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September 3, 2025

VIA EMAIL

Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames,

Re: Ontario Securities Commission ("OSC") Notice of Request for Comment – Proposed Amendments to OSC Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* ("Rule 48-501") and Proposed Changes to Companion Policy 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* ("48-501CP")

We are writing in response to the OSC Notice of Request for Comment to provide our perspective on the proposed changes to OSC Rule 48-501 and Rule 48-501CP relating to short sales of securities in advance of securities offerings (collectively, the "**Proposed Amendments**"). We welcome the opportunity to provide comments on the Proposed Amendments. In this letter, we have provided both general comments and some specific suggestions for additional exemptions from the short sale restrictions.

General Comments

As a general observation, we note that short selling is a lawful and widely used trading strategy that also plays a constructive role in terms of reflecting the market's assessment of the appropriate trading price for an issuer's securities. We respectfully submit that the OSC should further consider whether there is a strong need for the Proposed Amendments, as it is not clear to us that short selling with a view to covering one's short position through the purchase of shares in an offering is an activity that frequently arises in the Canadian market. We acknowledge that concerns about short selling were raised through the work of Ontario's Capital Markets Modernization Taskforce (the "**Taskforce**") in 2020 and 2021, which posited that hedge fund short sales in advance of offerings were making it more difficult for issuers to price and execute their offerings. We believe that the Taskforce's concerns may have been heightened by its observations during the years leading up to the Taskforce's report and were focused on short selling activities impacting specific industries. Based on our involvement in offerings of equity securities in the Canadian market, we are not aware of short selling activity having made it more difficult for issuers to price or execute their offerings. We further submit that the potentially detrimental effects of the Proposed Amendments may outweigh their intended beneficial

impact on issuers and the Canadian capital markets generally. As such, we question whether regulatory efforts would be better spent enforcing existing laws through a more targeted approach that focuses on specific cases of malfeasance instead of introducing new measures that may make it more difficult for Canadian issuers to raise capital.

In the United States, Rule 105 of Regulation M under the Securities Exchange Act of 1934, as amended ("**Rule 105**"), has restricted short-selling in certain instances for many years. However, we note that there are significant differences between Canadian and U.S. equity offering structures, as well as the depth and size of the investor base in Canada and the United States, that warrant careful consideration in the context of the Proposed Amendments. For example, in Canada, equity offerings by way of "bought deal" remain the dominant means that established issuers use to raise equity capital. We submit that bought deal equity offerings provide little opportunity for problematic short selling because, typically, the first time an investor will learn of the offering is at the time an offering is priced and publicly announced. In the less common situations where institutional investors may learn of a potential bought deal equity offering through confidential, "wall-cross" discussions, we note that such investors are subject to confidentiality and trading restrictions such that we are not aware of any such wall-crossed investors having determined to establish a short position based on the knowledge of a potential equity offering where the investors intended to purchase shares in the offering to cover their short position.

We note that the pool of institutional investors in Canada is considerably smaller than that in the United States. As such, we believe the Proposed Amendments could have the effect of disqualifying investors from participating in an equity offering where the investors, as part of their ordinary course trading strategies, have engaged in short selling an issuer's securities without any knowledge of an upcoming equity offering. If those potential investors are prohibited from participating in an equity offering under the Proposed Amendments, we have concerns that issuers may be required to agree to higher discounts to the market price of their shares when pricing their equity offerings in order to attract sufficient investor interest given the more limited pool of institutional investors in Canada. Accordingly, we submit that the Proposed Amendments could unintentionally make it more difficult for issuers to price and execute their equity offerings, without the corresponding benefit of reducing inappropriate short selling activity where the short position is established based on knowledge of an upcoming equity offering.

Additional Exemptions Required

If the OSC determines to implement the Proposed Amendments, we submit that exemptions should be added that will help to address the concerns we describe above.

Highly-liquid Securities Exemption

The Proposed Amendments seek to address the OSC's concern that short selling may depress the market price of an issuer's securities, thereby lowering the price at which the securities are then sold by the issuer in a near-term financing. We believe that this concern will be less applicable to issuers that have large market capitalizations and significant trading volumes, who would be less susceptible to the impact of short selling on their equity securities' trading prices in advance of an offering.

Accordingly, we recommend inclusion of an exemption in the Proposed Amendments for a security that is a "highly-liquid security" (as defined in Rule 48-501), or use of another similar measure of significant market capitalization or trading volume set at a level where short-selling is likely to be less influential on the trading price of an issuer's equity securities.

Bought Deal Exemption

For the reasons discussed above, we submit that the Proposed Amendments should not apply to bought deal equity offerings. In a bought deal, we submit that if the investor, without knowledge of a pending offering, happened to engage in short sales of the class of equity security being offered, they should not be precluded from participating in the offering.

De Minimis Exemption

Many investors enter into short sale transactions as part of their normal course risk management or trading strategies. We submit that the Proposed Amendment should provide an exemption for an investor who has entered into a *de minimis* short position relative to the amount the investor purchases in the offering (i.e., 2% or less).

Additional Guidance Needed for Separate Accounts Exception

While we support the inclusion of the separate accounts exception contemplated by section 4.1.2(4) of Rule 48-501 in the Proposed Amendments, we encourage the OSC to provide additional guidance in 48-501CP regarding the application of this exception. We submit such guidance should be substantially similar to that provided by the U.S. Securities and Exchange Commission, which, in an adopting release for amendments to Rule 105, provided indicia of separate accounts and examples of persons eligible for the separate account exception in Rule 105.[1]

[1] SEC Release No. 34-56206 (August 2, 2007).

Harmonization with Rule 105

To help manage the compliance burden in the context of cross-listed issuers, we generally support symmetry between Ontario securities laws and U.S. securities law, where it makes sense to do so, and we note the OSC's efforts to largely do so in the context of the Proposed Amendments. One such additional opportunity is in the definition of "short sale restricted period" in the Proposed Amendments. While the Proposed Amendments would apply to short sales during the period commencing five business days before pricing of an offering and ending at the pricing of the offering, Rule 105 applies to the shorter of such period or the period beginning with the initial filing of the applicable registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. We submit that adopting a similar restricted period would be appropriate to accommodate instances, for example, where a shelf prospectus for a "well-known seasoned issuer" is filed and drawn down within the five business days before pricing the offering.

We further note that pricing dynamics in private placements differ from those in public offerings, and we respectfully submit that there has been no clearly articulated rationale for including private placements within the scope of the Proposed Amendments and thereby diverging from the approach taken in Rule 105. We believe it would be more important from a policy perspective for the Proposed Amendments to align with Rule 105 in not applying to private placements.

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We are pleased to have had an opportunity to provide you with our comments. If you have any questions regarding our comments or wish to discuss them with us, please contact Rosalind Hunter (416.862.4943), Jason Comerford (212.991.2533) or Wesley Cohen (416.862.6560).

Yours very truly,

"Osler, Hoskin & Harcourt LLP"

c: Desmond Lee, *Osler, Hoskin & Harcourt LLP*
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