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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o

The Secretary
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-and-

Me Anne-Marie Beaudoin
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VIA EMAIL

Ladies and Gentlemen:

RE: Proposed Amendments to National Instrument 45-102 *Resale of Securities*

We are writing to you in response to the request of the Canadian Securities Administrators (the "**CSA**") for comments on the proposed amendments to National Instrument 45-102 *Resale of Securities* ("**NI 45-102**") published on June 29, 2017 (the "**Proposed Amendments**").

We are very supportive of the Proposed Amendments and, in particular, are supportive of removing the 10% ownership tests from the resale exemption in section 2.14 of NI 45-102, which have proven to be impractical in most circumstances.

We would, however, respectfully suggest that the CSA should not adopt in its current form the requirement in proposed section 2.14.1 of NI 45-102 that "the issuer of the security was a foreign issuer on the distribution date" (the "**Foreign Issuer Test**").

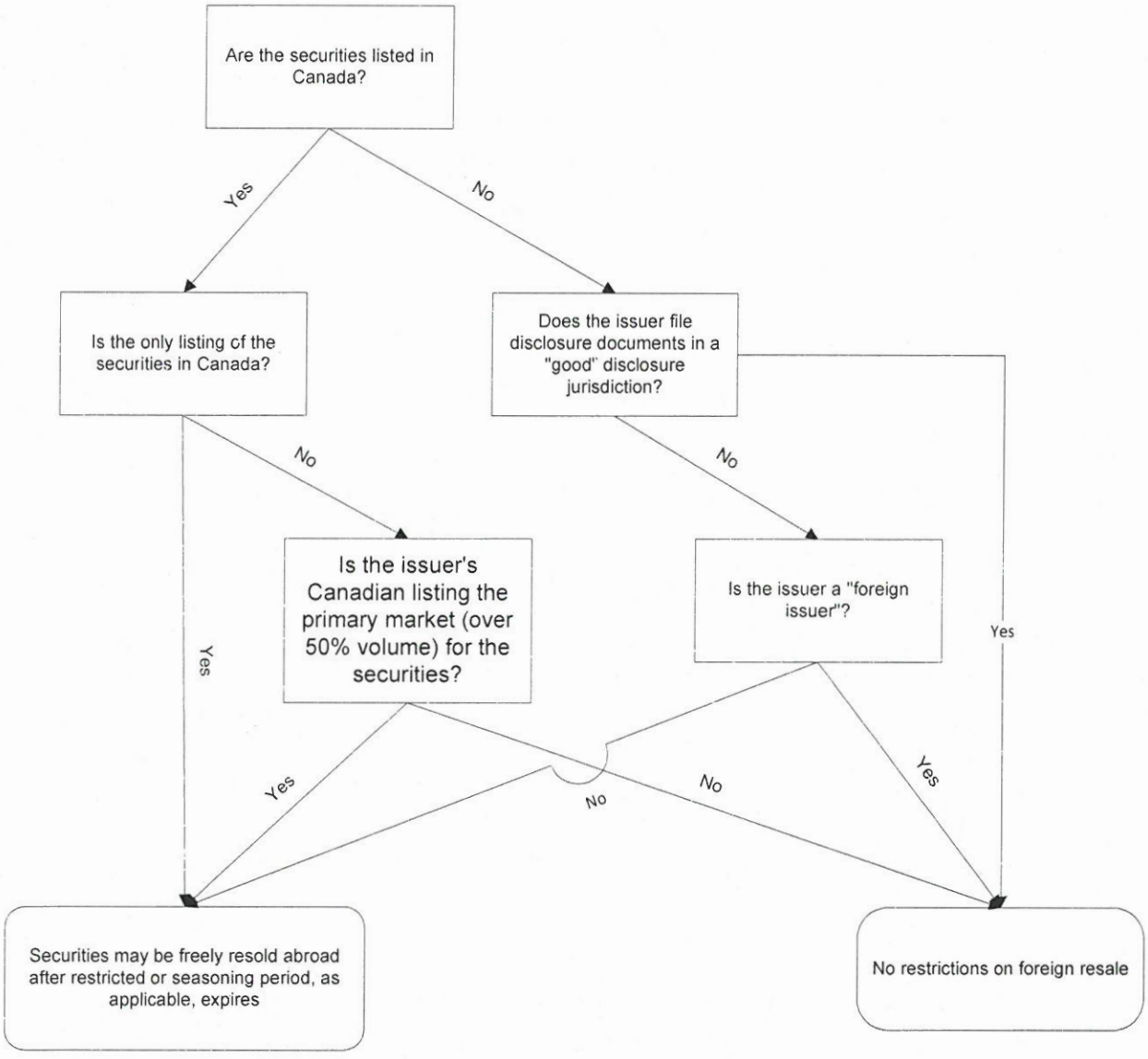
The stated purpose of the Foreign Issuer Test is to "limit the availability of the proposed exemption [in proposed section 2.14.1 of NI 45-102] to the securities of issuers having minimal connection to Canada." The Foreign Issuer Test achieves this purpose by creating what is effectively a "resale from the jurisdiction is a resale in the jurisdiction" regime across Canada for the securities of any issuer that fails the Foreign Issuer Test. In our view, this kind of regime is inappropriate for two main reasons.

