider to be in a better position to evaluate this question, taking more factors than simply product type into account.

Thank you for the opportunity to provide comments on the Consultation Paper. We would welcome the opportunity to discuss the foregoing with you in further detail. If you have any questions or require further information, please do not hesitate to contact the undersigned.

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