VIA E-MAIL September 3, 2025

The Secretary
Ontario Securities Commission
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Re: Proposed amendments (Proposed Amendments) to Ontario Securities Commission Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* (Rule 48-501) and consequential changes (Proposed Changes) to the Companion Policy to Rule 48-501 (48-501CP)

Background

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to provide comments on the proposed amendments (**Proposed Amendments**) to Ontario Securities Commission Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* (Rule 48-501) and consequential changes (**Proposed Changes**) to the Companion Policy to Rule 48-501 (48-501CP) (collectively, the **Consultation**).

PMAC represents over 330 asset management firms registered to do business with the various members of the Canadian Securities Administrators (**CSA**) as portfolio managers (**PM**s). Approximately 65% of our members are also registered as investment fund managers (**IFM**s). PMAC's membership is comprised of firms of varying sizes and models, ranging from one-person firms to international and bank-owned firms. In total, our members manage assets in excess of $4 trillion for institutional and private client portfolios.

PMAC's mission statement is "advancing standards". We are consistently supportive of measures that elevate standards in the industry, enhance transparency, improve investor protection and benefit our capital markets as a whole. We are also cognizant of the global market in which many of our mid-size and large members operate and are sensitive to any regulatory changes being misaligned with other international capital market jurisdictions.

OVERVIEW

PMAC generally favours principles-based regulation that recognizes differences in business models, sizes, and client types. We support the OSC's decision to consult with stakeholders on the important issues raised in the Consultation. We agree that any type of market manipulation must be discouraged and prosecuted where warranted. With respect to changes to the short selling regime, we have consistently urged the CSA to rely on evidence and data in responding to any issues that are identified.

We strongly believe that there is a risk that over-regulation of short selling activity could have negative consequences for market efficiency, because such restrictions can impede price discovery and curtail legitimate investing activity. In addition, short sale restrictions can be cumbersome and operationally difficult to implement for market participants, particularly when there is a patchwork of different rules and regulations enacted across jurisdictions.

We have expressed our views on the important role of short selling in the Canadian marketplace in previous submissions to the CSA in 2021[1] and 2023[2]. As we noted in our responses to these consultations, we are of the view that regulators should only intervene where there is both a legitimate concern, and a reasonable prospect that the planned intervention will have the desired effect. Any potential direct and indirect consequences of regulation on legitimate capital market activities should be taken into account. Regulation should be targeted and proportional, and should be designed to reduce regulatory burden to the extent possible.

Harmonization

We also strongly advocate for regulation to be harmonized across Canada. We do not see how the Proposed Amendments to the short selling regime could be implemented in Ontario alone. Monitoring short selling activity differently in Ontario than in other provinces would represent an important regulatory burden for firms. A lack of harmonization will also create an uneven playing field and cause uncertainty in the market, which would reduce competition, and discourage capital flows to the province.

[1] PMAC response to CSA Consultation Paper 25-403 *Activist Short Selling* (**2021 Response**)
[2] PMAC response to Joint CSA and IIROC Staff Notice 23-329 *Short Selling in Canada* (**2023 Response**)

KEY RECOMMENDATIONS

PMAC's key recommendations are as follows:

1. **Do not make any immediate changes to the regulatory framework with respect to the short selling regime - clarify the guidance rather than enacting new rules if there is a concern that material non-public information is being misused in the context of short selling in connection with prospectus offerings and private placements;**
2. **Confirm that affiliated investment funds (including pooled funds) or portfolio management strategies would qualify as separate accounts under the Rule 48-501 exemptions or otherwise be excluded, if the rule is enacted;**
3. **Harmonize requirements across Canada; and,**
4. **Continue to conduct research and consult with stakeholders to determine whether changes to the short selling regime are necessary, and to identify any unintended consequences of such changes.**

DISCUSSION

We have consistently urged regulators to take a cautious approach when proposing changes to the short-selling regime. We believe that any changes should be carefully studied and should be based on clear evidence of a problem. In this case, the Consultation acknowledges that "it is not possible to quantify the costs and benefits of the proposed amendments as there is not sufficient publicly available data or other data available to the Commission on participation by short sellers in distributions, also there is no requirement to keep records of this activity." It would be preferable to survey market participants to determine the prevalence of the targeted activity within the industry, by, for example, reviewing whether firms already have policies in place that would target this activity.

As noted in the Consultation, in 2021, the Capital Markets Modernization Taskforce (Taskforce), recommended a prohibition on short selling in connection with prospectus offerings and private placements. The Taskforce found that short selling in connection with prospectus offerings and private placements, and in particular bought deals pre-arranged with hedge funds that short the stock before the bought deal is announced, makes pricing and completion of offerings more difficult. The Taskforce believed that a requirement that does not require regulators to prove intent, similar to the U.S. Securities and Exchange Commission (**SEC**)'s Rule 105 of Regulation M: Short Selling in Connection with a Public Offering (**Rule 105**),[3] is preferable in the circumstances of short selling in advance of an offering.

