



September 27, 2017

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria
22^e étage C.P. 246
Tour de la Bourse
Montréal (Québec) H4Z 1G3

Fax: (514) 864-6381

E-mail: consultation-en-cours@lautorite.qc.ca

Dear M^e Beaudoin:

Subject: CSA Notice and Request for Comment - Draft *Regulation to amend Regulation 45-102 respecting Resale of Securities* and Draft Amendments to *Policy Statement to Regulation 45-102 respecting Resale of Securities*

The *Caisse de dépôt et placement du Québec* (the “**Caisse**”) has reviewed CSA Notice and Request for Comment - Draft *Regulation to amend Regulation 45-102 respecting Resale of Securities* and Draft Amendments to *Policy Statement to Regulation 45-102 respecting Resale of Securities* (the “**Draft Amendments**”).

About the Caisse

Under its constituting act, the Caisse manages funds from its depositors, primarily public and private pension and insurance plans.

The Caisse is one of the largest institutional fund managers in Canada.

Background

As a globally active institutional investor, the Caisse often participates in public offerings of securities in foreign jurisdictions or distributions conducted by foreign

issuers in Canada under a prospectus exemption.

The Caisse is especially attentive to any regulatory initiative that ensures its access to those distributions and provides for equal treatment with other investors.

However, securities regulation imposes resale restrictions on investors like the Caisse for securities that are primarily distributed in a foreign jurisdiction.

The current exemption granted under section 2.14 of Regulation 45-102 (the “**Current Exemption**”) allows for the resale of those securities outside of Canada if residents of Canada do not own more than 10% of the outstanding securities of the issuer and those residents do not represent more than 10% of the total number of owners of the securities (the “**Ownership Conditions**”). The purpose of the Ownership Conditions is to ensure that the issuer has a minimal connection to Canada.

Since the Caisse has some reservations concerning the relevance of those provisions, it welcomes the initiative of the Canadian Securities Administrators (the “**CSA**”) which proposes to amend the existing exemption and repeal the Ownership Conditions.

The Caisse submits the following general comments and responses to certain specific questions by the CSA.

General comments

It has become clear that compliance with the Current Exemption conditions is difficult to determine.

Given the liquidity of public markets, it is quite challenging to ascertain whether the securities held by residents of Canada exceed the Ownership Conditions under the exemption.

Moreover, the Ownership Conditions are not the best indicator of an issuer's connection to Canada or whether there is a market for the issuer's securities in Canada.

The Caisse is in favour of eliminating those Ownership Conditions and replacing them with the definition of foreign issuer as proposed in the Draft Amendments.

The Caisse believes that the Draft Amendments will help remove the unnecessary impediment to participation by Canadian institutional investors, such as the Caisse, in foreign offerings while ensuring compliance with the "closed system" on which the regulatory approach to distributions of securities in Canada relies given the absence of a market in Canada for such offerings.

It should be noted, however, that some Canadian issuers conduct public offerings over foreign markets and choose not to contemporaneously offer their securities to the public in Canada. Concurrently with their foreign public offering, these issuers will offer securities in Canada under a prospectus exemption. Here again, there is no market for such securities in Canada.

Therefore, these issuers could decide to never become reporting issuers in Canada. Accordingly, Canadian investors who purchased the issuers' securities may be subject to an indefinite restricted (or "hold") period unless the issuers (i) apply for a discretionary exemption for the resale of their securities on an exchange, or a market, outside of Canada or to a person outside of Canada; or (ii) use a statutory prospectus exemption as part of a private placement.

In this instance, Canadian investors are thus at a disadvantage compared with foreign investors who participated in the same placement, as they would be subject to resale restrictions to which the foreign investors would not be subject.

The Draft Amendments would not apply in this case as the issuers could not qualify as foreign issuers.

Given those circumstances, we believe that the CSA should provide an exemption for the resale of securities of Canadian issuers outside of Canada.

Insofar as such securities are prevented from returning to Canada and compliance with the spirit of the regulation and the definition of a closed system is ensured—by imposing conditions such as permitting the resale only outside of Canada or to a person outside of Canada—we believe that such an exemption should be allowed.

Since June 30, 2016, the *Autorité des marchés financiers* (the “AMF”) issued two blanket orders granting exemptive relief to certain Canadian institutional investors for the resale of securities outside of Canada.

One of the blanket orders concerns the resale outside of Canada of securities of Canadian issuers, i.e., the *Décision générale relative à la dispense de l’obligation d’établir un prospectus pour la revente à l’étranger de titres d’émetteurs canadiens* (“Canadian issuer blanket order”).

However, this blanket order imposes conditions on such resales including the requirement that the issuer be a reporting issuer in Canada on the date of resale.

We propose that the CSA adopt a similar exemption and that its scope extend beyond that decided by the AMF.

The CSA should, therefore, also provide an exemption for Canadian issuers that distribute their securities primarily in a foreign jurisdiction without ever becoming reporting issuers in Canada.

Such an exemption would be similar to that proposed for foreign issuers in the Draft Amendments, except that it would extend to issuers that do not meet the definition of foreign issuer.

Responses to CSA Questions

In response to question 6, we believe therefore that the CSA should consider a similar exemption for the resale outside of Canada of securities of Canadian issuers distributed under a prospectus exemption in Canada if those securities are listed on an exchange, or a market, outside of Canada, without requiring that the issuers be reporting issuers.

However, we believe that the exemption should include conditions such that the resale must take place exclusively outside of Canada and that there be no unusual efforts made to prepare the market or to create a demand.

Conclusion

The CSA initiative will allow Canadian investors such as the Caisse to participate in what may prove to be attractive foreign investments while ensuring the fair treatment of Canadian and foreign investors within one and the same offering.

In our view, however, in order to fully achieve this objective, the CSA should adopt an exemption for the resale outside of Canada of securities of Canadian issuers distributed under a prospectus exemption in Canada.

Yours truly,



Soulef Hadjoudj
Directrice-conseil, Affaires juridiques, Investissements
Affaires juridiques et secrétariat