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September 28, 2016

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

VIA EMAIL

Ladies and Gentlemen:

OSC Notice and Request for Comment – Proposed OSC Rule 72-503 – Distributions Outside of Canada and CP 72-503CP to OSC Rule 72-503 Distributions Outside of Canada

We appreciate the opportunity to submit the below comments on Proposed OSC Rule 72-503 *Distributions Outside of Canada* ("Rule 72-503") and Proposed Companion Policy 72-503CP (the "Companion Policy," and collectively with Rule 72-503, the "Proposed Rule").

1. *We support the preservation of the principle behind the Interpretation Note as a safe harbour but recommend commentary on the policy goals of the Proposed Rule.*

The Commission states in the Companion Policy that: " ...[it] does not interpret the prospectus requirement as applying to a distribution of securities outside of Canada ... 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." This interpretive language is a helpful statement of the jurisdictional scope of the prospectus requirement of Ontario securities legislation. The jurisdiction of Ontario securities law in the context of the prospectus requirement is not necessarily the same as in the dealer registration requirement or as stated in enforcement case law.

Moreover, the language above in the Companion Policy preserves the principle underlying Interpretation Note 1 *Distributions of Securities Outside Ontario* (the "Interpretation Note") as a safe harbour position for issuers and underwriters that sell securities abroad but that cannot easily fit into the prospectus exemptions in the Proposed Rule. We strongly support and appreciate that the Commission has included this guidance in the Proposed Rule. We agree that the reasonable steps outlined in Part 3 "The Operation of the Principle" in the Interpretation Note are no longer workable, given changes in market practice between 1983 and 2016.

In elucidating the simple, the Interpretation Note had discussed connecting factors to Ontario that were relevant to determine the nature of restrictions to be put in place to ensure the securities come to rest outside of Canada. These included,

> "the class and nature of the securities being distributed, the attractiveness to Ontario investors of such securities, the likelihood that, absent such restrictions or precautions, the securities would come to rest in Ontario, whether a market for the class of securities being distributed or any other securities of the issuer already exists in Ontario, the likelihood of the development in the future of a market in Ontario for the securities being distributed, the way in which the distribution is proposed to be effected, the relationship between the capital markets of Ontario and the jurisdictions in which the securities are being distributed and the ease of access of one to the other, whether or not the underwriters and other participants in the distribution are, or are affiliated with, investment dealers that conduct substantial activities in Ontario and the presence of the issuer in Ontario (whether through the conduct of business in Ontario, a number of shareholders resident in Ontario, the issuer being closely followed by Ontario investors or otherwise)".

The Companion Policy lacks such helpful guidance. Without guidance in the Companion Policy on which connecting factors create a risk of the securities not coming to rest outside of Canada and flowing back to Ontario, it becomes difficult to determine in what circumstances reasonable steps should be taken and what those reasonable steps would be in light of 2016 market practice. The prospectus exemptions in Rule 72-503 only cover certain circumstances and it will continue to be necessary to look to the guidance of the Companion Policy in other situations. If Canadian regulation does not enable clear market practice to develop, the Proposed Rule will not have achieved its goal of greater certainty. Ontario issuers and, ultimately Ontario investors, will pay the price in increased offering costs.

The principle underpinning Rule 72-503's prospectus exemptions seems to be related to the availability of sufficient acceptable disclosure that may act as a substitute for a Canadian prospectus, so that if an issuer is filing either Canadian continuous disclosure documents or an offering document in the U.S. or a designated foreign jurisdiction, such documents will sufficiently protect any Canadian "flowback" purchasers, such that restrictions on sales back into Canada need not be imposed. We believe this principle is sound. Investors' broad, easy and quick access to issuer information in 2016 has increased exponentially since 1983, when the Interpretation Note was published.

