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File No. 235332

BY E-MAIL

Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
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Attention: The Secretary

Dear Sirs/Mesdames:

Proposed Amendments to OSC Rule 45-501 – *Ontario Prospectus and Registration Exemptions* and National Instrument 45-106 – *Prospectus and Registration Exemptions*

We and Blake, Cassels & Graydon LLP are writing to you in response to the request of the Ontario Securities Commission (the "**OSC**") for comments on the proposed amendments to OSC Rule 45-501 – *Ontario Prospectus and Registration Exemptions* ("**Rule 45-501**") and National Instrument 45-106 – *Prospectus and Registration Exemptions* (collectively, the "**Proposed Amendments**").

As you are aware, we acted as counsel to certain U.S. and Canadian registered dealers and exempt international dealers in connection with the applications for exemptive relief granted by the OSC, as principal regulator, from the requirement to deliver a "wrapper" affixed to a foreign offering document in connection with private placements of certain foreign securities to permitted clients in Canada. This relief was the impetus for the Proposed Amendments.

It is a condition of the relief, and now the Proposed Amendments, that before an "unwrapped" foreign offering document can be delivered to a permitted client in Canada, the dealer must have delivered a prescribed client notice to such permitted client and the permitted client must have signed and returned a consent and acknowledgement (the "**notice and consent requirement**"). Since the initial relief was granted on April 23, 2013, we have been working with our clients to prepare the prescribed notices and to implement a process for collecting and tracking the signed consents. The unanimous feedback we have received is that the notice and consent requirement significantly diminishes the utility of the relief and is by far the biggest impediment to its use, requiring dealers to expend significant resources to ensure compliance. In fact, notwithstanding that the dealers who obtained the original wrapper relief began the process of designing a procedure for collection of the consents months ago a significant number of them have been unable to rely on the wrapper relief yet due to the complexities of complying with the notice and consent requirement. It does not work well given the way securities offerings are typically carried out. From a policy perspective, the notice and consent requirement, while arguably necessary in the context of a novel exemption order, should not be required in the context of relatively minor amendments to applicable securities laws.

Burdensome for Both Dealers and Canadian Permitted Clients

The dealers have had to devote significant internal and external resources, at considerable expense, in order to identify the Canadian purchasers, mail the prescribed notices and collect the signed consents. Furthermore, given the large number of dealers that now have the benefit of the relief and given that each dealer (and each of its eligible affiliates) must obtain its own signed consent and acknowledgement from each Canadian purchaser, the Canadian purchasers have been overwhelmed by the large number of notices and requests for consent. Finally, if a dealer were ever to form a new subsidiary in the future, that subsidiary would have to send its own notices and obtain its own signed consents and acknowledgements from the very same Canadian purchasers from whom consent had previously been obtained, which is costly, time-consuming and unduly burdensome not only for the dealer, but also the Canadian purchasers.

Although the dealers have made every effort to identify in advance all possible Canadian purchasers to whom they may sell securities from time to time, their list of potential Canadian clients is always changing. It may very well be the case that on a particular transaction a dealer is approached by a Canadian purchaser wanting to participate in the offering, but from whom the dealer has not previously received a consent and acknowledgement. The dealer would then be put in the unfortunate position of either having to scramble at the last minute to deliver the notice and obtain the signed consent or, alternatively, decline to make the trade to the Canadian purchaser. If the transaction is proceeding on a tight timeline, as is often the case, there is a real possibility that the Canadian purchaser will be precluded from participating in the offering in those circumstances.

Presents Practical Problems Given How Securities Offerings are Structured

At the outset of a typical securities offering, one of the underwriters will be assigned the role of billing and delivery agent (the "**B&D Bank**") on behalf of the other members of the underwriting syndicate. This administrative role is designed to streamline the delivery of offering documents and the offered securities to prospective purchasers. When a member of the underwriting syndicate (the "**Relationship Bank**") receives an indication of interest from one of its Canadian permitted clients, that client's name is entered into the "deal book" maintained by the B&D Bank. The B&D Bank will have no way of determining whether or not the Relationship Bank has complied with the notice and consent requirement in respect of its Canadian client. In any event, the B&D Bank will not be able to rely on the Relationship Bank's compliance to satisfy the conditions of the relief (and now the Proposed Amendments), since it is the B&D Bank that will be distributing the offering document and delivering the offered securities to the Canadian purchaser. It therefore bears the ultimate responsibility for ensuring it has complied with the notice and consent requirement, even in cases where it has no existing relationship with the Canadian purchaser.

