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November 27, 2003

Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, ON M5H 3S8

Attention: John Stevenson, Secretary

Dear Sirs:

**Re: Request for Comments OSC Rule 48-501 – Trading During Distributions,
Formal Bids and Share Exchange Transactions.**

I. INTRODUCTION

We are pleased to submit this letter in response to the Notice and Request for Comments published on August 29, 2003 (2003) 26 OSCB 6157 (the “**Notice**”) on proposed Ontario Securities Commission (the “**OSC**”) Rule 48-501 (the “**Rule**”). Unless otherwise defined herein, defined terms used in this response letter will have the same meaning as used in the Notice. A diskette (in Word format) containing a copy of this letter is enclosed with this comment letter.

PART II – Response to Specific Requests for Comments sets out our response to the OSC’s request for comments on certain specific aspects of the Rule. **PART III – General Comments** sets out our general comments on the Rule.

II. RESPONSE TO SPECIFIC REQUESTS FOR COMMENTS

The following are our comments in response to certain of your specific requests for comments.

1. Definition of “highly-liquid security”

We think that the Rule should include, in clause (a) thereof, criteria based on the size of the public float, similar to that contained in the United States Securities and Exchange Commission’s (the “**SEC**”) Reg M. We are of the view that a public float test will correct for volume aberrations and prevent securities that

experience unusual trading volume relative to their public float from qualifying for the highly-liquid security exemption.

The SEC, in commentary to Reg M, noted that the public float should be calculated based on an issuer's most recent Form 10-K or more recent publicly filed information. We are of the view that this method provides an efficient method to calculate public float.

We suggest that the OSC consider requiring issuers to disclose, to their knowledge, in the annual information form the amount of common equity securities held by persons who are neither affiliates nor associates nor otherwise related in a manner that would not permit them to be considered to be held by the "public". This would provide a basis for calculating the public float in the Rule.

As well, we suggest that the OSC adopt a public float value that reflects the dynamics of the Canadian market rather than adopting the Reg M definition of public float in toto. Please see Part III at Section 1 of this letter for further discussion on this matter.

2. **Termination of Restricted Period**

We feel that further clarification, such as that proposed in the UMIR provisions, would be helpful in determining when the restricted period has expired.

3. **Exemptions**

Exemption in s.3.2(b)(iii) of the Rule

You may wish to clarify what an approved rating is for a non-convertible debt security, non-convertible preferred share or asset-backed security. We suggest using the definition of approved rating in National Instrument 44-101.

Inadvertent Violation Exemption

We feel that the Rule should contain an exemption to deal with inadvertent violations of the Rule.

Reg M exempts bids that are not accepted and one or more purchases that in the aggregate over the restricted period total less than 2% of the security's average daily trading volume, provided that the person making the unaccepted bids or

purchases maintains and enforces written policies and procedures designed to achieve compliance with Reg M.

Exemption for Dealer Restricted Persons Affiliated with an Issuer

You may wish to clarify the exemptions available to dealer restricted persons affiliated with an issuer (i.e. an underwriter that is affiliated with an issuer). Under the current draft of the Rule such entities are subject to both the issuer and the dealer restrictions.

We suggest that the OSC consider adding a clause, similar to the one in Reg M, which allows a dealer restricted person affiliated with an issuer or selling securityholder to utilize the exemptions available to dealer restricted persons.

Exemption for Financial Services Affiliates of a Dealer/Issuer

We think that the Rule should include an exemption similar to the exemption in Reg M for financial services affiliates of a dealer or an issuer. Reg M provides that an exemption is available if the affiliate, which may be a separate identifiable department or division, (i) has no officers or employees in common that direct, effect or recommend transactions in securities; (ii) maintains and enforces written policies and procedures designed to segregate the flow of information to or from the affiliate and has obtained an annual, independent assessment of such policies and procedures; and (iii) the affiliate does not during the applicable restricted period act as a market maker or engage as a broker or dealer, in solicited transactions in the restricted security.

The effect of the exemption in the Rule would allow a related entity of a dealer restricted person or an affiliated or associated entity of an issuer, meeting the above specifications, to act as an investment adviser, or in some other non-broker-dealer capacity with regard to the restricted security.

III. GENERAL COMMENTS

1. Definition of “highly liquid security”

\$ 1,000,000 Average Trading Value

The definition of highly liquid security uses a component of the comparable definition of “Actively Traded Securities” from Reg M. In adopting the standard of a \$1,000,000 average trading volume in Reg M the SEC noted that

approximately 2,071 issuers were exempted from the application of Rule 101 of Reg M. When the public float requirement is taken into account, the number of issuers eligible for exemption was reduced by approximately 9% to 1,900 domestic issuers and a substantial number of foreign issuers. It would be helpful to know the number of issuers that would be exempted under the highly liquid security exemption as proposed in the Rule to determine the appropriateness of a \$1,000,000 average trading value standard in Canada.

Trade 100 Times per Trading Day

If the public float test is adopted you may wish to consider the necessity of requiring that a stock trade 100 times per trading day (the “**Trading Requirement**”). It would be helpful to know the number of issuers that would be eligible for an exemption when the Trading Requirement is taken into account with the \$1,000,000 average trading value requirement.

Average Trading Value

It is not clear in the Rule how average trading value is calculated. Is average trading value to be calculated based on world wide average trading volume? Is the average trading value derived from multiplying the number of shares by the price in each trade, or from multiplying each day’s total volume of shares by the closing price on that day? In commentary to Reg M, the SEC stated that any reasonable and verifiable method may be used. It would be helpful to know the OSC’s position on how to calculate average trading value.

2. Determination of Maximum Permitted Stabilization Price:

Guidance is required as to how the maximum stabilization price is determined under s.3.2(a) of the Rule. In this regard, Reg M is instructive.

Regulation M provides that a stabilizing bid may be made with reference to the principal market for the security, wherever located. When the principal market is closed, but quotations have opened in the market where stabilization will be initiated, Reg M provides that stabilization may be initiated with reference to the lower of (i) the price at which stabilizing could have been initiated in the principal market at its previous close or (ii) the last independent transaction price in the market where stabilizing is being initiated.

Reg M provides further flexibility in that adjustments to a stabilizing bid may be made when the price of the security being stabilized is adjusted for the payment

of dividends, rights or distributions, or is expressed in a currency other than the currency of the principal market and there are changes in the exchange rate between the two currencies

IV. CONCLUSIONS

We appreciate being given the opportunity to comment on the important and worthy initiatives contained in OSC Rule 48-501. If you wish to discuss any of our comments please do not hesitate to contact Roxanne McCormick or Krisztian Toth of our Toronto office. The contact particulars are set out below.

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Respectfully submitted,

The Securities Law Group of Fasken Martineau DuMoulin LLP

Krisztian Toth

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Encl.