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December 19, 2014

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0506

Re: *CFTC v. Royal Bank of Canada*, 2012-cv-2497 (S.D.N.Y. Apr. 2, 2012)

Dear Mr. Scheidt:

We submit this letter on behalf of our client, Royal Bank of Canada ("RBC"), the defendant in the above-captioned civil proceeding, which was filed on April 2, 2012.[1]

RBC seeks the assurance of the staff of the Division of Investment Management (the "Staff") that it would not recommend any enforcement action to the U.S. Securities and Exchange Commission (the "Commission") under Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") and Rule 206(4)-3 thereunder (the "Rule"), if any investment adviser that is required to be registered pursuant to Section 203 of the Advisers Act pays RBC, or any of its associated persons as defined in Section 202(a)(17) of the Advisers Act, a cash solicitation fee, directly or indirectly, for the solicitation of advisory clients in accordance with the Rule, notwithstanding the existence of a consent order (the "Consent Order")[2] (as described below) that otherwise would preclude such an investment adviser from paying such a fee, directly or indirectly, to RBC or certain related persons.

While the Consent Order does not operate to prohibit or suspend RBC or any of its associated persons from being associated with or (except as provided in Section 9(a) of the Investment Company Act of 1940, from which Section relief has been separately requested as described in footnote 3) acting as an investment adviser and does not relate to solicitation activities on behalf of any investment adviser, it may affect the ability of RBC and its associated persons to receive such payments.[3] The Staff in many other instances has granted no-action

[1] An amended complaint ("Amended Complaint") was filed on October 17, 2012.

[2] *CFTC v. Royal Bank of Canada*, Case No. 2012-cv-2497 (S.D.N.Y. Apr. 2, 2012).

[3] Under Section 9(a) of the Investment Company Act of 1940 ("Investment Company Act"), RBC, the settling defendant and its affiliated persons will, as a result of the Consent Order, be prohibited from serving or acting as,

relief under the Rule in similar circumstances. The staff of the Division of Enforcement at the United States Commodity Futures Trading Commission has informed us that it does not object to the grant of the requested no-action relief.

BACKGROUND

RBC and the Division of Enforcement of the United States Commodity Futures Trading Commission ("CFTC") have reached an agreement to settle a lawsuit filed by the CFTC (the "**Action**") in the United States District Court for the Southern District of New York (the "**Court**"). As part of the agreement, the parties have submitted a consent order ("**Consent Order**") that has been entered by the Court. RBC has consented to entry of the Consent Order by the Court without admitting or denying the findings set forth therein (other than those relating to service, venue, the jurisdiction of the district court over it and the subject matter, and the jurisdiction of the CFTC over the conduct alleged in the Action). RBC has not consented to the use of the Consent Order or the findings in the Consent Order, in any other proceeding to which the CFTC is not a party.

The Amended Complaint filed in the Action alleged that during the period June 1, 2007 and May 31, 2010 (the "**Relevant Period**"), RBC entered into certain stock futures contract transactions in "block trades," which are privately negotiated transactions pursuant to exchange rules, and which were reported and centrally cleared on an electronic futures exchange in Chicago, Illinois called OneChicago, LLC ("**OneChicago**"). (*See* Am. Compl., *CFTC v. Royal Bank of Canada*, 12-cv-2497 (AKH), Dkt. No. 50 (S.D.N.Y. Oct. 17, 2012).)[4] RBC entered into

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among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company or registered unit investment trust. RBC and its affiliated persons who act in the capacities set forth in Section 9(a) of the Investment Company Act filed an application under Section 9(c) of the Investment Company Act requesting the Commission to issue both temporary and permanent orders exempting them, and RBC and its' future affiliated persons should any of them serve or act in any of the capacities set forth in Section 9(a) in the future, from the restrictions of Section 9(a). The applicants believe that they meet the standards for exemptive relief under Section 9(c). On December 19, 2014, the Commission issued a temporary order (SEC Release No. IC-31388) effective as of the date of the Consent Order, and the applicants expect the Commission will issue a permanent order in due course thereafter.

[4] The Amended Complaint superseded the original complaint in the Action, which was filed on April 2, 2012. (*See* Compl., *CFTC v. Royal Bank of Canada*, 12-cv-2497 (AKH), Dkt. No. 1 (S.D.N.Y. Apr. 2, 2012).)

these block trades through its branches and internal trading accounts, and it traded opposite two subsidiaries of RBC.[5]

The Consent Order finds that, in violation of Section 4c(a) of the Commodity Exchange Act ("CEA"), RBC entered into the block trades with an express or implied understanding that the positions resulting from the trades would later be offset or delivered opposite each other, which the Consent Order finds achieved an economic and futures market nullity for the RBC corporate group because the RBC corporate group as a whole was not exposed to risk in the futures market. The Consent Order also finds that, in violation of CFTC Regulation 1.38(a), the express or implied understandings for later trades were not reported to the OneChicago exchange "without delay," as required by OneChicago rules.[6]

The Consent Order enjoins RBC from violations of Section 4c(a) of the CEA and CFTC Regulation 1.38(a) (the "**Injunction**") and requires RBC to pay a civil monetary penalty of $35,000,000. (*See* Consent Order, *CFTC v. Royal Bank of Canada*, 2012-cv-2497, Dkt. No. 124 (S.D.N.Y. December 18, 2014).