First, the "distribution from the jurisdiction is a distribution in the jurisdiction" framework for regulating primary distributions is a concept that currently applies in Alberta, British Columbia and Québec. In our experience, that concept in practice creates significant barriers to or, at a minimum, increases expenses for, capital raising for affected issuers with connections to those provinces, without any apparent material corresponding Canadian "investor protection" regulatory benefit. For this reason alone, we respectfully submit it would be undesirable to broadly extend this concept into the realm of deemed distributions upon resale.

Second, if the subject securities are listed in Canada, we suggest that the question should then be whether there is sufficient trading volume in Canada that the risk of "flow back" is significant enough to justify Canadian regulation of a foreign transaction. For example, if trading volume in Canada is more than 50% of total worldwide volume, perhaps then the resale exemption would not be available. If not, or if securities are not listed in Canada, we submit that such securities should be able to be freely resold abroad.

We suggest that offshore resales of securities that are listed on foreign exchanges (at least, exchanges located in more sophisticated foreign jurisdictions) should always be permitted. If the issuer is listed in Canada, it will be a reporting issuer in Canada and will be filing Canadian continuous disclosure documents. If not, the issuer will be filing continuous disclosure documents in the foreign jurisdiction in accordance with such jurisdiction's listing rules. In either case any Canadian "flow back" purchaser should have access to the information it needs.

Our proposal for a foreign resale regime that respects the current 4 month hold period regime in appropriate circumstances is outlined below. Each of the elements below would be considered as of the resale date.



The corollary of the above framework is that, if the CSA decides to adopt the Foreign Issuer Test, such test should only apply if the issuer is not filing continuous disclosure documents in a "good" disclosure jurisdiction.

If the CSA does not consider it feasible to more comprehensively revisit the framework currently applicable to offshore resales under section 2.14 of 45-102 as we have suggested above, we would make two suggestions regarding how the Foreign Issuer Test should be implemented: (i)

such test should only apply if the issuer of the securities is not filing continuous disclosure documents in a "good" disclosure jurisdiction; and (ii) issuers should be permitted to determine whether they are "foreign issuers" under the "business contacts" portion of the test on a yearly basis, perhaps as of year-end or the end of the second fiscal quarter, the latter being when foreign companies are required to make annual determinations regarding "foreign private issuer" status under the SEC's rules. This may aid investors (and issuers) in being able to make a more certain determination by providing a specific reference point for which current financial statements and other information will be available.

* * *

If you have any questions regarding this submission please contact Ross McKee at ross.mckee@blakes.com or 416-863-3277 or Tim Phillips at tim.phillips@blakes.com or 416-863-3842.

Yours truly,

(signed) Ross McKee

(signed) Tim Phillips