

September 21, 2016

BY E-MAIL

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario
M5H 3S8

Dear Sirs/Mesdames:

Re: Proposed OSC Rule 72-503 *Distributions Outside of Canada* and Companion Policy 72-503CP

We are pleased to have the opportunity to comment on proposed OSC Rule 72-503 *Distributions Outside of Canada* (the “Proposed Rule”) and Companion Policy 72-503CP (the “Proposed Companion Policy”).

We are supportive of the Proposed Rule and the policy objective underlying it. It is commendable that the Commission wishes to eliminate the uncertainty that Interpretation Note 1 has caused for market participants over the past several years. We have only two suggestions.

Proposed Rule – Section 2.4

We recommend that the first trade of securities distributed under the “Other Distributions” exemption in section 2.4 of the Proposed Rule not be a distribution if it is made in the normal course through a published market outside of Canada. (The “normal course” concept could be codified through selective wording taken from section 2.6 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* or paragraphs 3 and 4 of subsection 2.6(3) of National Instrument 45-102 *Resale of Securities*.) This addition would address the circumstance where, for example, an Ontario-based issuer whose securities are listed solely in a foreign market carries out a distribution outside of Canada and the purchaser wishes to resell the securities in a normal course trade on the foreign market. As the Proposed Rule is presently drafted, this resale could be illegal if the open market purchaser happened to be a Canadian. There does not appear to be a pressing investor protection concern that would justify this restriction.

Proposed Companion Policy – Statement of Principle and Resale

There are two passages in the Proposed Companion Policy that would, in our view, undermine the certainty the Rule is designed to achieve. The first passage, which is in the second paragraph under the heading “Statement of Principle” in Part 1, reads as follows:

... provided that the issuer, underwriters and other participants in the offering take reasonable steps to ensure that the securities come to rest outside of Canada and are not redistributed back into Canada. The issuer, underwriters and other participants in the offering would be expected to implement reasonable precautions and restrictions

designed to ensure that the entire distribution process results in the securities being held by or for the benefit of foreign investors, as opposed to intermediaries in the distribution chain holding securities for resale to investors in Canada.

The second passage, with similar wording, is under the heading “Resale” in Part 2 of the Proposed Companion Policy.

We acknowledge that the discussion in the Notice and Request for Comment preceding the text of the Proposed Rule and Proposed Companion Policy appears to make the Commission’s position clear as to the intended inapplicability of Interpretation Note 1 once the proposals are implemented. However, the above-noted passages run counter to that intention by largely tracking the wording contained in sections 2 and 4 of Interpretation Note 1. With the inclusion of those passages, it is not unreasonable to anticipate that there will be market participants reading the Proposed Companion Policy in the future who may conclude that the substance of Interpretation Note 1 has essentially been maintained, the only difference being that examples are no longer provided of restrictions or precautions an issuer or registrant might implement to ensure compliance.

It would be desirable for the Proposed Companion Policy to include a warning against issuers, selling securityholders and their agents abusing one of the new exemptions by, for example, purposely using a foreign purchaser as a conduit for an indirect distribution to Canadian purchasers, or carrying out a distribution while having reason to believe that the purchaser intends to be such a conduit. However, this message could be conveyed in a more direct manner that would not continue the existing uncertainty around the concept of “coming to rest”.

Thank you for considering these comments. Any questions or comments regarding this submission may be directed to Ralph Shay, at ralph.shay@dentons.com or 416-863-4419, or Kim Lawton, at kim.lawton@dentons.com or 416-863-4514.

Yours truly,

“Dentons Canada LLP”