Based upon this principle, we submit the bolded and italicized portion of the following Companion Policy guidance should be deleted in the final version of the Proposed Rule:

> "Nothing in [Rule 72-503] prohibits or restricts the resale of the securities distributed under an exemption from the prospectus requirement in section 2.1, 2.2 or 2.3 of the [Proposed Rule]. ***Nevertheless, the Commission expects that the issuer, underwriters and other participants in the offering will have taken reasonable steps to ensure that the securities come to rest outside of Canada and are not redistributed back into Canada in a manner that constitutes an indirect distribution in Ontario.***" (Emphasis added).

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The highlighted language is problematic because it suggests that, despite Rule 72-503 making exempted securities expressly freely tradeable, Canadian resale restrictions may nevertheless be required.

The "reasonable step" that market participants typically take to prevent "redistribut[ion] back into Canada", where there is risk that securities distributed abroad will flowback into Canada, is the imposition of Canadian resale restrictions. Therefore, the highlighted language arguably directly contradicts the express provisions of Rule 72-503 which provide that the resale of securities distributed abroad pursuant to section 2.1 (the "Foreign Public Offering Exemption"), section 2.2 (the "Concurrent Canadian Prospectus Exemption") or section 2.3 (the "Canadian Reporting Issuer Exemption") of Rule 72-503 are exempt from the prospectus requirement.

Thus the highlighted language creates doubt regarding whether the Proposed Rule has actually changed the law as it currently stands, by reintroducing as a policy expectation the same principle that underlay the Interpretation Note. For foreign offerings that fall within the exemptions listed in the paragraph immediately above the highlighted text, Rule 72-503 should provide complete resale certainty, and the Companion Policy should not create uncertainty, which was the basis for the current concern about the application of the Interpretation Note.

We therefore respectfully suggest that the highlighted sentence be deleted in the final version of the Companion Policy.

It is worth noting that, in our view, the Interpretation Note has not created significant uncertainty in the market. Market practice has evolved on an ongoing basis. The greater difficulty faced by issuers, underwriters, investors and legal counsel in dealing with distributions outside of Canada has been the different approaches to distributions outside the jurisdiction implemented by British Columbia, Alberta and Québec as compared to Ontario.

Fundamentally, we support the Ontario approach that distributions from Ontario, which satisfy appropriate criteria, ought not to be treated the same as distributions made in or to Ontario. We provided our feedback on this point in our comments to the proposed Regulations and Policies for the Cooperative Capital Markets Regulatory System. Like the Commission in its Introduction in the Notice and Request for Comment to the Proposed Rule,, we felt that those draft instruments represented too broad an approach to the application of the prospectus requirement.

2. *The list of "designated foreign jurisdictions" should be expanded.*

Rule 72-503's list of "designated foreign jurisdictions" matches the list in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* ("NI 71-102"), which is limited to Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland and the United Kingdom. The list in NI 71-102 has not been updated since 2004 and was itself based on the list in Draft National Policy Statement 53 *Foreign Issuer Prospectus and Continuous Disclosure System* ("NP 53") published August 20, 1993, but never finalized. This list of "designated foreign jurisdictions" appears to be under-inclusive. The list appears to exclude

many E.U. members (such as Austria, Belgium, Denmark and Ireland) and other countries (such as Norway or Brazil) that one might expect would have prospectus offering disclosure regimes that are approximately equivalent to the Canadian regime.

We recommend that the Commission give further consideration to the countries that could be included in the list of "designated foreign jurisdictions" and recommend that, at a minimum, all E.U. member countries should be included.

We also discuss the "designated foreign jurisdiction" concept as used in the context of the new dealer registration exemption in section 3.1 of the Rule 72-503 in item 7, below.

3. *The Companion Policy guidance that suggests that foreign purchasers may be entitled to statutory withdrawal and other rights under Ontario law in certain circumstances should be deleted.*

The Companion Policy contains the following guidance:

> "If an issuer or selling securityholder files a prospectus to qualify a concurrent distribution to a person or company in Ontario, the issuer may choose to file a prospectus in Ontario to qualify the distribution of securities to an investor outside of Canada. ***Any prospectus filed in such circumstances should therefore clearly state whether or not it also qualifies the distribution of securities to an investor outside of Canada, recognizing that purchasers of Ontario prospectus-qualified securities may be entitled to certain rights and investor protections under the Act even if the investor is outside of Canada***."

