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VIA COURIER

November 9, 2004

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

Dear Sirs:

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

Ontario Teachers' Pension Plan ("Teachers'") is an independent corporation responsible for investing $79 billion in assets and administering the pensions of Ontario's 155,000 elementary and secondary school teachers and 97,000 retired teachers. Teachers' is one of Canada's largest institutional investors, with significant equity and debt investments in many Canadian reporting issuers.

We have reviewed the proposed amended Rule 48-501 – Trading during Distributions, Formal Bids and Share Exchange Transactions ("Rule 48-501") from several perspectives, including our perspective as an active institutional investor that from time to time is an insider of a reporting issuer or an insider of a selling securityholder of a reporting issuer.

We believe strongly that the definition of "issuer-restricted person" in Rule 48-501 should not include insiders of the issuer of the offered security or of the selling security holder.

The stated purpose of Rule 48-501 is to prohibit purchases of restricted securities in situations where there is a heightened concern over the possibility of manipulation by those with an interest in the outcome of a distribution or restriction.

Simply because a person is an insider of an issuer (or of a selling security holder) does not mean that the person has an interest in the outcome of a distribution or transaction that is different from the interest of a non-insider security holder. Nor does being an insider of an issuer imply that a person has any greater ability to manipulate the value of offered securities than a non-insider may have. To the contrary, the reporting obligations imposed on insiders will serve to dissuade an insider (but not others) from engaging in manipulative conduct; this is particularly so given the recent introduction of both Multilateral Instrument 55-103 (requiring disclosure of insiders' indirect, synthetic and derivative transactions) and section 126.1 of the Securities Act (making

market manipulation a statutory offence), the recent amendments to Part X of the Criminal Code (making certain types of market conduct a criminal offence), and the anti-manipulation provisions in Part 3 of National Instrument 23-101.

Persons who have knowledge of undisclosed material facts or changes with respect to an issuer (whether or not they are insiders) will generally be unable to acquire securities of the issuer during an "issuer-restricted period" (as at any time). Persons that are acting jointly or in concert with the issuer concerning a particular transaction (whether or not they are insiders) will be "issuer-restricted persons". Merely because a person is an "insider" (because the person owns more than 10% of the voting securities of an issuer, because he or she is a director of such a security holder, or otherwise) does not justify in and of itself imposing a prohibition on acquisitions by that person. **Having the status of "insider" in relation to an issuer does not mean that the person in question has knowledge with respect to the issuer's affairs, or the market for the issuer's securities, above and beyond the knowledge that investors in the marketplace as a whole possess.**

Also, **there is no way that an insider can reasonably be expected to be able to comply with Rule 48-501 as an "issuer-restricted person", even if the insider implements expensive and time-consuming monitoring processes.** An insider, as such, will not in most cases be certain when an "issuer-restricted period" begins or ends. In connection with a public distribution, the insider will not know on a particular date that such date is two trading days prior to the day the offering price of the offered security will be determined, or that such date is the date on which the selling process and all related stabilization arrangements have ended. In connection with a securities exchange take-over bid or reorganization (or similar transaction), the insider will not know on a particular date that the information circular bears such date (particularly considering that the SEDAR website does not provide real-time access to an issuer's documents, but rather typically provides access on a day-after-filing basis).

The duration of the proposed trading restrictions are also very significant. For a public distribution of securities, the shortest restriction (for a conventional bought deal financing) could be approximately three weeks. For a take-over bid, the minimum period would be the 35 day period a bid is required to be open. For reorganizations and similar transactions involving shareholders votes, the period would run at a minimum the 21 day mailing period for the information circular.

Further, the inclusion of insiders as "issuer-restricted persons" would unnecessarily impede the ability of investors to complete take-over bids for securities of entities in which they are insiders. If a person were to initiate a take-over bid for securities of an issuer in which it is already an insider, that bid could not be completed if the issuer then commenced a transaction (such as an arrangement or an amalgamation) that begins an "issuer-restricted period" relating to the target security, until the "issuer-restricted period" ends. An "issuer-restricted period" could last many weeks. **We are concerned that including insiders as "issuer-restricted persons" could have an unnecessary and improper impact on**

potential change-of-control situations, where the person looking to acquire control owns sufficient securities to make it an insider. The existing exemption in subsection 3.2(d) for the solicitation of securities to a securities exchange take-over bid does not address this concern (since it is limited only to solicitation activities, and only to securities-exchange take-over bids).

Beyond take-over bids, Rule 48-501 would impose a harsh and unwarranted absolute ban on any open-market acquisitions by insiders. In our circumstance, portfolio acquisitions (whether large or small) that may be in the best interests of our pension plan would be impeded by Rule 48-501, and we expect that other institutional investors would face similar problems.

The proposal to include insiders as “issuer-restricted persons” is unnecessary, overly-restrictive and in many circumstances impossible for an insider to comply with. The proposal imposes disproportionate restrictions on the trading activities of large shareholders to address perceived market integrity concerns which are already well addressed by existing rules. Insiders should not be deemed to be “issuer-restricted persons”. Similarly, for the same reasons, the definition of “associated entity” in section 1.2 of Rule 48-501 should be modified to eliminate the inclusion in the definition of situations where an investor owns more than 10% of the voting securities of an issuer.

We note that a similar comment was made in a letter concerning the previous draft of Rule 48-501 submitted to the Commission by Glen R. Johnson of Torys LLP dated November 27, 2003, and that the summary of comments and responses of the OSC published as an appendix to the current request for comments does not seem to address the comment made in that letter.

If you have any questions concerning this comment, please contact me.

Yours truly,

Michael Padfield
Senior Legal Counsel, Investments