



ONTARIO  
BAR ASSOCIATION  
A Branch of the  
Canadian Bar Association

L'ASSOCIATION DU  
BARREAU DE L'ONTARIO  
Une division de l'Association  
du Barreau canadien

February 17, 2012

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Superintendent of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Nunavut

c/o John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8

Anne-Marie Beaudoin, Secrétaire  
Autorité des marchés financiers  
Tour de la Bourse  
800, square Victoria  
C.P. 246, 22<sup>e</sup> étage  
Montréal, Québec H4Z 1G3

*Via e-mail to [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca) and [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)*

**Re: Proposed Pre-Marketing and Marketing Amendments to Prospectus Rules  
(the “Proposed Amendments”)**

This submission is made by the Business Law Section of the Ontario Bar Association (the “OBA”) in response to the request for comments published on November 25, 2011 (the “Request for Comments”) with respect to the Proposed Amendments.



As the largest voluntary legal organization in the province, the OBA represents more than 17,500 lawyers, judges, law professors and students in Ontario. OBA members practice law in no fewer than 37 different sectors. More than 1,800 of these lawyers belong to our active Business Law Section, including those working in private practice, government, non-governmental organizations and in-house. In addition to providing legal education for its members, the OBA analyzes and assists government and other policy-makers with dozens of legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

The OBA supports the objectives of the Proposed Amendments and agrees that the changes will increase the range of permissible pre-marketing and marketing activities in connection with prospectus offerings. The OBA also agrees with the policy rationales for the existing rules and with the Canadian Securities Administrators' ("CSA") belief that they are still valid.

We have provided comments in respect of the questions or issues where we felt that our perspective might be helpful.

#### *Bought Deal Exemption*

3. We encourage the CSA to ensure that the restrictions regarding enlarging bought deals or deal syndicates are clear to avoid creating uncertainty. In this respect, we note that the proposed additions of clauses 7.4(2) (d) and 7.4(3)(a) to NI 44-101 include a subjective element (i.e. whether the "increase in the number of securities was the culmination of formal or informal plans to offer a larger number of securities...") which will create uncertainty.

In setting a percentage cap on the enlargement of a bought deal the CSA should consider the related provisions in the United States ("US") to ensure consistency.

#### *Term Sheet Provisions for Bought Deals*

4. The OBA agrees that a term sheet may benefit investors and that the proposed term sheet provisions provide for investor protection. Therefore, we believe that it would be in keeping with the policy rationales to allow a bought deal term sheet to be given to retail investors before the receipt of a preliminary short form prospectus. As well, we question the need for the press release to contain all of the information provided in the term sheet.



### *Comparables*

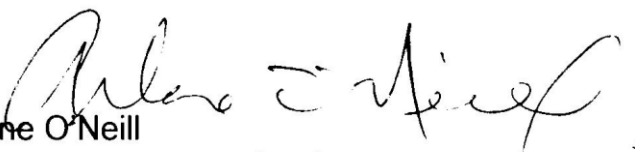
Given the complexity around comparables and the uncertainty of their value to institutional investors who are able to evaluate the offering and any comparables on their own, we question the benefit of the provisions permitting comparables. However, if comparables are provided to institutional investors we believe, in keeping with the policy rationales, they should also be provided to retail investors. If comparables are provided detailed rules are required to ensure they are fair and balanced and cautionary language and risk factors should be included in the materials to alert investors of the risks related to comparables.

### *Road Shows*

The draft Companion Policy refers in section 6.13 to the fact that US rules require the filing of internet road show materials with the SEC or that they be made "available without restriction by means of graphic communication". In order to maintain an approach consistent to that adopted under the US rules, we suggest that issuers be permitted to either file the materials from internet road shows on Sedar or make them available without restriction through other internet outlets.

Thank you for this opportunity to comment. If you have any questions, please direct them to Philippe Tardif at (416-367-6060 or ptardif@blg.com) or Eleanor Farrell at (905-812-7959 or eleanorkfarrell@gmail.com).

Yours truly,

  
Arlene O'Neill  
Chair, Business Law Section  
Ontario Bar Association