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September 28, 2016

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto ON M5H 3S8

Via email to comments@osc.gov.on.ca

Re: Response to Ontario Securities Commission (“OSC”) Notice and Request for Comment re Proposed OSC Rule 72-503 and Companion Policy 72-503CP (Proposed Companion Policy) Distributions Outside of Canada (collectively, the “Proposed OSC Rule”)

Dear Sirs/Mesdames:

AUM Law is a boutique securities law firm with offices in Toronto and Montreal, providing regulatory compliance, fund formation, and corporate finance advice. We deliver practical and forward-thinking advice and services to our clients, consisting primarily of portfolio managers, fund managers and exempt market dealers.

We are pleased to provide the OSC with comments on the recently published Proposed OSC Rule, as it reflects issues that directly impact the registrants we service. The comments in this letter represent the personal views of the undersigned lawyers and are not necessarily the views of AUM Law. This comment letter is submitted without prejudice to any position that has or may in the future be taken by AUM Law on its own behalf or on behalf of its clients.

We believe the Proposed OSC Rule is a welcome development in providing greater certainty for issuers participating in the global capital markets. In particular, we support the OSC's goal of resolving the current uncertainty surrounding cross-border transactions by clearly detailing four exemptions from the prospectus requirement for certain distributions outside of Canada, as well as an exemption from the dealer and underwriter registration requirement.

We are concerned, however, that certain aspects of the Proposed OSC Rule will lead to continued uncertainty and confusion for capital markets participants, as set out below.

In particular, we have questions and comments regarding the following issues.

1. Issuers distributing securities outside of Canada through a local dealer or adviser

Pursuant to Sections 8.5 and 8.5.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”), an issuer that trips the business trigger and distributes its securities to investors who are clients of registered dealers or registered advisers, respectively, is exempt from the dealer registration requirement.

Though we fully support the inclusion of a dealer registration exemption at Section 3.1 of the Proposed OSC Rule, we are concerned that there is no accompanying issuer exemption for distributions outside of Canada, similar to that of NI 31-103. Without the inclusion of a corresponding issuer exemption, the possibility remains that the OSC may deem an issuer to have triggered the dealer registration requirement if it distributes securities outside of Canada through a person or company that is not registered or exempt from registration in Canada, but is otherwise registered or exempt from registration in the non-Canadian jurisdiction where the issuer makes the distribution.

As we recognize that the provision of an issuer exemption similar to Sections 8.5 and 8.5.1 of NI 31-103 may be a longer term project, we respectfully request that the OSC provide additional guidance and clarity around these circumstances.

2. Issuers distributing securities outside of Canada directly

Further to our comment above, we are uncertain of the policy rationale behind requiring issuers to register as a dealer where they directly distribute their securities in a non-Canadian jurisdiction without market intermediaries such as dealers or advisers. Though we agree that the OSC should retain its power to assert jurisdiction over capital market activities that originate in Ontario, whether or not directed at residents of the province, in circumstances where an Ontario-based issuer complies with the non-Canadian jurisdiction's registration and prospectus requirements, we submit that the OSC should not export Ontario's investor protection measures to the non-Canadian jurisdiction.

In our view, it would be impractical and unnecessary for issuers to have to comply with both Ontario's registration regime and that of the non-Canadian jurisdiction where securities are distributed to investors outside of Canada and there is no intention for the distributed securities to flow-back to Canada.

A foreign standard of investor protection that differs from a Canadian jurisdiction should not in itself merit the imposition of the OSC's jurisdiction or imposition of Canadian dealer obligations. This could unfairly disadvantage Ontario-based issuers competing with issuers from other jurisdictions, all of whom are seeking to access global capital markets.

We request that the OSC provide additional guidance and clarity around these circumstances and the interaction between the Ontario business trigger and local registration requirements.

3. Canadian registered dealers participating in the distribution outside of Canada

Pursuant to OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*, the OSC grants an exemption from Ontario dealer registration requirements to market participants located in Ontario acting only on behalf of U.S.-resident clients, provided that they comply with the U.S. registration and investor protection regime. We believe similar provisions should be made for Ontario-registered dealers and their affiliates who are in compliance with foreign requirements.

We understand that some take the view that if an Ontario-registered dealer deals with a non-Ontario investor client, Ontario registrant requirements should apply. However, it is our view that absent market integrity concerns, the foreign jurisdiction should be responsible for foreign investor protection and Ontario registrant requirements should not apply. To require compliance with both jurisdictions' requirements would create uncertainty and cause unnecessary regulatory burden without additional investor protections. We request that the Proposed OSC Rule provide policy clarity to Canadian-registered dealers who, directly or together with their local affiliates, act as market intermediaries in a non-Canadian jurisdiction.

4. Proposed Companion Policy guidance on resale

As capital market advisers, our goal is to provide clients with the greatest degree of regulatory certainty possible. As such, we laud the OSC's replacement of the vague and outdated policy guidance contained in the 1983 Interpretation Note with the prospectus exemptions contained in the Proposed OSC Rule. We note, however, that the clarity gained through the new prospectus exemptions, which do not restrict the resale of securities distributed pursuant to Sections 2.1, 2.2 and 2.3, is counteracted to some extent by the Proposed Companion Policy that states that issuers and dealers are expected to take "reasonable steps" to ensure that the distributed securities do not flow back into Ontario.

We are uncertain of the policy rationale for requiring issuers and dealers to take additional steps beyond the requirements of the proposed prospectus exemptions. Moreover, though we appreciate that "coming to rest" is not a new concept, there is still much confusion and ambiguity surrounding its meaning. In our view, this is a great opportunity for OSC Staff to provide guidance and clarity to this longstanding ambiguity and put the issue to rest once and for all.

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We thank you for the opportunity to comment on the Proposed OSC Rule. Please do not hesitate to contact any of the undersigned should you have any questions or wish to discuss our comments further.

Sincerely,

AUM LAW PROFESSIONAL CORPORATION



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