

Tuesday, November 7, 2023

The Honorable David L. Cohen  
Ambassador of the United States  
The Embassy of the United States of America  
323 Coventry Road, Ottawa,  
Ontario, K1K 3X6

Dear Ambassador Cohen:

**Re: National Defense Authorization Act for Fiscal Year 2024**

The Canadian Securities Administrators (the CSA or we) is an umbrella organization of Canada's provincial and territorial securities regulators. The CSA's mission is to deliver a harmonized securities regulatory system that (i) protects investors from unfair, improper or fraudulent practices, (ii) fosters fair and efficient capital markets, and (iii) reduces risks to market integrity and maintains investor confidence in the markets. To carry out this mission, which is similar to that of the Securities and Exchange Commission (SEC), each CSA member administers and enforces securities law in its respective province or territory.

We are writing you about the National Defense Authorization Act for Fiscal Year 2024, S.2226. We wish to highlight the consequences to Canadian issuers of section 6081 of the proposed Senate bill<sup>1</sup>, which removes the foreign private issuer exemption (FPI exemption) from section 16 of the Securities Exchange Act of 1934 (Exchange Act) for *all* foreign private issuers. Among other things, section 16 of the Exchange Act requires insiders of public companies to disclose trades. As comparable insider reporting requirements already apply in Canada, removing the FPI exemption would trigger significant and unnecessary additional reporting costs in the U.S. for Canadian companies that are foreign private issuers, typically after listing in both Canada and the United States.

U.S. and Canadian securities regulatory authorities share the goals of disclosing the trading activity of directors, senior officers and significant shareholders of public companies to the market as this deters improper insider trading on confidential information, among other benefits. Canadian insider reporting requirements require similar public disclosure to U.S. requirements. Insider reports filed under Canadian securities legislation are freely available and searchable on [www.sedi.ca](http://www.sedi.ca).

If Canadian foreign private issuers were required to comply with both insider reporting regimes, it could lead to considerable confusion and undue burden for insiders, inconsistent filings across jurisdictions and unnecessary duplicative compliance reviews by both the SEC and Canadian securities regulatory authorities. Critically, the significant

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<sup>1</sup> We understand that this provision originated with the *Holding Foreign Insiders Accountable Act* introduced by Senators John Kennedy and Chris Van Hollen earlier in the year and was folded into the Senate Bill.

increase in administrative burden and cost for Canadian foreign private issuers would not provide any meaningful additional disclosure to market participants and securities regulators.

The SEC and Canadian securities regulatory authorities have been collaborating for decades to reduce the cost of capital for North American companies by minimizing duplicative substantive and procedural regulation and barriers to cross-border offerings, issuer bids, take-over bids, business combinations, continuous disclosure and other filings, including insider reporting, while ensuring that Canadian and U.S. investors remain adequately protected.

Canada currently exempts insiders of U.S. issuers registered with the SEC from Canadian insider reporting requirements, provided the insider complies with U.S. requirements. The Canadian exemption mirrors the current treatment of insiders of Canadian foreign private issuers under U.S. securities legislation, through the FPI exemption, which avoids subjecting U.S. issuers to duplicative insider reporting requirements in Canada. To remove the exemption for insiders of Canadian foreign private issuers would detract from the mutual recognition philosophy the SEC and Canadian securities regulatory authorities have employed for decades.

Given the existence of a comparable, strong, and transparent insider reporting regime in Canada, we urge you to allow all Canadian-domiciled foreign private issuers and their insiders to be able to continue to rely on exemptions from section 16 of the Exchange Act. An alternative approach would be to authorize the SEC to grant exemptions from section 16 that would be applicable to regulatory regimes, such as the Canadian one, that are comparable to the United States.

As Canadian securities regulatory authorities, we do not believe that it is appropriate for us to send these comments directly to the sponsor of the legislation so we would appreciate any action that you could take in conveying the potential impacts of this legislative change to the appropriate staff. Thank you for your consideration of this letter. We would be very pleased to provide additional information on this matter if it would be of assistance.

Yours very truly,

A handwritten signature in black ink, appearing to read "Stan Magidson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stan Magidson  
Chair, Canadian Securities Administrators  
Chair and Chief Executive Officer, Alberta Securities Commission