The highlighted phrase seems to say that statutory withdrawal rights under Section 71 of the *Securities Act* (Ontario) (the "Act") and the statutory causes of action for a misrepresentation in a prospectus under Section 130 of the Act and for failure to deliver a prospectus under Section 133 of the Act may be extended to foreign investors simply by, perhaps inadvertently, including the securities to be offered in the foreign jurisdiction in the number of securities qualified by the Ontario prospectus.

This position would have significant implications. The guidance could be taken to mean that including the securities to be offered in a registered offering in the U.S. under the Multi-Jurisdictional Disclosure System ("MJDS") in the number of securities qualified by a Canadian "southbound" MJDS prospectus for a cross-border offering has the legal effect of extending Ontario's statutory two-day withdrawal right to investors in the U.S. public offering. This result would be unworkable from a practical perspective, is out of sync with both U.S. disclosure requirements under the MJDS and the U.S. markets' settled understanding that Canadian statutory rights are not available to U.S. purchasers, and could cause significant disruption to the manner in which (and whether) MJDS cross-border offerings are undertaken.

Part I, Item 1 of the SEC's Form F-10, which is the primary SEC form used by Canadian issuers for southbound MJDS offerings, provides that the "prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, ***including, without limitation ... any***

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description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to the U.S. offerees or purchasers) ..."(emphasis added). The uniform practice (except for occasional oversight) is to delete the disclosure regarding statutory rights available under applicable Canadian law from any MJDS prospectus that is filed with the SEC and delivered to U.S. purchasers. This is a clear and unambiguous indication that Canadian issuers and U.S. market participants do not believe and do not intend that Canadian statutory rights are available to U.S. purchasers in MJDS offerings.

If the Commission takes the view that the Ontario prospectus requirements would apply in that case to U.S. investors, then, in addition to withdrawal rights, the U.S. dealer selling the Ontario prospectus-qualified securities in the U.S. would be also subject to the obligation to deliver the Ontario prospectus to a U.S. purchaser, so the U.S. purchaser would buy under two prospectuses. If no Ontario prospectus was delivered to the U.S. investor as required, the 48 hour withdrawal right under Ontario law would be perpetual, since the right of withdrawal commences upon delivery of the final prospectus. Moreover, each U.S. purchaser would be entitled under section 133 of the Act to "bring an action for rescission or damages against the dealer" that failed to deliver the Ontario prospectus in compliance with section 71 of the Act. Clearly this is unworkable.

Distributions of Ontario-qualified prospectus securities outside of Canada could only be distributed in the relevant jurisdictions outside of Canada in compliance with the applicable securities laws of those relevant jurisdictions. The point of having all of the securities in an offering qualified under the Ontario prospectus is for the resale of those securities back to Ontario, in order to ensure that they are freely tradable and fungible with securities distributed to Ontario-based investors. This is in keeping with the thrust of the Proposed Rule and we submit that the Commission should not over-apply the prospectus requirements and, to quote the Commission's Notice and Request for Comment, "strike an appropriate balance between investor protections and facilitating cross-border offerings by avoiding the duplicative application of Ontario requirements where offerings are subject to foreign securities laws."

With respect to foreign private placements that are made concurrently with a Canadian prospectus offering, we believe that the prevailing practice is to qualify under the Canadian prospectus all the securities that may be sold, even if some may be sold via a foreign private placement (for example, in the U.S. as a Rule 144A tranche to "qualified institutional buyers"). This practice developed because the final Ontario prospectus must be filed and receipted prior to the time actual orders may be taken and sales can be confirmed (since no actual trades can take place until after the final prospectus has been receipted). Therefore, prior to obtaining that prospectus receipt, it is impossible to determine with exact certainty what proportion of orders will be generated from Canadian purchasers versus foreign purchasers.

