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September 3, 2025

**DELIVERED BY EMAIL**

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Timothy Baikie, Senior Legal Counsel, Trading and Markets  
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Dear Sirs/Mesdames:

**Re: OSC Notice and Request for Comments - Proposed Amendments to OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions and Proposed Changes to Companion Policy 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions**

We are pleased to provide the following comments in response to the Notice and Request for Comments (the **Notice**) published by the Ontario Securities Commission (**OSC**) on June 5, 2025 with respect to proposed amendments and proposed changes (the **Proposed Amendments**) to OSC Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* (**OSC Rule 48-501**) and to Companion Policy 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* (**CP 48-501**).

We thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of the Securities and Capital Markets practice group at Borden Ladner Gervais LLP (**BLG**). Our comments are not those of BLG generally or any client of the firm. Our comments are being submitted without prejudice to any position taken or that might be taken in the future by BLG on our own behalf or on behalf of any client.

Where our comments are in response to specific questions posed in the Notice, we have included the text of the question for ease of reference. Capitalized terms used in this letter that are not defined have the meanings attributed to them in the Notice.

**Part A – General Comments**

We appreciate the approach taken by the Proposed Amendments which set out a defined rule that is not contextual or fact-specific allowing it to be easily applied by market participants. However, given the general goal of harmonization of securities laws across Canada, if the OSC wishes to proceed with

the Proposed Amendments, we encourage the OSC to collaborate with the other members of the CSA to adopt a national rule with respect to short sales and related concerns. This would ensure that securities of all Canadian reporting issuers would be captured by the Proposed Amendments rather than only those who are reporting issuers in Ontario.

## **Part B – Response to OSC Questions**

### ***2. Will the Proposed Amendments have any unintended consequences, such as (i) making it more difficult for certain reporting issuers to raise capital, or (ii) requiring a greater price discount on offerings?***

The Proposed Amendments could impact an issuer's ability to raise capital if certain key investors are precluded from participation in the offering.

### ***3. Is the definition of "short sale" in the Proposed Amendments adequate for achieving the purposes of the Proposed Amendments?***

We submit the following with respect to the definition of "short sale" included in the Proposed Amendments:

- The definition of "short sale" refers to "...a security where the seller does not **have title** to the security..." We submit that the concept of "title" is inconsistent with terminology used in Canadian securities laws which generally refers to beneficial ownership of securities. This may result in confusion as to how the Proposed Amendments are to be applied. If the concept of "beneficial ownership" is too broad for the purpose of the Proposed Amendments, this can be addressed in exclusions to the rule and/or Companion Policy guidance.
- The definition of "short sale" may have unintended consequences for persons who own convertible securities (i.e., options, warrants, etc.). We recommend additional guidance be provided in CP 48-501 to clarify that the exercise of a convertible security does not constitute a "sale of a security" by the holder of the convertible security.

### ***4. Should the Proposed Amendments apply to distributions of securities of a broader or narrower group of issuers? If so, what criteria should be used to define this population?***

Please refer to our general comment above with respect to harmonization of rules across Canada with respect to short selling.

In addition, we question whether the Proposed Amendments could be limited by excluding "highly-liquid securities".

### ***7. Is the exemption under section 4.1.2(b) of the Proposed Amendments appropriate?***

Yes. The exemption in section 4.1.2(2) is appropriate. Please also refer to our comment above in response to question 2 with respect to convertible securities.

### ***9. The 5-day period is based on Rule 105 and is intended to ensure that, in a marketed offering, a short seller intending to participate in the offering would not have an opportunity to adversely affect the market price of the offering through short sales immediately before pricing of the offering, as any activity from before that period should no longer be reflected in the market price of the offered securities. Is this assumption correct?***

We note that the Proposed Amendments, while inspired by SEC Rule 105, are generally broader in scope than SEC Rule 105 which is limited to firm-commitment underwritings. The Proposed Amendments apply to all equity securities (other than ETF units). The Proposed Amendments also extend to situations where a trade occurs without the short seller's knowledge of the offering, without regard to the materiality of the offering or any actual market impact.

***10. Should the restricted period be extended for a period of time following pricing?***

No. The restricted period should not be extended past the time of pricing.

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Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions with respect to our comments above or wish to discuss.

Sincerely,

**Laura Levine**  
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