DISCUSSION

The Rule prohibits an investment adviser that is required to be registered under the Advisers Act from paying a cash fee to any solicitor that has been temporarily or permanently enjoined by an order, judgment or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Entry of the Consent Order would cause RBC to be disqualified under the Rule and, accordingly, absent no-action relief, RBC would be unable to receive cash payments from advisers required to be registered for the solicitation of advisory clients.

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[5] The two branches were RBC Bahamas Branch and RBC Cayman Branch, which were branches of RBC located in the Bahamas and Cayman Islands. The set of internal RBC accounts was known as Canadian Transit and its traders were located in Toronto. The two RBC subsidiaries involved in the trades were RBC Capital Markets Arbitrage, S.A. ("CMA"), a Luxembourg-based subsidiary with offices in New York, and RBC Europe Limited ("RBC EL"), a United Kingdom-based bank subsidiary with offices in London (RBC, CMA, and RBC EL are referred to as the "RBC corporate group.")

[6] The Amended Complaint also alleged that RBC violated Section 9(a)(4) of the CEA by making false statements and concealing facts in communications to CME Group Inc. (which performs regulatory functions for OneChicago) relating to, among other things, the origin and intended operation of the block trading activity, when the block trading was originally presented to the CME in 2005. RBC denied those allegations in the Action and the Consent Order does not contain any findings that RBC made false statements to or concealed any facts from CME Group and does not find that RBC violated Section 9(a)(4) of the CEA or any other law that prohibits making false statements.

In the release adopting the Rule, the Commission stated that it "would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar."[7] We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule's proposing and adopting releases explain the Commission's purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

> [b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who ... has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act ... and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.[8]

The Consent Order does not bar, suspend, or limit RBC or any person currently associated with RBC from acting in any capacity under the federal securities laws (except as provided in Section 9(a) of the Investment Company Act).[9] RBC has not been sanctioned for conduct in connection with the solicitation of advisory clients for investment advisers. The Consent Order does not pertain to advisory activities. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit any investment adviser from paying RBC or its associated persons for engaging in solicitation activities under the Rule.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder or permanently

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[7] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295.

[8] *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

[9] *See* footnote 3.

enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.[10]

UNDERTAKINGS

In connection with this request, RBC undertakes:

1. to conduct any cash solicitation arrangement entered into with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule 206(4)-3 as if RBC was not a disqualified person for purposes of the Rule by virtue of the Consent Order;

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[10] *See, e.g.*, RBS Securities Inc., SEC No-Action Letter (pub. Avail Nov. 26, 2013);Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. July 15, 2013); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. Jan. 9, 2013); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. September 21, 2012); J.P. Turner & Company, L.L.C., et al, SEC No-Action Letter (pub. avail. Sept. 10, 2012); GE Funding Capital Market Services, Inc., SEC No-Acton Letter (pub. avail. Jan. 25, 2012); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. Sept. 21, 2012); J.P. Turner and Company, L.L.C. et al., SEC No-Action Letter (pub. avail. Sept. 10, 2012); GE Funding Capital Market Services, Inc., SEC No-Action Letter (pub. avail. Jan. 25, 2012); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. July 11, 2011); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. June 29, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 22, 2010); Banc of America Investment Services, Inc., SEC No-Action Letter (pub. avail. June 10, 2009); Barclays Bank PLC, SEC No-Action Letter (pub. avail. June 6, 2007); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. May 15, 2006); American International Group, Inc., SEC No-Action Letter (pub. avail. Feb 21, 2006); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Feb. 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Prime Advisors, Inc., SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); Prudential Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action Letter (pub. avail. Dec. 12, 2000); Founders Asset Management LLC, SEC No-Action Letter (pub. avail. Nov. 8, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Market Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999); PaineWebber Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); Nations Bank Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Morgan Keegan & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 9, 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc., SEC No-Action Letter (pub. avail. Aug. 7, 1997); Gruntal & Co., SEC No-Action Letter (pub. avail. July 17, 1996); Salomon Brothers Inc., SEC No-Action Letter (pub. avail. Jan. 26, 1994); BT Securities Corporation, SEC No-Action Letter (pub. avail. Mar. 30, 1992); Kidder Peabody & Co. Inc., SEC No-Action Letter (Oct. 11, 1990); First City Capital Corp., SEC No-Action Letter (pub. avail. Feb. 9, 1990); RNC Capital Management Co., SEC No-Action Letter (pub. avail. Feb. 7, 1989); and Stein Roe & Farnham Inc., SEC No-Action Letter (pub. avail. Aug. 25, 1988).

2. to comply with the terms of the Consent Order, including, but not limited to, payment of the civil penalty; and

3. that, for ten (10) years from the date of the entry of the Consent Order, RBC or any investment adviser with which it has a solicitation arrangement subject to Rule 206(4)-3 will disclose the Consent Order in a written document that is delivered to each person whom RBC solicits (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate such contract without penalty within five (5) business days after entering into the contract.

CONCLUSION

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays RBC a cash payment for the solicitation of advisory clients, notwithstanding the Consent Order.

Sincerely,

Arthur W. Hahn