The guidance above therefore casts considerable uncertainty over the legal effect of structuring these foreign private placements in connection with Canadian public offerings (and, as described above, U.S. public offerings under the MJDS) in the manner that they are currently structured, and we respectfully submit it ought to be deleted. Moreover, it is not clear that

foreign purchasers require the protection of Ontario securities law and extending such interior rights disturbs the balance which the Commission said it was seeking to achieve..

The Companion Policy expressly recognizes this by stating:

> "The Commission takes the view that an investor outside of Canada will ordinarily expect to rely on the prospectus, registration statement or similar protections of the securities laws of the foreign jurisdiction in which the investor is located. The Commission recognizes that compliance with the prospectus requirement or conditions of a prospectus exemption may be unnecessarily duplicative of these protections and will generally not be necessary to fulfill the purposes of the Act."

We therefore submit that the highlighted guidance detracts from goals of the Proposed Rule and ought to be deleted, and guidance to the opposite effect be provided, for clarity. In the alternative, express exemption from obligations to deliver a prospectus and extend withdrawal rights to foreign purchasers ought to be included within Rule 72-503, pursuant to clause 143(1)16.ix of the *Securities Act*.

4. *The requirement to file Form 72-503F should be eliminated.*

Under Rule 72-503, a distribution of securities abroad in reliance on the Concurrent Canadian Prospectus Exemption, the Canadian Reporting Issuer Exemption or the exemption in section 2.4 of Rule 72-503 (the "Restricted Resale Exemption") would trigger the requirement to file Form 72-503F within 10 days of the closing of the offering. We submit that this new form requirement ought to be eliminated in the final version of the Proposed Rule, as it would unnecessarily increase the compliance burden of Ontario issuers without providing any material benefit. The information that would be provided to the Commission in Form 72-503F should, in most cases, be available to the Commission through the issuer's Canadian continuous disclosure filings.

The "Anticipated Costs and Benefits" in the Notice and Request for Comment treated all proposed costs as a lump sum against all unquantified benefits. We respectfully submit that this is not the appropriate way to assess costs and benefits. Paragraph 143.2(2)7 of the *Securities Act* requires a "description of the anticipated costs and benefits of the proposed rule". Simply listing that something will be a cost is not a description of those anticipated costs. Such costs ought to be quantified. In particular, when dealing with items described as costs, the particular benefit of that proposed item should be assessed against its particular costs. In other words, the cost of compiling, preparing, and submitting the new Form 72-503F should be assessed against the benefit to the public interest of that Form, compared to the alternative of no new form.

5. *The Commission should seek consistency in the forms of certification that are included on various Commission reporting forms.*

In the event that the Commission nevertheless determines to retain Form 72-503F, the Form 72-503F appears to have yet another different style of certification from other recent forms imposed by the Commission. While the new Form 72-503F is not the most onerous certification of these recent forms, we wish to raise this issue in the context of this request for comments.

The certification issue is becoming a real problem, which has recently come to a high point with the new private placement trade report Form 45-106F1. The variety of styles of certification as highlighted the lack of consistency and exacerbates the sense that stringent personal liability is being imposed without, perhaps, fully considering the appropriate standards. It would be one thing if this style of certification represented a firm standard and clear policy choice by the Commission. But that does not seem to be the case.

Like the new Form 45-106F1, Form 72-503F insists that the form must be signed by an officer or director of the issuer or their equivalent. Given that Form 72-503F is solely administrative reporting, we question why it is necessary that this be raised to an executive function and could not be handled within the routine internal signing authorities of the issuer.

There does not seem to be any consistent standard for certification in forms used under Ontario securities legislation. Individual certification requirements appear to fluctuate widely from form to form, without explanation or discussion.

We set out below some examples of different forms of certification drawn from forms used in many sections of Ontario's securities rules. While these differences may not seem all that material to a regulator, to the person signing the form who takes the responsibility seriously, there are marked differences in the standards and risk of personal individual liability.

