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HOOPP
Healthcare of Ontario Pension Plan

Delivered by Email

September 12, 2016

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o Robert Blair, Secretary (Acting)
Ontario Securities Commission
20 Queen Street West, Suite 2200
Toronto, ON M5H 3S8
Fax: 416-593-2390
E-mail: comments@osc.gov.on.ca

- and -

Me Anne-Marie Beaudoin
Corporate Secretary
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Dear Sirs and Mesdames:

CSA Notice and Request for Comment dated July 7, 2016 – Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") – International Dealer Restrictions

Introduction

We understand that the Canadian Securities Administrators (the CSA) are seeking comments on proposals to amend the current regulatory framework for dealers, advisers and investment fund managers, as set out in NI 31-103 and related instruments, policies and forms. Those proposals are published in the CSA Notice and Request for Comment dated July 7, 2016 (the "**Proposals**"). We further understand that following consideration of comments received, some or all of the Proposals, either as proposed or in modified form, are expected to be incorporated into amendments to NI 31-103 (the "**Upcoming NI 31-103 Amendments**").

The purpose of this letter is to voice our strong concern regarding a capital markets problem that has arisen as a result of certain changes to NI 31-103 that became effective on July 11, 2015 (the "**2015 Amendments**"). We do not have any specific comments on the Proposals as published. However, we are writing to urge the CSA to take advantage of the opportunity presented by the Upcoming NI 31-103 Amendments to resolve the problem created by 2015 Amendments.

As you know, the dealer registration exemption in Section 8.18 of NI 31-103 has always imposed restrictions on the ability of an international dealer to trade in securities of a Canadian issuer. Before July 11, 2015, a substantial number of the foreign dealers relying on the international dealer exemption were also registered as exempt market dealers, and could utilize their exempt market dealer status to effect trades outside the permitted scope of the international dealer exemption. However, as a result of the 2015 Amendments, a foreign dealer is no longer permitted to use the international dealer exemption if it is registered in a category of registration that would permit the trade. We understand that most, if not all, foreign dealers that were previously registered as exempt market dealers have surrendered that registration status, in order to preserve their eligibility to rely on the international dealer exemption.

In consequence, for the reasons we explain below, it has become virtually impossible for us to make secondary market purchases of outstanding debt securities of a Canadian issuer that are originally offered primarily in the United States or elsewhere outside Canada. This has a number of adverse consequences for Canadian issuers and investors.

About HOOPP

Healthcare of Ontario Pension Plan ("**HOOPP**") is a defined benefit pension plan that is dedicated to providing a secure retirement income to more than 309,000 workers in Ontario's healthcare sector. More than 490 employers across the province offer HOOPP to their employees. With more than $63 billion in assets, HOOPP is one of the largest defined benefit pension plans in Ontario, and in Canada. Our proven strategy and track

record of investment returns have made HOOPP a recognized leader among its global peers.

HOOPP uses a liability driven investment strategy to align funding and cash flow requirements. Through a minimum risk portfolio, the characteristics of HOOPP's liabilities are matched with assets that have similar characteristics, providing HOOPP with more control over risk and volatility than what would be offered in a conventional portfolio.

An element of this strategy depends on our ability to invest in securities (particularly debt securities) of Canadian issuers, including in certain circumstances debt securities of a Canadian issuer that were originally offered primarily outside Canada.

Foreign Debt Offerings by Canadian Issuers Through International Dealers

The dealer registration exemption in Section 8.18 of NI 31-103 imposes restrictions on the ability of an international dealer to trade in securities of a Canadian issuer. An international dealer is, however, permitted to trade debt securities of a Canadian issuer with a permitted client during the distribution of the security, provided that the debt security is offered primarily in a foreign jurisdiction and no prospectus has been filed with a Canadian securities regulatory authority (a "**Foreign Debt Offering**").

The ability afforded to an international dealer to trade debt securities of a Canadian issuer in a Foreign Debt Offering was very carefully crafted to permit a number of important policy objectives to be achieved. First and most importantly, this regime allows Canadian issuers access to U.S. and other foreign debt capital markets through an international dealer that operates in and is familiar with those markets. Second, it allows Canadian institutional investors to participate in Foreign Debt Offerings to some extent, together with the foreign investors to which the offering is primarily being made.

When a Canadian issuer makes a Foreign Debt Offering, there is typically no Canadian dealer involved, or Canadian dealers play only a very limited role. The principal, and often only, secondary trading market for debt securities sold in a Foreign Debt Offering will be in the United States, or another foreign market where the securities were primarily distributed at first instance. Canadian dealers will not have any meaningful ability to make a market in Canada for debt securities sold in a Foreign Debt Offering, nor would they have any reason to attempt to do so.

