November 27, 2003

John Stevenson, Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

Dear Mr. Stevenson:

Re: Notice and Request for Comments - Proposed OSC Rule 48-501- Trading during Distributions, Formal Bids and Share Exchange Transactions

We are submitting comments on proposed OSC Rule 48-501 (the "Proposed Rule") on behalf of ourselves, as a registered investment dealer and broker, as well as on behalf of UBS AG, UBS Securities LLC, and UBS Financial Services Inc., each a registered international dealer, UBS Global Asset Management (Canada) Co., a registered limited market dealer and investment counsel and portfolio manager, UBS Investment Services Canada Inc., a registered mutual fund dealer and limited market dealer and UBS Trust (Canada), a registered investment counsel and portfolio manager (collectively, "UBS"). Our comments focus on some of the implications that the Proposed Rule will have for investment dealers and those multi-service financial institutions, like UBS, whose business includes a broad range of investment dealer or broker, investment adviser and portfolio management activities. UBS appreciates the opportunity to make these submissions in connection with the Proposed Rule.

Overall, UBS is pleased that the Proposed Rule will clarify the law for securities industry participants and will bring regulation in Ontario into greater harmony with Regulation M ("Reg M"), the parallel regulation of trading during a distribution in the United States. In particular, we see the incorporation of an exemption for "highly-liquid securities", in line with the "actively-traded security" concept under Reg M, as a positive development. However, we believe that further refinements are necessary to align Ontario regulation to Reg M and ensure that a disproportionate or unintended burden is not placed on dealers and multi-service financial institutions.

Definition of "dealer-restricted person"

UBS is of the view that the Proposed Rule inappropriately broadens trading restrictions to capture certain dealer affiliates that are currently exempt from such restrictions under Paragraph 26 of OSC Policy 5.1. We believe that the Commission should use this opportunity to further refine the existing class of restricted participants to cover only those that are factually positioned

to manipulate the market or take advantage of material non-public information. In this regard, we respectfully submit that the Commission move beyond the *status quo* and adopt the approach taken in Reg M, which permits trading during a restricted period by a separately identifiable department or division of an underwriter or dealer, provided certain safeguards are met.

Under the Proposed Rule, a "dealer-restricted person" is, subject to certain permitted activities and exemptions, prohibited from bidding for or purchasing a restricted security for its account, an account in which it has a beneficial interest or an account over which it exercises direction or control, or attempting to induce or cause any person or company to purchase any restricted security during the dealer-restricted period. The definition of "dealer-restricted person" includes the participating dealer, a related entity of the dealer, a partner, director, officer or employee of the dealer or a related entity of the dealer, any person or company acting jointly or in concert with the dealer, a related entity or any of the individuals above, or an investment fund or account managed by any of the above. A "related entity", in respect of a dealer, is an affiliated entity of the dealer which carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation. An entity is "affiliated" if the person or company is a subsidiary entity of the other or if both are subsidiary entities of the other or if both are subsidiary entities of the same person or company. The combined effect of these inter-locking definitions is that a person or entity that is factually isolated from the original dealer will be caught by the restriction. This is not problematical in itself, however in the absence of appropriate exemptions the scope of the restrictions on trading is over-inclusive. As such, the Proposed Rule would impose regulation that is more burdensome that that which presently exists or is necessary.

Currently, Paragraph 26 of OSC Policy 5.1 contains an exemption from the general trading prohibition for affiliates of dealers provided that they meet certain criteria. A bid or purchase made by an affiliate of the participating dealer, or an attempt by such affiliate to induce or cause a purchase by another person or company, is exempt from the trading restriction provided that:

- The affiliate is a separate and distinct organizational entity from the dealer, with no common officers or employees (other than those who are not engaged for the affiliate in securities activities);

- The affiliate has employee compensation arrangements with respect to those persons who are actively involved in securities activities or in the management of securities activities that are not affected by the performance or profitability of the dealer; and

- The bid or purchase by the affiliate is made in the ordinary course of its business and is not made jointly or in concert with or for the account of any of the issuer, selling security holder, underwriter or dealer.

