



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

June 11, 2009

DIVISION OF  
CORPORATION FINANCE

Mr. George S. Canellos  
Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, N.Y. 10005-1413

Re: SEC v. RBC Capital Markets Corporation (HO-10906)  
**Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act by Royal Bank of Canada**

Dear Mr. Canellos:

This is in response to your letter dated May 6, 2009, written on behalf of your client Royal Bank of Canada ("Company") and its subsidiary RBC Capital Markets Corporation ("RBC Capital") and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an ineligible issuer under Rule 405, arising from the settlement of a civil injunctive proceeding with the Commission. The Commission filed a civil injunctive complaint against RBC Capital in the United States District Court for the Southern District of New York alleging that RBC Capital violated Section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act"). RBC Capital filed a consent in which it agreed, without admitting or denying the allegations of the Commission's Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment as entered on June 9, 2009, permanently enjoins RBC Capital from violating Section 15(c) of the Exchange Act.

Based on the facts and representations in your letter, and assuming the Company and the RBC Capital will comply with the Final Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted and the effectiveness of such relief is as of the date of the entry of the Final Judgment. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

A handwritten signature in cursive script that reads "Mary J. Kosterlitz".

Mary Kosterlitz  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance

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May 6, 2009

## VIA FIRST CLASS MAIL AND E-MAIL

Mary Kosterlitz, Esq.  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-7553

**Re: Securities and Exchange Commission v. RBC Capital  
Markets Corporation (File No. HO-10906)**

Dear Ms. Kosterlitz:

We submit this letter on behalf of our client Royal Bank of Canada, a reporting company registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"), to request a determination by the Division of Corporation Finance, acting pursuant to authority duly delegated by the Securities and Exchange Commission (the "Commission"), that Royal Bank of Canada should not be an "ineligible issuer" as defined under Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act") as a result of the entry of a Judgment as to Defendant RBC Capital Markets Corporation ("RBC") (the "Judgment"). Relief from the ineligible issuer provisions is appropriate in the circumstances of this case for the reasons set forth below. It is also our understanding that the Staff of the Division of Enforcement (the "Staff") does not oppose the grant of exemptive relief, including the requested waiver. Royal Bank of Canada requests that this determination be made effective upon the entry of the Judgment.

## BACKGROUND

The Staff has engaged in settlement discussions with RBC in connection with the above-captioned civil proceedings, which will be brought alleging violations of Section 15(c) of the Exchange Act. As a result of these discussions, RBC submitted an executed Consent of Defendant RBC Capital Markets Corporation (the "Consent").

In the Consent, solely for the purpose of the proceedings brought by or on behalf of the Commission or in which the Commission is a party, RBC agreed to consent to the entry of the Judgment, without admitting or denying the allegations contained in the above-captioned Complaint (other than those relating to personal and subject matter jurisdiction, which are admitted). The Complaint concerns the marketing and sale of auction rate securities ("ARS") by the Respondent to investors. The Complaint alleges that RBC failed properly to disclose in communications with certain customers the increasing risks associated with ARS that RBC underwrote, marketed and sold. The Complaint further alleges that, through its employees and marketing materials, RBC misrepresented to many of its customers that ARS were safe, highly liquid investments that were substitutes for cash or money-market funds. The Complaint alleges that, as a result, numerous customers invested their savings in RBC's ARS that they needed or expected to have available on a short-term basis. The Complaint further alleges that (i) on February 11, 2008, RBC determined that it would not place bids in most of its auctions, as it had historically done, (ii) at or around the same time, other broker-dealers also discontinued their practice of placing bids in auctions, and (iii) as a result, most auctions failed, and RBC's customers were left holding more than \$8.8 billion in illiquid ARS. The Complaint alleges that RBC violated Section 15(c) of the Exchange Act.

The Judgment, among other things, will permanently restrain and enjoin RBC and its agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the Judgment, from violating, directly or indirectly, Section 15(c) of the Exchange Act. Royal Bank of Canada is not a party to the proceedings.

## DISCUSSION

Effective on December 1, 2005, the Commission reformed and revised the registration, communications, and offering procedures under the Securities Act.<sup>1</sup> As part of these reforms, the Commission created a new category of issuer defined under Rule 405 as a well-known seasoned issuer ("WKSI"). A WKSI is eligible under the new rules, among other things, to register securities for offer and sale under an "automatic shelf registration statement," as so defined. A WKSI is also eligible for the benefits of a streamlined registration process including the use of free-writing prospectuses in registered offerings pursuant to Rules 164 and 433 under

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<sup>1</sup> Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

the Securities Act. These benefits, however, are unavailable to issuers defined as “ineligible issuers”<sup>2</sup> under Rule 405.

