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March 15, 2004

EMAIL

Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
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Attention: John Stevenson, Secretary

Dear Sirs/Mesdames:

**Re: Proposed OSC Rule 48-501 -
Trading During Distributions, Formal Bids and
Share Exchange Transactions**

We are making this submission on behalf of TAL Global Asset Management Inc., Goodman & Company, Investment Counsel Ltd., Jones Heward Investment Counsel Inc., RBC Asset Management Inc., Natcan Investment Management Inc., BMO Investments Inc., Scotia Cassels Investment Counsel Limited, and TD Asset Management Inc. (collectively, the "Managers") in response to the Request for Comments concerning proposed OSC Rule 48-501 (the "Proposed Rule") published at (2003) 26 OSCB 6157.

Each of the Managers is registered as an adviser with the Ontario Securities Commission in order to provide portfolio management services to their clients. In addition, each of the Managers is an affiliate of a dealer which regularly acts as an underwriter.

Each of the Managers is part of a large corporate group. To permit advisers, such as the Managers, to focus on their duties to their clients, large corporate organizations put in place "ethical walls" to segregate advisers from the other business units. In addition, other securities rules also create an incentive for corporate organizations to have "ethical walls" around their advisers. For example, Rule 62-103 provides the right not to aggregate the positions beneficially owned or controlled or directed by the adviser with other business units in an organization if certain conditions are met.

The business of advisers is to manage their clients' money consistent with the best interests of their clients and the mandate established by each client. As a result, advisers are subject to fiduciary duties. Advisers are focused on these fiduciary duties and their investment

performance in order to attract and retain their clients. Accordingly, advisers are focused on the price at which a security can be bought with a view to enhancing performance.

The Proposed Rule prohibits a "dealer-restricted person" from purchasing "restricted securities" during a "dealer-restricted period", except as permitted by the Proposed Rule. The Proposed Rule permits purchases during the dealer-restricted period provided the purpose of the purchase is not to create a false or misleading appearance of actual or apparent trading, and the purchase price does not exceed a prescribed maximum, the securities are "highly liquid", or are certain types of securities, such as non-convertible preferred shares.

As each of the Managers is a "dealer-restricted person" within the meaning of the Proposed Rule as well as the investment funds and accounts managed by the Managers, they become subject to the Proposed Rule. The Managers believe that the application of the Proposed Rule to them is inappropriate as:

(i) it fails to recognize the fact of the independence of the adviser's descision-making,

(ii) it requires advisers to be impacted by dealer activities which is the antithesis of the purpose of the "ethical wall",

(iii) it ignores the fact that by virtue of their fiduciary duties, the Managers are already precluded from ever trading for reasons other than a client's best interest and also already precluded from participating in market manipulation;

(iv) it imposes unnecessary technical compliance burdens on the Managers; and

(v) it fails to impose the obligation where it properly should lie, namely on the dealers.

One of the purposes of the Proposed Rule is clearly to prohibit dealers who have participated as underwriters from driving up the share price or otherwise manipulating the market to enhance their own risk exposure and investor and client relationships. The purpose of extending the application to affiliates of the dealers which are advisers is to ensure that the advisers or their clients are not used by the dealers to circumvent the impact of the policy on them. As a result of the structure of the Proposed Rule, advisers such as the Managers become subjected to the Proposed Rule in order to enhance the regulatory regime for dealers. The Proposed Rule subjects them to specific technical requirements. It is the dealers who have engaged in an underwriting and who may have an incentive to manipulate the price for this reason. Advisers have not participated in, or earned any fees, in respect of, the underwriting and therefore lack such incentives. The application of the Proposed Rule to the adviser distracts the adviser from its core activity in order to ensure compliance with a set of technical requirements which are brought about by actions other than their own.

The Managers feel very strongly that this type of regulation of their activities is inappropriate and does nothing to enhance what the real regulatory purpose should be - namely,

that advisers operate their businesses independently and uninfluenced by other entities in the same corporate organization and with a view to the best interests of their clients.

This is not to suggest that the Managers would then be free to manipulate the market or to trade for the purpose of enhancing another business unit's performance, on the basis of their own decision to do so. The Managers are already prohibited from doing so by virtue of their fiduciary duties and express market manipulation provisions in securities regulation. They are already required to act solely in the best interests of their clients and as fiduciaries, owe a complete duty of loyalty to those clients.

To place the onus on the adviser is to require what is the antithesis of the natural order of events which should occur when there are "ethical walls". By subjecting the advisers to compliance with this Proposed Rule, a communication of information between the dealer and the adviser becomes necessary in order for the adviser to comply with the Proposed Rule.

In order to establish a proper compliance program under the Rule, a dealer-restricted person needs to know:

(i) when a dealer is participating in an underwriting,

(ii) when the dealer-restricted period is to commence, and

(iii) when the dealer-restricted period ends.

Dealers participating in the underwriting easily know this information since they are involved. Conversely, an adviser is dependent on its related dealer communicating these facts to the adviser.

The policy purpose of prohibiting dealers using others as a means to circumvent their own obligations under the Proposed Rule can be achieved by drafting the Proposed Rule in a different manner. Where the main purpose of a requirement is to ensure that a dealer does not do indirectly what it cannot do directly, the rule should be drafted to impose the obligation on the dealer not to take steps that would effect such result. For example, a requirement could be imposed that the dealer shall not seek to influence or solicit the related entities to trade in the restricted security during the dealer-restricted period.

The Managers recognize that the regulators have a legitimate interest in understanding that appropriate controls for independence are in place between the advisers and dealers. Accordingly, the Managers suggest that the definition of a dealer-restricted person could provide that it includes related entities which are registered as advisers or dealers, other than "Segregated Related Entities". Segregated Related Entities would be defined to include the following elements:

(a) decisions regarding purchases and sales of securities for clients are made by the Segregated Related Entity uninfluenced by considerations other than the best interests of the clients;

(b) the dealer related to the Segregated Related Entity does not make, advise on, participate in the formulation of, or exercise influence over, decisions on such purchases or sales by the Segregated Related Entity;

(c) the Segregated Related Entity is subject to an "ethical wall" such that information does not pass from or to the adviser or dealer, other than general research and economic information and compliance related information; and

(d) the Segregated Related Entity does not act jointly or in concert with the related dealer with respect to any securities.

By structuring the Proposed Rule in that manner, the Ontario Securities Commission would both achieve its policy purpose and give recognition to the processes of independence already in place.

The Managers appreciate the opportunity to comment and make suggestions on the Proposed Rule. If you have any questions or comments, please contact Marlene Davidge at 416-865-7322.

Yours truly,

Marlene Davidge

MJD/lp