In our 2021 Response, with respect to the Taskforce's recommendation 26, PMAC stated:

[3] 17 CFR §242.105.

…there are legitimate reasons for short selling ahead of a capital raise by an issuer, and this activity is not necessarily an indication of market manipulation. For example, an investor may believe that an issuer's capital structure is over-levered and in urgent need of an equity raise to de-lever, and so may anticipate through fundamental analysis of the issuer that a dilutive (and price depressing) equity offering is imminent. Having expressed that investment thesis through a short position, the investor would anticipate closing its short position in the equity offering and so would be a natural buyer in the equity offering, which is typically priced below the pre-offering market price, such that the investor would prefer to buy in the offering since buying in the market is more expensive.

We believe Recommendation 26 is being made in response to a concern that there may be market manipulation taking place at the time of the offering. Our members believe that any potential price distortion would only affect a particular segment of the market, likely smaller to mid-size issuers. If this is the case, we suggest the CSA consider a narrower, more targeted response – for example by making any such requirements subject to a threshold to benefit smaller issuers (although this would be very difficult to implement, given that market capitalization changes daily and monitoring would be very onerous). A restriction of the sort proposed in Recommendation 26 is a blunt instrument that would suppress legitimate activity, with questionable corresponding benefit to investors and the market.

Recommendation 26 is very broad, and would negatively impact investment managers, including those managers with separate investment teams that make separate investment decisions independent of one another. In the U.S., Rule 105 of Regulation M includes a "separate accounts" exemption that excludes different teams from the rule if they operate independently and are not aware of the investment decisions being made by the other team. As a result, one team might buy into a private placement and the other may short the stock – this is permitted if the terms of the exception are met. A similar exemption should be included if the CSA were to implement the recommendation.

The Consultation notes the concern that "a person or company learns of an upcoming financing by an issuer that has not been publicly announced and makes short sales in advance of the announcement intending to close out the short position by buying back securities in the financing…" We are of the view that the proposed amendments could more specifically target this activity, if necessary. For example, a clarification of the existing guidance to include a prohibition of short selling with specific knowledge of the offering would be preferable, and would lessen the impact on market participants that are not involved in such activity.

The Consultation notes in Appendix E under the heading "Investor protection" that "[the proposed amendments]… also eliminate the information asymmetries reflected in short

sellers trading *with knowledge of a financing* that the issuer is not required to disclose and enable retail investors to manage their investment portfolios more efficiently" (emphasis added). We believe that existing rules would prohibit trading on the basis of non-public information – an upcoming financing would almost always represent material non-public information, especially if the information had the capacity to influence the price. If the OSC believes there is a lack of clarity on this point, the guidance should be updated to state that confirmed knowledge of an equity offering (i.e. being included in the pre-marketing of it) is material non-public information (**MNPI**). We do not believe a rule change is required to address this issue.

Under the heading "Fair, efficient and competitive capital markets", the Consultation notes that "short selling around the time of a new issue of equity securities (prospectus offering or private placement) *with the intent* of closing the short position with the new issue could have an effect on the price of an equity security and consequently of the financing." We agree with this statement, but the element of intent is paramount. For the reasons expressed above, we do not believe that short selling of the security without prior knowledge of the offering is a proportionate response to the perceived problem. Contrary to the statement in the Consultation, the price would be better determined by permitting the short selling activity.

CONSULTATION QUESTIONS

1. **Will the Proposed Amendments address concerns with short selling making pricing and completion of offerings more difficult?**

We do not believe that there is sufficient evidence of a problem to justify the Proposed Amendments, and that as drafted, they will have a disproportionate negative impact on the capital markets and on market participants in terms of participation in equity and debt offerings, price discovery and compliance costs.

The Proposed Amendments apply to "any person or company" – it is not clear to us whether investment funds (including pooled funds) or multiple strategies managed by the same IFM or PM would be subject to the rule. As is described below, we believe that including these funds would have a negative effect on the capital markets, decrease competition, be unfair to investors and represent a disproportionate regulatory compliance burden on asset managers.

The Proposed Amendments also do not appear to address the fact that it may not be possible for the manager to reverse a short position that is already being held. Most short positions are held for a long period of time, not a matter of a few days.

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?**

We ask the OSC to confirm that affiliated investment funds (including pooled funds) or portfolio management strategies would qualify as separate accounts under the Rule 48-501 exemptions. It is not clear to us whether funds or strategies managed by the same investment fund manager or portfolio manager that may have made a short sale in the same securities in other funds or strategies are excluded from the requirements. These IFMs and PMs may have a single Chief Investment Officer, who is aware of trading activity taking place in various funds or portfolios. We note that the criteria in Rule 105 to qualify as a "separate account" are very onerous and would be difficult to meet in this scenario. If these are not considered "separate accounts", if a fund or portfolio has made a short sale in the securities within five business days of the offering, no other fund or strategy managed by the same IFM or PM could participate in the offering. This outcome would not be in the best interests of unitholders of a fund or investors in the strategy, since there will be fewer options available to the portfolio manager to fulfill the investment mandate of the fund or portfolio.

