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Headnote

1996 Securities Act s. 48, 76 Employees & Consultants - exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution involving employees, consultants, past employees and similar persons. Trades by a general partner of units of a limited partnership that it manages to employees and officers of affiliated issuers and their relatives. Purchasers are limited to the affiliate's employees, officers and their relatives and related corporations and trusts. The employees and officers have experience and expertise in investment banking, money management, private equity investing or banking and spend a significant amount of time on the business of the partnership. Therefore, they are capable of evaluating the merits and risks of an investment in the partnership. The decision to invest in units of the limited partnership is made by the employee or officer on behalf of any of that person's relatives investing in the limited partnership.

Exemption Order

HSBC Capital 2005 Inc.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 HSBC Capital 2005 Inc. (the filer) applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain trades of limited partnership units of PEF 2005(C) Limited Partnership (the partnership).

Representations

- ¶ 2 The filer represents that:
1. it is incorporated under the laws of British Columbia;
 2. it is a direct wholly-owned subsidiary of HSBC Capital (Canada) Inc. (HCCA) and an indirect wholly-owned subsidiary of HSBC Bank Canada (the Bank), a Schedule II bank under the Bank Act (Canada);
 3. the partnership was established on April 13, 2005 as a limited partnership governed by the *Partnership Act* (British Columbia) by the filer (as general partner) and two individuals (as initial limited partners) who are employees of HCCA;

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4. neither the filer nor the partnership is a reporting issuer in British Columbia or in any other jurisdiction;
5. the partnership is a non-redeemable investment fund as defined in the Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103);
6. the filer is also the sole general partner of three other limited partnerships that, together with the partnership, constitute a new private equity fund currently being formed by the filer; the limited partners of the three other limited partnerships will all be accredited investors as that term is defined in MI 45-103;
7. the following (each an eligible person) will be eligible to be limited partners of the partnership:
 - (a) a director, officer, or employee of HCCA or affiliates of HCCA (a private equity professional);
 - (b) the spouse and any child or grandchild of a private equity professional (an eligible family member);
 - (c) a corporation wholly owned by one or more of a private equity professional or an eligible family member (an eligible holding company);
 - (d) a trust the only beneficiaries of which are a private equity professional or the spouse, children or grandchildren of the private equity professional and the trustee of which will be the private equity professional, or if the trust has two or more trustees:
 - (i) the private equity professional or his or her spouse, or both, will constitute at least 50% of the trustees; or
 - (ii) at least one trustee will be either the private equity professional or his or her spouse, in which case the unanimous vote of the trustees will be required for decisions of the trust;(an eligible trust);
 - (e) a registered retirement savings plan within the meaning of the Income Tax Act (Canada) under which the annuitant of the plan is a private equity professional or his or her spouse (an eligible RRSP); and
 - (f) certain affiliates (as defined in the *Bank Act* (Canada)) of the Bank;

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provided that the decision to invest in limited partnership units (units) of the partnership by each eligible person will be made by the private equity professional that is, or is related to, that eligible person;

8. no exemption from the registration and prospectus requirements is available for certain trades of units to eligible persons;
9. the private equity professionals are, and future private equity professionals will be, highly skilled individuals with experience and expertise in investment banking, money management, private equity investing or banking who at the time of their investment in the units:
 - (a) spend a significant amount of time and devote significant attention to the business and affairs of the partnership;
 - (b) are knowledgeable about the business and affairs of, and the investments made by, the partnership; and
 - (c) are capable of evaluating the merits and risks of an investment in the partnership;
10. investment in the units by each eligible person is voluntary; no eligible person will be induced to invest in the units by expectation of employment or continued employment of the private equity professional with HCCA, the filer, the partnership or their respective affiliates;
11. under the terms of the limited partnership agreement governing the partnership, the units may not be transferred, except with the prior consent of the general partner of the partnership, who will not unreasonably refuse to approve an assignment of units to an eligible person that is related to the holder of the units.

Order

¶ 3 Because it is not prejudicial to the public interest, the decision maker orders,

1. under sections 48 and 76 of the Act, that the registration and prospectus requirements do not apply to the distribution of units of the partnership to an eligible person provided that:
 - (a) the eligible person is not induced to purchase the units by expectation of employment or continued employment of the eligible person with the partnership or an affiliated entity of the partnership; and

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(b) before each trade, the filer delivers a copy of this order to each eligible person who is purchasing units; and

2. under section 76 of the Act, the first trade of units acquired under this order to a person who is not an eligible person will be deemed to be a distribution.

¶ 4 June 23, 2005

Noreen Bent
Acting Director, Corporate Finance
British Columbia Securities Commission