A. Old version of Form 45-106F1 Report of Exempt Distribution:

"On behalf of the issuer, I certify that the statements made in this report are true."

B. New version of Form 45-106 F1 Report of Exempt Distribution:

"By completing the information below, I certify to the securities regulatory authority or regulator that I have read and understood this report, and all of the information provided in this report is true."

C. Form 62-103F1 Early Warning Report:

"I, as the acquiror, certify, or I, as the agent filing the report on behalf of an acquiror, certify to the best of my knowledge, information and belief, that the statements made in this report are true and complete in every respect."

D. Form 62-103F2 Alternative Monthly Report by and Eligible Institutional Investor:

"I, as the eligible institutional investor, certify, or I, as the agent filing the report on behalf of the eligible institutional investor, certify to the best of my knowledge, information and belief, that the statements made in this report are true and complete in every respect."

E. Form 13-502F1 Class 1 Class 3B Reporting Issuers – Participation Fee:

"I, _____, an officer of the reporting issuer noted below have examined this Form 13-502F1 (the Form) being submitted hereunder to the Ontario Securities Commission and certify that to

my knowledge, having exercised reasonable diligence, the information provided in the Form is complete and accurate."

F. Form 33-109 F6 – Firm Registration

"It is an offence under securities legislation and derivatives legislation, including commodity futures legislation, to give false or misleading information on this form.

"By signing below, you (1) certify to the regulator in each jurisdiction of Canada where the firm is submitting and filing this form, either directly or through the principal regulator, that: you have read this form, and to the best of your knowledge and after reasonable enquiry, all of the information provided on this form is true and complete."

G. CSA Notice 31-317 – Monthly Suppression of Terrorism and UN Sanctions Report

"The Undersigned certifies that, to the best of his/her knowledge, and after having made reasonable inquiries, the information contained in this report is correct."

H. Form 24-101F1 – Registered Firm Exception Report of DHP/RAP Trade Reporting and Matching

"The undersigned certifies that the information given in this report on behalf of the registered firm is true and correct."

I. Form 55-102F6 Insider Report:

"The undersigned certifies that the information given in this report is true and complete in every respect. It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue."

J. Form 72-503F Report of Distributions Outside of Canada

"The undersigned hereby certifies that the statements made in this report are true."

As can be seen from these examples, there is very little consistency. However, what Form 72-503F lacks (in common with the new version of Form 45-106F1) is recognition that the individual is signing ***on behalf of*** the reporting entity. Other styles of equally important certification, as shown above, do include this and frequently also a qualification that the information is to the best of their knowledge after reasonable enquiry.

The certification in Form 72-503F omitted both of those qualifications, and thus makes it clearly a personal liability offence for the individual signing the report in the event that it includes any mistaken information, pursuant to paragraph 122(1)(b) of the *Securities Act*.

This is the spectre raised by a personal certification that does not indicate the individual is signing on behalf of the reporting entity and does not give the signing individual any potential

qualification for best knowledge. While, on the other hand, it might seem desirable to regulators to keep signers on their toes by such spectres, the current situation around the new Form 45-106F1 shows that there might be an adverse reaction.

6. *The Restricted Resale Exemption should explicitly permit sales over exchanges outside of Canada*

Section 2.4(1) of Rule 72-503 provides that "[t]he prospectus requirement does not apply to a distribution of securities to a person or company outside of Canada if, in connection with the distribution, the issuer of those securities or the selling securityholder has complied with the securities law requirements of the jurisdiction outside of Canada." Section 2.4(2) of Rule 72-503 provides that "[t]he first trade of securities distributed under the exemption in subsection (1) is a distribution unless (a) the trade is to a person or company outside of Canada; or ... [t]he issuer of the securities is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade [and] [a]t least four months have elapsed from the distribution date."