If the asset managers are not considered to be "separate accounts", the Proposed Amendments could also result in a significant reduction in potential buyers for financings. This could have a negative impact on the take-up and price of the offering, including a debt issuance. Debt issuances are very common; the proposed changes could have a significant negative impact on issuers.

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

We believe the definition is adequate.

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?**

We have no comment.

5. **Are the securities covered by the Proposed Amendments correctly scoped?**

We believe the securities are correctly scoped.

6. **Is the prohibition on buying and selling short a security "of the same class" too narrow?**

No, the prohibition is not too narrow.

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

We have no comment.

8. Are there other types of distributions or securities that should exempted from the Proposed Amendments?

We have no comment.

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?

The registering of the offering is at the point it is in the public domain. Pricing is around the same time (e.g. after market close). It is unlikely there will be an opportunity to trade during the interim period if markets are closed.

We believe that the restricted period in the Proposed Amendments should be narrowed to align with section (a)(2) of Rule 105 with respect to the restricted period. Similar to Rule 105, it should be the "shorter of" the period:

> (1) Beginning five business days before the pricing of the offered securities and ending with such pricing; or
>
> (2) Beginning with the initial filing of such registration statement or notification on Form 1-A or Form 1-E and ending with the pricing.

Assuming the short seller had no prior knowledge of the offering, once the notification is public, the purchaser can adjust the price to cover the short on the offering. There should not be a restriction where the short seller had no knowledge of the offering.

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

No, the restricted period should not be extended for a period of time following pricing.

11. Does your answer to Question 9 depend on whether the issuer made a press release announcing the offering and when the press release was issued?

As noted above, we believe that trading should not be restricted once information is in the public domain. This is why material information is generally disclosed after markets close – this gives participants the opportunity to digest the information and reduces volatility in the

markets that can result from information becoming public. Once the information is public, an efficient market will reflect its significance.

12. Is the assumption that the separate account exemption will be sufficient for underwriters and market makers correct? If not, please provide specific examples of how the Proposed Amendments would adversely affect their activities.

In the U.S., a short seller can participate in the offering if they cover the short sales which occurred within the 5-day window. The Proposed Amendments suggest that these *bona fide* purchases must occur in open-market transactions on a marketplace. We believe that transactions that may occur in alternative trading systems should be included, as it would be difficult to restrict covers to exchanges only.

13. Are there any additional foreseeable costs if the Proposed Amendments are adopted? Can these costs be mitigated?

The Consultation does not properly consider the monitoring costs for IFMs and PMs. We do not agree that compliance with Rule 105 means that compliance costs will be diminished.

The current rule relies on manual processes to monitor. It requires ongoing training with traders and PM Advising Representatives to be aware of the restrictions. Most compliance systems would not have the ability to systematically flag situations where short selling occurred before an order to participate on an equity offering is created; thus, tracking this is a manual process.

The monitoring costs would be especially onerous if there is no exemption for affiliated investment funds or portfolio strategies. It would be a significant burden for asset managers to monitor whether securities have been sold short in one fund or strategy, thereby preventing the fund manager from participating in an offering via another investment fund or strategy.

The application of the rule is not clear where short sales occurred in the PM or IFM's U.S. line of business, given that many Canadian equities are inter-listed on U.S. exchanges (e.g., if the stock is shorted on the NYSE, would the purchaser need to cover it to participate in an offering of the same security in Canada?). We assume that the answer is yes, given that the securities are fungible. However, this may have ramifications on the internal PM and compliance systems that monitor and track compliance with the rule. To the extent that PM systems are not equipped to deal with this situation, a longer lead time would be required for implementation of the rule, so that the appropriate development work can be completed.

CONCLUSION

We strongly urge the OSC not to make changes to the short selling regime without compelling evidence of the existence of a problem, and without seriously considering the potential unintended consequences. We believe that the Proposed Amendments will have a disproportionate negative impact on the capital markets and on market participants in terms of participation in equity and debt offerings, price discovery and compliance costs.

If the OSC believes that MNPI is being misused in the context of short selling in connection with prospectus offerings and private placements, a clarification of the existing guidance to include a prohibition of short selling with specific knowledge of the offering would be preferable, and would lessen the impact on market participants that are not involved in such activity.

Finally, the rules regarding short selling should be harmonized across Canada. Monitoring short selling activity differently in Ontario than in other provinces would represent an important regulatory burden for firms. A lack of harmonization will also create an uneven playing field and cause uncertainty in the market, which would reduce competition, and discourage capital flows to the province.

Thank you for the opportunity to respond to the Consultation. If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Victoria Paris at (416) 504-1118.

Yours truly,

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