



RBC Wealth Management
Dominion Securities

RBC Dominion Securities Inc.
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Via Email

January 9, 2014

Meg Tassie
Senior Advisor, Capital Markets Regulation
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
mtassie@bcsc.bc.ca

Dear Ms. Tassie:

Re: BC Notice 2013/09 – Request for Comment - Proposed Changes to Conditions of Registration – Investment Dealers with a BC Office that Trade in the U.S. Over-the-Counter Markets

This comment letter is being submitted on behalf of RBC Dominion Securities Inc. (“RBC DS”) in response to the request for comment issued by the British Columbia Securities Commission (“BCSC”) relating to the proposed amendments to the conditions of registrations for investment dealers with a British Columbia (“BC”) office that trade in the U.S. over-the-counter (“OTC”) markets (“Proposal”), published on October 29, 2013 (“Notice”).

RBC DS generally supports regulatory proposals that aim to curb abusive trading in U.S. OTC markets and enhance the process of information sharing in order to streamline the investigative efforts of securities regulatory authorities. Given that investment dealers as applicable have established business arrangements for trading in the securities of an “OTC issuer” (as defined in the current Conditions of Registration), we appreciate the BCSC’s intention, as stated in the Notice, of minimizing the impact of the Proposal on investment dealers while addressing the regulatory concerns. That said, we find that the scope of the proposed amendments as drafted is unclear and may lead to unintended consequences. Pending clarification from the BCSC, we strongly encourage the BCSC to consider re-issuing the proposal with additional guidance to provide investment dealers with an opportunity to fully assess the potential impact of the rules and provide informed feedback.

Our comments are outlined below:

Scope

Under the proposal, investment dealers may not engage in account activity involving a security of an OTC issuer through a BC office with any financial institution’s office in a jurisdiction, outside Canada or the United States, where the securities regulatory authority in that jurisdiction is not a signatory to the International Organization of Securities Commissions’ Multilateral Memorandum of Understanding (“IOSCO MMOU”). We seek clarification on the scope of the proposed prohibition. Based on the draft provisions, we interpret this to mean that the proposed prohibition is intended to apply in circumstances where the “financial institution” is a broker/dealer that is used by the investment dealer for trading in the U.S. OTC markets.

Should the BCSC wish to extend the application of the proposed prohibition to circumstances where the financial institution is a client of the investment dealer or a broker/dealer acting for the client of the investment dealer, we note that this may have unintended business consequences on investment dealers. In this case, we strongly suggest that BCSC consult with the industry to obtain feedback on investment dealers' practices before considering next steps, similar to the BCSC survey that was conducted in conjunction with the August 2012 proposal.

“Financial Institution”

The proposed definition of “financial institution” under subsections (a) to (i) outlines a non-exhaustive list of the types of organizations that may fall under the term. The list covers a broad range of organizations ranging from banks, pension funds to advisers.

Subsection (j) of the definition would capture “an entity similar to any of (a) to (i)”. We find that subsection (j) as drafted may be subject to interpretation. If the term is intended to capture similar entities that are located in a foreign jurisdiction, we suggest that the term can be revised to read “an entity conducting business in a foreign jurisdiction in a manner analogous to (a) to (i)”.

Subsection (k) provides that a “financial institution” would include an “affiliate” of a financial institution. First, it should be clarified whether the term “affiliate” has a meaning similar to that provided under proposed section 1.1 (for example, an entity is affiliated with a financial institution if (a) one of them is the subsidiary of the other, or (b) each of them is controlled by the same person). Second, the term “affiliate” as drafted may capture an entity that is not carrying on business similar to that of the entities under (a) to (j) and is part of a financial group under a complex corporate structure that may not be easily identifiable. Is the intention of the proposed prohibition intended to apply to dealings with financial institutions only? If so, we submit that the subsection (k) should be revised to clearly reflect the scope.

Transition Period

We suggest that the BCSC could consider providing investment dealers with a transition period, taking into account the time period that may be required to properly identify business arrangements that may be covered by the proposed prohibition and to address matters that may arise, as applicable (such as engaging a new broker/dealer for trading in U.S. OTC markets). At this time, we are not in a position to suggest a suitable timeframe without additional guidance from the BCSC.

With respect to proposed section 2.2, we note that 90 days would be an appropriate period for liquidating a position in the security of an OTC issuer.

We appreciate the opportunity to comment on the Proposal. For the reasons stated above, we encourage the BCSC to consider re-issuing the proposal with clarification, as that would provide investment dealers with an opportunity to fully assess the potential impact of the rules. If you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,

“Nick Cardinale”

Nick Cardinale
Chief Compliance Officer
RBC Dominion Securities Inc.