Rule 405 defines “ineligible issuer,” in pertinent part, as any issuer which itself or any of its subsidiaries had within the past three years been “made the subject of any judicial or administrative decree or order arising out of a government action that [prohibits certain conduct or activities regarding, including future violations of, the antifraud provisions of the federal securities laws.” Notwithstanding the foregoing, paragraph (2) of the definition provides that an issuer “shall not be an ineligible issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” The Commission has delegated authority to the Division of Corporation Finance to make such a determination pursuant to 17 CFR § 200.30-1 (a)(10).

The Judgment might be deemed to render Royal Bank of Canada an ineligible issuer for a period of three years after the Judgment is entered.<sup>3</sup> This result would preclude Royal Bank of Canada from qualifying as a WKSI and having the benefits of automatic shelf registration and other provisions the Securities Offering Reform for three years. This would impose a significant burden on Royal Bank of Canada. Royal Bank of Canada is a frequent issuer of registered securities that offers and sells securities under a shelf registration statement in both one-off and ongoing debt and equity transactions. For Royal Bank of Canada, the shelf registration process provides an important means of access to the U.S. capital markets, which are an essential source of funding for the company's global operations. Consequently, the ability to avail itself of automatic shelf registration and the other benefits available to a WKSI is very important to Royal Bank of Canada.

As set forth above, Rule 405 authorizes the Commission to determine for good cause that an issuer shall not be an ineligible issuer, notwithstanding that the issuer or a subsidiary of the issuer becomes subject to an otherwise disqualifying judicial order. Royal Bank of Canada believes that there is good cause for the Commission to make such a determination here on the following grounds:

1. Designation of Royal Bank of Canada as an ineligible issuer is not warranted given the nature of the violations that are the basis of the Complaint. The alleged conduct related to the marketing and sale of ARS issued by third party issuers to RBC's customers. The Complaint does not challenge the disclosures by Royal Bank of Canada in its filings with the Commission, nor does it involve allegations of fraudulent activity by Royal Bank of Canada.

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<sup>2</sup> This request for relief is not intended to be limited solely for the purpose of continuing to qualify as a WKSI, but for all purposes of the definition of “ineligible issuer” under Rule 405 including but not limited to whatever purpose the definition may now or hereafter be used under the federal securities laws, including Commission rules and regulations.

<sup>3</sup> RBC Capital Markets Corporation is a wholly-owned indirect subsidiary of Royal Bank of Canada.

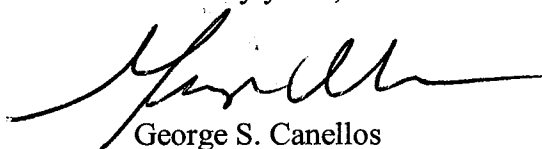
2. Royal Bank of Canada and RBC have strong records of compliance with the securities laws and fully cooperated with the Enforcement Division's inquiry into this matter.

3. Designation of Royal Bank of Canada as an ineligible issuer would be unduly and disproportionately severe. The Judgment will require RBC, among other things, to buy back approximately \$867 million of ARS sold to retail customers, without regard to whether customers received or relied upon false or misleading information supplied by RBC. RBC will also make whole any losses sustained by certain customers who sold ARS on or between February 11, 2008 and October 8, 2008. In addition, until RBC provides par solutions to clients pursuant to the Judgment, RBC will provide customers no-net-cost loans that will remain outstanding until the ARS are repurchased. Loss of, or the possibility of preclusion from WKSI privileges, and other adverse consequences thereof, would impose an additional penalty beyond what the Judgment requires and is not necessary to achieve its remedial purposes.

In light of the foregoing, subjecting Royal Bank of Canada to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists for the grant of the requested relief. Accordingly, we respectfully request that the Division of Corporation Finance, acting pursuant to authority duly delegated by the Commission and pursuant to paragraph (2) of the definition of "ineligible issuer" in Rule 405, determine that under the circumstances Royal Bank of Canada will not be considered an "ineligible issuer" within the meaning of Rule 405 as a result of the Judgment.<sup>4</sup> We further request that this determination be made (i) effective upon entry of the Judgment and (ii) for all purposes of the definition of "ineligible issuer," however it may now or hereafter be used under the federal securities laws and the rules thereunder.

If you have any questions regarding this request, please contact me at (212) 530-5174.

Sincerely yours,



George S. Canellos

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<sup>4</sup> We note in support of this request that the Division of Corporation Finance, acting pursuant to authority duly delegated by the Commission, has in other instances granted relief under Rule 405 for similar reasons. See e.g. Waiver Requests of Ineligible Issuer Status under Rule 405 of the Securities Act were granted for: UBS Financial Services, Inc. (December 23, 2008); Bank of America (May 1, 2008); Morgan Stanley (May 11, 2007); Banc of America Securities LLC (March 14, 2007); Bank of New York (January 9, 2007); and Deutsche Bank, AG (January 9, 2007).