Investment Opportunities in Debt Securities of a Canadian Issuer

HOOPP participates as an investor in Foreign Debt Offerings from time to time, purchasing debt securities of a Canadian issuer during the course of their original

distribution from an international dealer, as permitted for offerings being made primarily outside of Canada.

In addition, HOOPP will, from time to time, identify a compelling investment opportunity in debt securities of a Canadian issuer that were originally sold in a Foreign Debt Offering. Those opportunities may arise in the context of an insolvency or reorganization of the Canadian issuer, or in other circumstances where we believe the trading value of those debt securities to be undervalued. Additionally, there may be other circumstances where acquiring debt securities originally sold in a Foreign Debt Offering would be a fit and proper investment for our portfolio, without which we are hampered in achieving our investment objectives.

Problem Created by the 2015 Amendments

Before the 2015 Amendments came into effect, it was usually a simple process for us to acquire outstanding debt securities originally sold in a Foreign Debt Offering through secondary market trading. We would contact the international dealer that had led the Foreign Debt Offering, as that dealer would typically be making a market in the securities in the United States or other jurisdiction where the original purchasers of those securities were principally located. In most cases, that international dealer would have been both qualified as an international dealer and also registered as an exempt market dealer. The international dealer would then source the Canadian-issued debt securities for us in the market outside Canada where they were readily available, and trade them to us relying on its status as an exempt market dealer.

Following the 2015 Amendments, we are faced with significant obstacles at every turn, and have found that we are generally unable to purchase outstanding debt securities of a Canadian issuer that were originally sold in a Foreign Debt Offering. The international dealer that led the original Foreign Debt Offering is now no longer able to rely on its status as an exempt market dealer to sell those securities to us, because it is effectively prohibited from obtaining or maintaining registration as an exempt market dealer in order to be able to rely on the international dealer exemption for other purposes. Even if the international dealer has a Canadian affiliate that is registered as a dealer in Canada, that affiliate often does not have the necessary registered salespersons, or logistical or technical capabilities, to broker a trade of Canadian-issuer debt securities to us from the international dealer. Finally, Canadian dealers that are unaffiliated with the international dealer that originally led the Foreign Debt Offering are not sufficiently incentivized to participate in acting as brokers on behalf of the foreign dealer in making secondary trades of the debt securities to us. Generally speaking, when we contact Canadian dealers to buy Canadian-issuer debt securities originally sold primarily outside Canada, those Canadian dealers advise us that they do not trade those securities.

Canadian issuers are themselves suffering from the impact of this problem as well. We have observed significant disruption in the secondary market trading of Canadian-issuer securities denominated in U.S. dollars or other foreign currencies. The bid and ask spreads for these Canadian issuer securities are wider than the spreads for their global counterparts. We believe this is because Canada is the natural market for secondary trading in Canadian-issuer bonds, no matter what currency they are denominated in, and no matter where in the world they are originally primarily sold. The adverse impact of the 2015 Amendments on secondary market liquidity for these bonds depresses their price, making the cost of capital for Canadian issuers more expensive than it is for similar issuers in other countries, as institutional investors in their own country are unable to provide market support.

The problem is especially acute in the context of a Canadian issuer that is facing financial stress. U.S. institutional investors will naturally be disinclined to trade in that issuer's debt securities, given the additional risk perceived. On the other hand, Canadian institutional investors, such as HOOPP, are often more inclined to support a Canadian issuer in financial stress. They are likely to be more familiar with the issuer's history and prospects, and to have a higher degree of confidence in and desire to support the issuer's successful recovery, based on their greater familiarity with the issuer and their holdings of other securities of the issuer. As a result, Canadian institutional investors tend to actively support the market for debt securities of Canadian issuers in financial stress, and now, as a result of the 2015 Amendments, are unable to do so for those debt securities originally offered primarily outside Canada.

We cannot stress strongly enough how serious we perceive the impact of this problem to be, not only on institutional investors such as HOOPP, but also on Canadian issuers (including but not limited to those in financial stress), the proper functioning of the Canadian capital markets and, ultimately, the Canadian economy as a whole. We have specific examples of situations where the impact of 2015 Amendments has adversely affected the liquidity of Canadian issuer securities. We would be pleased to provide further information about these specific situations to you at an in person meeting between HOOPP and the appropriate CSA representatives.

We are also faced with tremendous difficulties reselling debt securities that we purchased directly from an international dealer in a Foreign Debt Offering, or that we were successfully able to acquire in a secondary market purchase prior to, or despite, the 2015 Amendments. Our understanding is that as a result of the 2015 Amendments most, if not all, international dealers have concluded that they will not execute resales to a purchaser outside Canada of debt securities of a Canadian issuer held by a Canadian institutional investor such as HOOPP, either because they have concluded (correctly or incorrectly) that they are not permitted to do so under the international dealer exemption, or for other reasons.