For a multi-service financial institution like UBS, this carve-out from trading restrictions is crucial. For example, in a circumstance in which UBS Securities Canada Inc. is a an underwriter of a public offering of common shares of a TSX listed issuer, such a carve-out allows UBS Trust (Canada) and UBS Global Asset Management (Canada) Co. to continue to purchase the shares in the secondary market as part of their provision of portfolio management services. There is no

apparent policy reason as to why this exemption should not be carried forward into the Proposed Rule. The pre-conditions provide more than adequate protection from the risk that affiliates could artificially condition the market or jeopardize independent pricing principles.

UBS believes that it is not sufficient to preserve the exemption from trading restrictions in Paragraph 26 of Policy 5.1 in the Proposed Rule. We submit that the OSC should use this opportunity to tailor the regulation to meet present securities industry conditions and make changes that will align Ontario regulation with Reg M.

Securities industry participants in the U.S. debated the policy rationale behind trading restrictions during a distribution when the Securities and Exchange Commission ("SEC") first proposed Reg M in April, 1996. Indeed, certain concepts in Paragraph 26 of Policy 5.1 were considered and then abandoned by the SEC when Reg M was implemented. Notably, the SEC initially defined an "affiliated purchaser" as a "separate and distinct organizational entity" but ultimately adopted a narrower definition. The result is that under Reg M an "affiliated purchaser", which may be "a separately identifiable department or division of a distribution participant", that regularly purchases securities for its own account or the account of others, or that recommends or exercises investment discretion with respect to the sale of securities, is exempt from the prohibitions on trading if the following conditions are satisfied:

- The dealer (i) maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of the the applicable sub-rules of Reg M, and (ii) obtains an annual, independent assessment of the operation of such policies and procedures;

- The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support staff) in common with the dealer that direct, effect, or recommend transactions in securities; and

- The affiliate does not, during the applicable restricted period, act as a market maker, or engage, as a broker or a dealer, in solicited transactions or proprietary trading, in covered securities.

We believe that the Proposed Rule should create a carve-out from restrictions for separately identifiable departments or divisions of a dealer that meet the safeguards of current Paragraph 26 of Policy 5.1 or those set out above from Reg M. We agree with the SEC that the requirement that an affiliate be a separate legal entity elevates "form over substance" (see SEC Release No. 33-7375; 34-38067 – December 23, 1996, p. 20).

Restricted Period for Formal Bids and Share Exchange Transactions

The Proposed Rule provides that the dealer–restricted period in connection with a securities exchange take-over bid or issuer bid or another share exchange transaction begins on the first public announcement of the transaction. The comparable restricted period under Reg M begins on the day proxy solicitation or offering materials are first disseminated to security holders. We submit that the date for commencement of the restricted period under Reg M is more appropriate.

There is frequently a substantial time period between the pricing and announcement of the transaction and the mailing of materials**.** During this time period existing regulation of trading by those with access to material non-public information is sufficient to address market integrity concerns regarding purchases by the adviser or soliciting dealer for the bidder, so long as the adviser or dealer is not acting jointly or in concert with the bidder.

Termination of Restricted Period

The Proposed Rule provides that the restricted period, for both dealers and issuers, ends "on the date the selling process ends and all stabilization arrangements relating to the offered security terminate". Reg M provides that the restricted period concludes upon a person's "completion of participation in the distribution". We submit that the Proposed Rule should not include the additional language put forth in the proposed Universal Market Integrity Rule 7.7, which would extend the restricted period until the dealer has delivered the prospectus to purchasers. It is crucial in cross border public offerings of securities of inter-listed issuers that the restricted periods in Canada and the U.S. end at the same time. Therefore, the restricted period under both the Proposed Rule and UMIR 7.7 should end, as it does under Reg M, upon completion of participation by the restricted dealer in the distribution. The restricted period thereby terminates on a dealer by dealer basis.

Thank you for your consideration. Please call me at (416) 350-2806 or e-mail me at craig.petty@ubs.com if you would like to discuss the above submissions.

Yours truly,

Craig W. W. Petty
Director, Head of Compliance