December 1, 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: Response to Notice and Request for Comments
Proposed OSC Proposed Rule 48-501 (the " Proposed Rule')
Trading During Distributions, Formal Bids and Share Exchange Transactions

We are writing in response to the above-noted Notice and Request for Comments. In particular, we wish to offer comments on:

- the definition of "dealer-restricted person" and "issuer-restricted person";
- the definitions of "connected security", "offered security" and "restricted security";
- the definition of "highly-liquid security";
- the definition of "issuer-restricted period";
- the length of the restricted period;
- the termination of the restricted period;
- the description of permitted research activities; and
- the exemption for short sales.

Below, we address each of the categories individually.

Definitions of "dealer-restricted person" and "issuer-restricted person"

Both the definitions of "dealer-restricted person" and "issuer-restricted person" refer to persons or companies "acting jointly or in concert with" either the dealer-restricted person or issuer-restricted person. We are unsure whether there is any practical difference between *acting jointly* or *acting in concert with* and suggest that the phrase "acting jointly or in concert with" requires clarification.

Definitions of "offered security", "connected security" and "restricted security"

Since the Proposed Rule effectively imposes a restricted period on a listed security or quoted security which would be issued on the exercise of a special warrant (by virtue of paragraph c of the definition of "connected security"), and special warrants, like private placement securities, are not distributed pursuant to a prospectus, we believe that if a listed or quoted security is distributed by way of a private placement, such listed or quoted security should also be subject to a restricted period.

As such, we suggest that:

(i) the definition of "offered security" be amended to include a listed or quoted security being distributed through a private placement;
(ii) the definition of "connected security" be amended to include a listed or quoted security, if the offered security is a listed or quoted security being distributed through a private placement; and
(iii) paragraph (a) of the definition of "restricted security" be amended to read: "the offered security, other than, in the case of a public distribution or private placement, those offered securities comprising the distribution or private placement…".

Definition of "dealer-restricted person"

In our opinion, the definition of "dealer-restricted person" is overly-broad, since it encompasses both (i) a related entity of a dealer-restricted person referred to in paragraph (a) of the definition (a "Related Entity") and (ii) such Related Entity's partners, officers, directors, employees and persons holding certain positions or acting in certain capacities for the Related Entity (collectively, the "Employees"), when there may not be any reason to restrict the trading activity of the Related Entity and its Employees. We suggest that a Related Entity and its Employees be exempted from the dealer-restricted period, if a Related Entity:

(i) has effective policies and procedures reasonably designed to prevent the flow of information between the "dealer-restricted person" referred to in (a) and the Related Entity; and
(ii) the Related Entity does not act as a market maker for a restricted security during the dealer-restricted period.

Definition of "highly-liquid security"

Paragraph (a) of the definition of "highly-liquid security" contains a two-pronged test to measure a security's liquidity, and refers to both a minimum average number of daily trades and an average daily trading volume. We believe that the average number of daily trades is an inadequate measure of a security's liquidity, since:

(i) information about a security's average trades per day is not readily accessible from more commonly used financial information providers. We know of only one information source that provides reasonable access to information about a security's average number of daily trades, but in our opinion, this information source is not widely used; and

(ii) the number of daily trades in a security is not a reliable measure of a security's liquidity since, for instance, the number of daily trades can be affected by the public disclosure of unanticipated information by an issuer or inappropriate market conduct (e.g. insider trading).

We therefore recommend that the reference to average number of daily trades in the definition of "highly-liquid security" be replaced with another measure of a security's liquidity, such as a requirement for a minimum public float. Information about a security's public float is readily available from widely disseminated and reliable sources, including the TSX website.

Definition of "issuer-restricted period"

We suggest that paragraph (a) of the definition of "issuer-restricted period" requires clarification as to whether the restricted period begins on the earlier or later of the days described in sub-paragraphs (i), (ii) or (iii).

Length of the Restricted Period

We see no benefit to the imposition of different lengths of restricted period, depending on an issuer's size.

Termination of Restricted Period

In our opinion, the termination of the "dealer-restricted period" and the "issuer-restricted period" on the date the selling process ends and all stabilization arrangements relating to the offered security terminates may (i) unduly extend the dealer-restricted period longer than necessary; and (ii) lacks clarity.

For those reasons, we suggest that the dealer restricted period terminate once (i) a receipt is issued for the final prospectus, if applicable; and (ii) the dealer's participation in the distribution or special warrants offering are allotted to subscribers. We recommend that the "issuer-restricted period" terminate when (i) a receipt for the final prospectus is issued; and (ii) all of the securities in distribution or special warrants offering are distributed.

In its present from, the Proposed Rule does not define when the selling process ends or stabilization arrangements are terminated, although some guidance is offered in the proposed UMIR amendments (on which we comment below). We are of the opinion that since the UMIR do not apply to all persons that may be subject to the Proposed Rule,

the Proposed Rule itself should offer guidance on when the selling process or stabilization arrangements end.

We have recommended the changes to Proposed Rule's and UMIR's provisions respecting the termination of the restricted period, described above. In the alternative, we respectfully request that the following issues be clarified in the proposed UMIR provisions defining when the selling process is considered to end and stabilization arrangements terminate:

(i) When is a prospectus or offering memorandum considered to have been delivered to each subscriber to effectively end the selling process, in the case of a distribution by prospectus or a special warrants offering? As stated above, we believe that the dealer-restricted period should end when (i) a receipt has been issued for the final prospectus, if applicable; and (ii) the dealer-restricted person's participation in the distribution or special warrants offering has been allotted to subscribers.

(ii) Does the restricted period end even though the dealer-restricted person may exercise an overallotment option to cover short sales? (Please refer to our comments respecting short sales, below). Scotia Capital recommends that, as permitted under Regulation M, dealer-restricted persons be permitted to exercise overallotment options outside of the restricted period, as long as the dealer-restricted person does not exercise an overallotment option in an amount that exceeds its short position at the time of the exercise.

Research Activities

We recommend that section 4.1 of the Proposed Rule require that any estimates, recommendations or target prices relating to securities issued by the issuer of a restricted security be omitted from any research report issued by a dealer-restricted person during a restricted period.

We also believe that the requirement in section 4.1(b) of the Proposed Rule that a research report contain similar information, opinions and recommendations with respect to a *substantial number* of companies in an issuer's industry is ambiguous. Furthermore, the requirement may result in valuable information and analysis being withheld from the market, if dealer-restricted persons are unable to release research reports on the basis, for example, that those reports only deal with several dominant players in an industry that is occupied by dozens or hundreds of other minor players. We suggest that the requirement for a research report to reference a substantial number of industry participants is unnecessary if all the other requirements described in section 4.1 are met. If the requirement is maintained, we suggest that the Proposed Rule clarify what is meant by a *substantial number* of companies in the issuer's industry.

Short Sales

We believe that market integrity will be adequately protected if a dealer-restricted person is permitted to make short sales during a dealer-restricted period, if the bid for or purchase of the restricted security is at a price which does not exceed the maximum permitted stabilization price.

We sincerely appreciate the opportunity to comment on the Proposed Rule. If you have any questions or wish to further discuss the comments made in this letter, please do not hesitate to contact Susan Eapen at (416)862-5840 or James Barltrop at (416)862-3258.

Yours very truly,

SCOTIA CAPITAL INC.