As a result, we find that in practice it has effectively become impossible for us to acquire outstanding debt securities of a Canadian issuer originally sold in a Foreign Debt Offering, and that our holdings of debt securities originally distributed in a Foreign Debt Offering have become highly illiquid. We do not believe that this result was an intended consequence of the 2015 Amendments.

Request for Resolution Through the Upcoming NI 31-103 Amendments

The CSA has recently acknowledged the severity of some aspects of the problems created by the 2015 Amendments through the issuance of CSA Staff Notice 31-346 – *Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers*, published on September 1, 2016 (the "**CSA Staff Notice**"). While we commend the CSA for taking steps to acknowledge these problems, the CSA Staff Notice only invites international dealers to apply for exemptive relief to allow them to engage in certain trading activities not currently permitted by NI 31-103. We do not believe that inviting applications for exemptive relief is by itself a sufficient solution to a problem of such severity. The CSA Staff Notice places the onus on international dealers to pursue an exemptive relief application, without any assurance of their ability to obtain such relief successfully, or what terms and conditions might ultimately be imposed by the CSA. While we believe that international dealers would likely be willing to expand the scope of their trading activities with Canadian institutional investors to the extent they are permitted to do so, we expect that this would largely be as an accommodation to their Canadian clients, and that the benefits to them of pursuing exemptive relief may not be sufficient to justify the time, costs and uncertainties involved in the exemptive relief application process.

The CSA Staff Notice indicates that Staff may recommend an amendment to NI 31-103 to address these concerns. We strongly urge the CSA to take action, through the opportunity presented by the Upcoming NI 31-103 Amendments, to enable Canadian institutional investors to participate in secondary market trading of debt securities of a Canadian issuer that were originally sold in a Foreign Debt Offering. There does not appear to be any investor protection or public policy rationale that should preclude HOOPP or other Canadian institutional investors from being able to acquire from an international dealer, through secondary market trading, debt securities of exactly the same class that HOOPP or such other investors could have acquired from that international dealer during the original course of distribution of those securities. In fact, we believe that there are compelling public policy interests weighing in favour of permitting HOOPP and other Canadian institutional investors to acquire debt securities of a Canadian issuer from an international dealer in secondary market trades, if those debt securities were originally offered in a Foreign Debt Offering, given that this would be the only practical means available to acquire these types of securities.

Specific Recommendation

We propose that Section 8.18 of NI 31-103 should be amended at the time of the Upcoming NI 31-103 Amendments to add the following as a new subparagraph of section (2), creating a new permitted category of activity for an international dealer:

> (b.1) a trade in a debt security with a permitted client, other than during the security's distribution, if the debt security was offered primarily in a foreign jurisdiction during the security's distribution and a prospectus was not filed with a Canadian securities regulatory authority for the distribution;

This addition to Section 8.18 would permit international dealers to make resales into Canada, to HOOPP and other permitted clients, of the same Canadian-issued debt securities that they are permitted to sell in Canada as part of a Foreign Debt Offering. It would also permit international dealers to execute resales, both inside and outside Canada, of securities originally sold in a Foreign Debt Offering that are held by HOOPP and other Canadian institutional investors, creating a much needed source of liquidity for those securities.

Conclusion

We depend on access to global trading markets in order to be able to execute our investment policies and strategies, and compete with other institutional investors around the world. One of the effects of the 2015 Amendments, which we believe to have been an unintended consequence, is to prevent HOOPP and other Canadian institutional investors from acquiring for their investment portfolios securities of Canadian issuers that were originally sold in a Foreign Debt Offering.

Canadian institutional investors like HOOPP do not require the benefit of any additional investor protections that may be derived when trading securities through a registered dealer, as opposed to an international dealer, whether those securities are being traded in the course of their original distribution or in secondary market trades. While there may be certain public policy considerations fostering the involvement of registered dealers in trades of securities of Canadian issuers in certain instances, it cannot be in the best interests of Canada's capital markets to restrict international dealers from satisfying the legitimate investment needs of permitted clients in circumstances where registered dealers do not or cannot meet those needs.

For these reasons, we strongly urge the CSA to take advantage of the opportunity presented by the Upcoming NI 31-103 Amendments to make the additional amendment to Section 8.18 of NI 31-103 described above, in order to resolve the problem inadvertently created by the 2015 Amendments.

* * * * *

Please provide copies of this letter to the appropriate members of the CSA in each province and territory of Canada.

Should you wish to discuss the contents of this letter with us, or obtain more information about the concerns we have raised, please contact the undersigned at 416-350-4775 (dlong@hoopp.com).

Yours very truly,

HEALTHCARE OF ONTARIO PENSION PLAN TRUST FUND

David Long
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