

September 3, 2025

Timothy Baikie  
Senior Legal Counsel, Trading and Markets  
Ontario Securities Commission  
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Toronto, Ontario M5H 3S8  
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**Re: Proposed Amendments to OSC Rule 48-501**

Dear Mr. Baikie,

Cboe Canada Inc. ("Cboe Canada") is grateful for the opportunity to respond to the Ontario Securities Commission's (the "OSC") request for comment<sup>1</sup> on proposed amendments to OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* regarding potential prohibitions on short seller participation in distributions. Cboe Canada operates as a Tier 1 stock exchange by delivering cutting-edge trading and investment solutions earning trust through our access to quality liquidity and market data. Today, a large portion of volume traded in Canadian-listed securities flows through the Cboe Canada's four trading venues: NEO-L, NEO-N, NEO-D, and MATCHNow. Additionally, Cboe Canada is the listing platform of over 400 public companies, ETFs, and CDRs. Cboe Canada is supportive of the amendments and believes that they represent an important step towards addressing regulatory gaps in Canada's short selling framework for the benefit of issuers and investors alike.

The OSC's proposed amendments would prohibit any person or company that made a short sale of a security — defined as where the seller does not have title to the security sold, or that is settled or intended to be settled by the delivery of borrowed securities — within five business days prior to the pricing of a prospectus offering or private placement of the same class of securities sold short from buying securities in the offering unless an exemption is applicable. This prohibition applies even if the short seller had no prior knowledge of the offering, lacked material impact, or had no effect on the market price of the securities sold. These proposed changes align with recommendations issued by the Capital Markets Modernization Taskforce in 2021.<sup>2</sup>

While short selling plays an important role in capital markets – facilitating liquidity and price discovery – it can also be problematic in some contexts, such as during an offering or private placement. We are sympathetic to concerns about the incentives created when a short seller is able to short a security and soon after participates in an offering for that same security. Short selling can reduce the price of a security unrelated to business fundamentals, and in response, issuers may be forced to raise capital at a discount. Cboe Canada believes it makes sense for such activity to be prohibited, and the proposed changes as written will appropriately address issues involving short selling tied to private placements and public offerings. As the partner of choice for our listing companies, we are supportive of this increase in safeguards.

It is worth mentioning, however, that adoption of a harmonized rule throughout Canada is strongly preferred, as proceeding with the proposed amendments for Ontario-based issuers only will leave a significant number of Canadian issuers and investors without the desired protections, likely leading to unintended consequences. As such, we would be pleased to see the OSC work with the Canadian Securities Administrators (the "CSA") to extend adoption of the proposed amendments nationwide.

In the meantime, more can be done to harmonize Canada's approach to short selling with international standards. To take things further and match the global approach, the OSC (and ideally, all CSA members) and/or the Canadian

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<sup>1</sup> See [https://www.osc.ca/sites/default/files/2025-06/rule\\_20250605\\_48-501\\_proposed-amendments.pdf](https://www.osc.ca/sites/default/files/2025-06/rule_20250605_48-501_proposed-amendments.pdf)

<sup>2</sup> See <https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021/22-regulation-competitive-advantage>

Investment Regulatory Authority (“CIRO”) could improve transparency on short sale volume and positions and share information on short selling across jurisdictions.<sup>3</sup> Such changes would increase trust and transparency throughout Canada’s capital markets and prove beneficial for all.

Regarding definitions, “short sale” is defined within the proposal as the sale of a security where the seller does not have title to the security or a sale of a security that is settled or is intended to be settled by delivery of a security borrowed by or for the account of the seller. This definition is well-tailored in scope to adequately encompass short selling of securities. However, Cboe Canada would not be opposed to replacing the two instances of the words “does not have title to” within the proposed amendments with the words “does not beneficially own,” as the latter is more consistent with the wording used in existing Canadian securities law (and, in particular, the *Securities Act (Ontario)*) and may therefore be more commonly understood. In that event, we would also be supportive of the adoption of some clarifying commentary in the Companion Policy to the effect that borrowing under securities lending arrangements is not considered to be beneficial ownership for purposes of OSC Rule 48-501.

As for the suitability of a prohibition period of five business days prior to an issuer’s offering of securities, Cboe Canada believes the period is sufficient to address the concerns. Notably, this period aligns with the U.S. Securities and Exchange Commission’s (“SEC”) Rule 105 of Regulation M. This harmonization improves regulatory consistency across major North American capital markets. Extending the restricted period beyond five days is unnecessary, as the five-day threshold functions effectively in the United States and should operate similarly in Canada. A period greater than five days could impair liquidity and market activity, whereas the five-day approach strikes an appropriate balance while being time-tested and proven within the United States.

Cboe Canada thanks the OSC for its leadership in addressing this matter and for considering our perspective. We believe the proposal will strengthen Canadian capital markets and provide important safeguards for issuers and investors. Should you have any questions regarding our views, please do not hesitate to contact us.

Sincerely,

“Joacim Wiklander”

Joacim Wiklander  
President & Chief Executive Officer  
Cboe Canada Inc.

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<sup>3</sup> For a more detailed and comprehensive outline of Cboe Canada’s views on short selling regulation in Canada, see Cboe Canada’s response to Joint CSA and IIROC Staff Notice 23-329 *Short Selling in Canada* at [https://www.osc.ca/sites/default/files/2023-03/com\\_20230308\\_23-329\\_schmitti.pdf](https://www.osc.ca/sites/default/files/2023-03/com_20230308_23-329_schmitti.pdf). On a related note, we are generally supportive of the pending CIRO proposal to implement pre-borrow locate requirements, as this also further aligns Canada with global standards. See, e.g., <https://www.ciro.ca/newsroom/publications/proposed-amendments-respecting-mandatory-close-out-requirements>.