We respectfully submit Section 2.4(2)(a) should be revised to provide that the first trade of securities distributed under 2.4(1) will not be a deemed distribution if made to a person or company outside of Canada ***or through an exchange or a market located outside of Canada***.

This modification would (i) reflect the reality that most purchasers on foreign exchanges may be presumed to be outside of Canada and (ii) align the wording of section 2.4 of Rule 72-503 with the exemption in section 2.14 of National Instrument 45-102 *Resale of Securities* ("NI 45-102").

It is interesting to note that the Restricted Resale Exemption is conditioned on the issuer or selling securityholder complying with the laws of the foreign jurisdiction. There is no such qualification on the resale exemptions in NI 45-102 and it seems an unnecessary extraterritorial application of Ontario securities law. We respectfully submit that foreign securities regulators should regulate foreign markets and the condition in section 2.4(1) of Rule 72-503 creates the unnecessary duplication of regulation that the Companion Policy states Rule 72-503 seeks to avoid. This comment applies equally to the Concurrent Canadian Prospectus Exemption and the Canadian Reporting Issuer Exemption, each of which is also conditioned on compliance with foreign law.

7. *New dealer registration exemption raises a concern of extraterritorial regulation of foreign dealers selling securities of Ontario issuers abroad. Its interaction with paragraph 8.18(2)(a) of* National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations should be clarified.*

The Commission's rationale for the new dealer and underwriter exemption in section 3.1 of Rule 72-503 is that it will provide "greater certainty to market participants" and will "help address the challenges that foreign dealers and underwriters may face in determining whether the dealer and underwriter registration requirement applies to their activities." Our view, however, is that these are not challenges that foreign dealers face with any regularity, if at all. In short, this is

not a problem that needs to be solved and the new dealer registration exemption is, if anything, *harmful* to market certainty, in that it raises the question of whether a foreign dealer distributing securities of an Ontario issuer in a foreign jurisdiction to foreign investors *needs to consider whether it is engaged in the business of trading in securities in Ontario.*

We recommend the exemption in Section 3.1 of Rule 72-503 be deleted as unnecessary. If the Commission determines to include the new dealer registration exemption in the final version of the Proposed Rule, we believe some changes should be made.

The Proposed Rule's new dealer registration exemption would only apply to dealers that, among other things, are (i) registered in the U.S. or a "designated foreign jurisdiction," and (ii) in compliance with "all applicable dealer registration requirements and other broker-dealer regulatory requirements" of the foreign jurisdiction applicable in connection with the distribution.

The Proposed Rule's new dealer registration exemption should extend to dealers that are registered in any foreign country, not just in the U.S. or in a "designated foreign jurisdiction", the same way that the international dealer exemption in Section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") is not limited to specified countries.

There are at least three other issues with the requirements identified above. First, as discussed above in the context of the offshore offering exemptions, the list of "designated foreign jurisdictions" is problematic. A Brazilian dealer (for example) offering securities of an Ontario incorporated issuer to investors in Brazil would not be able to avail itself of the exemption, because Brazil is not included in the list of "designated foreign jurisdictions." But it is not clear why this should be so. As previously discussed, the list of "designated foreign jurisdictions" was developed for Draft NPS 53 and NI 71-102 and identifies countries that (in 2004) had continuous disclosure regimes that the Canadian Securities Administrators deemed sufficiently equivalent to Canada's continuous disclosure regime such that an issuer's foreign reports could be filed to satisfy its Canadian continuous disclosure obligations. It is not clear that, because the Commission viewed those countries' continuous disclosure regimes as adequate for Canadian purposes in 1993 or 2004, such countries' *securities dealer regulations* are roughly equivalent to Canadian dealer regulations in 2016 (or that excluded countries' securities dealer regulations are somehow lacking). This contrasts with the international dealer exemption in section 8.18 of NI 31-103, where a dealer registered in any foreign jurisdiction is considered eligible to trade foreign securities (of issuers from any other country) with permitted clients in Ontario. Therefore, the Proposed Rule's new dealer registration exemption should extend to dealers that are registered in any foreign country, not just in the U.S. or in a "designated foreign jurisdiction", just as the international dealer exemption in Section 8.18 of NI 31-103 is not limited to specified countries.

