

September 3, 2025

**Without Prejudice  
By E-mail**

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Dear Sirs/Mesdames:

**Re: Notice of Request for Comment – Proposed Amendments to Ontario Securities  
Commission 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 submit the following comments in response to the request for comment on the proposed amendments to Ontario Securities Commission Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* ("**OSC Rule 48-501**") and proposed changes to Companion Policy 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* (collectively, the "**Proposed Amendments**").

Thank you for the opportunity to provide feedback on the Proposed Amendments. This letter represents the comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

We recognize that the Proposed Amendments are broadly aligned with the U.S. Securities and Exchange Commission's ("**SEC**") Rule 105 of Regulation M: *Short Selling in Connection with a Public Offering* ("**Rule 105**") and follow recommendations from Ontario's Capital Markets Modernization Taskforce (the "**Taskforce**"). While we support changes to align OSC Rule 48-501 with Rule 105, we do not believe that the Proposed Amendments should be wider in scope than Rule 105 and extend to private placements. The Taskforce's final report noted particular concerns relating to bought deals that are pre-arranged with hedge funds who are shorting the stock before the bought deal is announced. Confining the Proposed Amendments to public offerings should address this concern, while harmonizing the Canadian and U.S. rules. This will provide market participants with a simpler and more consistent regulatory framework. Streamlined rules will also support the competitiveness of Canada's capital markets by not introducing additional restrictions that are not present in Rule 105.

While the Proposed Amendments are designed to assist with pricing and execution of offerings, there is risk that the Proposed Amendments could make it more difficult for certain reporting issuers to raise capital. Issuers may find that there are fewer potential purchasers of securities as those engaged in short selling during the restricted period will be precluded from participating in the offering. To mitigate this risk, we suggest adding an exemption that would allow a person or company to participate in an offering

regardless of any recent short selling activity where the board of directors determines that such participation is in the best interests of the issuer.

In terms of the proposed definition of “short sale”, we would suggest replacing the reference to “title” with “ownership”, similar to the concepts that are used in the Canadian Investment Regulatory Organization’s Universal Market Integrity Rules (“**UMIR**”) and in the SEC’s Rule 200. We believe this is preferable given that the majority of Canadian public shareholders hold their securities through CDS Clearing and Depository Services Inc. (“**CDS**”). In these circumstances, CDS holds registered title to the shares and such shareholders only hold a beneficial interest in the shares. In addition to framing the definition of “short sale” in terms of ownership, the UMIR and SEC Rule 200 provide specific examples of when a person is deemed or considered to own a security. This includes, among others, if the person has an option to purchase or rights to subscribe for a security and has exercised such option or rights. We believe that including similar guidance in the Proposed Amendments would provide investors with clarity and predictability in determining what conduct is permitted under the Proposed Amendments and would provide suitable carve-outs to the definition of a “short sale”. As the definition of “short sale” in the UMIR has been carefully considered and developed, the introduction of a new broader definition in the Proposed Amendments could lead to ambiguity that can be avoided if there is a consistent definition.

We do not believe that the “short sale restricted period” should be extended for a period of time following pricing. However, to assist market participants in determining whether any short sales have been made during the five business day restricted period, we recommend that the Proposed Amendments clarify whether the short sale would be considered made as of the trade date or the settlement date.

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We once again thank you for the opportunity to provide feedback on the Proposed Amendments. Please do not hesitate to contact any of the undersigned should you wish to discuss the foregoing comments in greater detail.

Yours truly,

Tara Law

on my own behalf and on behalf of

Simon A. Romano