Therefore, in order to comply with the notice and consent requirement, dealers who act as B&D Banks have resorted to manually reviewing the entire deal book for all Canadian addresses and then cross-referencing that list against a master list of signed consents. If it does not have a signed consent in hand from that Canadian purchaser, the trade will be rejected and the order will be put back to the Relationship Bank. The Relationship Bank must then decide whether it will make this trade separately as a "non-syndicate" trade or whether the trade ought to be cancelled outright. Given the speed at which these offerings typically proceed, it is very possible that the trade will be cancelled and the Canadian purchaser will be shut out of the transaction simply because the signed consent that it had returned was delivered to a different member of the syndicate who happened not to be the B&D Bank on that particular offering. To avoid this arbitrary result and to avoid having to devote scarce human resources to the perfunctory task of manually checking the deal book for Canadian addresses, some dealers are considering implementing automated systems, at a cost of perhaps hundreds of thousands of dollars, in order to more quickly and efficiently identify "ineligible" Canadian trades.

Not Necessary for Rule Amendments

The Proposed Amendments, if adopted, will become part of the "law of the land", and it should not be necessary to have investors consent to the application of the law, any more than they would have to consent to a seller's reliance on a statutory prospectus exemption. An accredited investor does not need to "consent" to the seller relying upon the accredited investor prospectus exemption. Furthermore, the Proposed Amendments are relatively minor in scope, effectively allowing sophisticated investors to buy foreign securities without the seller informing them that they have statutory rights of action in Ontario for any misrepresentations in the offering document. Given the sophistication of these investors, the fact that they have these rights will be obvious and, in any event, they are much more likely to consult legal counsel than a retail investor.

Arguably, the notice and consent requirement was appropriate in the context of the exemptive relief because it was novel and, since it was not published for public comment, the regulators had no real opportunity to gauge the sentiment of affected stakeholders. The compromise, therefore, was that the relief would not apply to any permitted client that did not expressly consent to it. The Proposed Amendments, however, have been published for comment and any dissenting stakeholders have been afforded an opportunity to publicly express their concerns. If, as we expect, the Proposed Amendments are well-received by stakeholders and the policy decision is made that permitted clients, as sophisticated investors, do not require the disclosure previously contained in the wrapper, there is nothing to be gained from a public interest perspective in requiring permitted clients to expressly consent to not receiving the disclosure that they deemed unnecessary in the first place. To do so is to merely substitute one set of unnecessary disclosure with a different set of unnecessary disclosure, which does not serve the public interest and does not foster an efficient capital market.

For the foregoing reasons, we submit that the Proposed Amendments should not include the requirement to deliver a notice to permitted clients and should not require permitted clients to return a signed consent and acknowledgement. Rather, the Proposed Amendments should provide that section 5.3 of Rule 45-501 does not apply in respect of an offering memorandum delivered to a permitted client in connection with the distribution of a designated foreign security.

This submission was prepared by *Pamela Hughes, Blake, Cassels & Graydon LLP – 416 863 2226; Ross McKee, Blake, Cassels & Graydon LLP – 416 863 3277; Anthony Spadaro, Davies Ward Phillips & Vineberg LLP, 416 367 7494 and Patricia Olasker*, *Davies Ward Phillips & Vineberg LLP, 416 863 5551*. Any of us would be pleased to discuss these comments further at your convenience.

Yours very truly,

(signed) Patricia Olasker
Davies Ward Phillips & Vineberg LLP

(signed) Pamela Hughes
Blake, Cassels & Graydon LLP