The second issue with the operation of the exemption is that it is conditioned on compliance by the foreign dealer with "***all*** applicable dealer ... requirements." For example, a U.S. registered broker-dealer offering securities of an Ontario incorporated issuer to investors in the United States would not be permitted to rely on the exemption unless it is in compliance with "***all*** applicable conduct and other regulatory requirements of U.S. federal and state securities law

and FINRA rules in connection with the distribution." This is a highly exacting standard in practice, and "in connection with" the distribution is exceedingly broad. It means that potentially any immaterial transgression with respect to, for example, state level "blue sky" requirements or FINRA regulations, even so minor as a late filing, would mean that the exemption would be completely available to U.S. broker-dealer, which would by implication require it to consider whether it should be registered in Ontario as a dealer. However, by the time the dealer became aware of its state law transgression, the distribution may have already been completed, which means that it was technically illegal under Ontario's rules.

It is not clear why the Commission ought to insist upon foreign compliance in this context, since the new dealer registration exemption only applies to activities outside of Ontario involving non-Ontario investors. If a dealer is sufficiently in compliance with the requirements of its foreign jurisdiction that the regulator of that foreign jurisdiction permits the dealer to carry on business, it does not seem reasonable nor necessary for the protection of Ontario markets that the foreign dealer be prohibited from selling securities to investors in that foreign jurisdiction for Ontario issuers. To turn things around hypothetically, it would seem an odd result if a Canadian investment dealer was selling securities of a United Kingdom issuer to Canadian investors under a Canadian prospectus offering, but miscalculated the Commission's final prospectus filing fee, and the U.K. Financial Conduct Authority could prohibit the Canadian investment dealer from completing the offering.

A third issue with the new dealer registration exemption is that is casts uncertainty over the operation of the international dealer exemption. Paragraph 8.18(2)(a) of NI 31-103 provides that an international dealer relying on the exemption in such section may participate in "any activity, other than a sale of a security, that is reasonably necessary to facilitate a distribution of securities that are offered primarily in a foreign jurisdiction." Any interaction of this power of international dealers with the proposed exemption in section 3.1 of Rule 72-503 is unclear.

We respectfully submit that, rather than include the proposed new dealer registration exemption in the final version of the Proposed Rule, a better approach would be for the Commission to clearly state that Ontario's dealer and underwriter registration requirements do not apply to distributions of securities by foreign dealers to investors located in foreign jurisdictions. To the extent a foreign dealer is engaged in conduct in a foreign jurisdiction that may have deleterious consequences for the Ontario capital markets (e.g., knowingly selling securities abroad of a fraudulent Ontario incorporated issuer), the Commission has its public interest jurisdiction.

8. *We appreciate the clarity on "name give up" for offerings by Ontario issuers provided by the Proposed Rule.*

Where an issuer with connections to Ontario offers securities abroad (usually in the United States) and concurrently sells the securities into Ontario in a private placement, market practice (based upon the Interpretation Note) has been to list only the Ontario purchasers – and not list the foreign public purchasers, which would as a practical matter be impossible for a foreign public offering – on the exempt distribution report filed on Form 45-106F1. The Proposed Rule will provide important certainty on this point, since none of the new prospectus exemptions are to be included on the list of prospectus exemptions that trigger a filing on Form 45-106F1.

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Thank you for your attention to these comments.

If you have any questions regarding this submission please contact Pamela Hughes at pamela.hughes@blakes.com or 416-863-2226, Ross McKee at ross.mckee@blakes.com or 416-863-3277, Stacy McLean at stacy.mclean@blakes.com or 416-863-4325 or Tim Phillips at tim.phillips@blakes.com or 416-863-3842.

Yours truly,

Pamela Hughes

Ross McKee

Stacy McLean

Tim Phillips