

ALBERTA INVESTMENT MANAGEMENT CORPORATION
CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC
CANADA PENSION PLAN INVESTMENT BOARD
OMERS ADMINISTRATION CORPORATION
ONTARIO TEACHERS' PENSION PLAN BOARD
PUBLIC SECTOR PENSION INVESTMENT BOARD

July 24, 2013

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8

Dear Sirs:

Re: Proposed Amendments to OSC Rule 45-501 – Request for Comments

We are writing in response to the Commission's Notice and Request for Comments in respect of proposed amendments to the Commission's Rule 45-501 – *Ontario Prospectus and Registration Exemptions* and National Instrument 45-106 – *Prospectus and Registration Exemptions*.

The Funds

Together, we have over \$690 billion in net assets and pay (or provide for the payment of) pensions to, and invest plan assets on behalf of, more than 18 million working and retired Canadians. While our individual statutory mandates are framed in slightly different language, each of us has the basic responsibility to invest in the best interests of the contributors to, and beneficiaries of, our plans with the objective of maximizing investment returns without undue risk, having regard to the requirements of our plans and the ability to meet the financial obligations under the plans. Our ability to successfully discharge our mandates is impacted by, among other things, our ability to invest – and monetize our investments – in securities of foreign issuers. Investing in a broadly diversified global portfolio, including partnering with world-class international investment managers, is central to our respective investment strategies and the sustainability of our respective plans. Our ability to access investment opportunities outside of Canada – and to monetize those investments in their principal trading markets outside of Canada – is and will be crucial to our success over the coming years as, of necessity, we address long-term trends in the global economy.

The Proposed Amendments

We have supported, and continue to support, the initiatives that have been taken by the Commission to effect the proposed amendments. The elimination by the Commission of the requirement for “wrappers” – which have discouraged foreign issuers and underwriters from extending foreign offerings to Canadian investors for years and unnecessarily restricted our access to foreign investment opportunities that are an important element in our strategies to achieve the objectives for which we are responsible – is an important first step. It is not, however, itself sufficient to achieve the stated purpose of the proposed

amendments because we continue to be left with significant restrictions on our ability to sell those foreign securities in their principal markets outside of Canada. As a result of those restrictions – which have the same overly restrictive result as the wrapper requirements that the proposed amendments address – we cannot make certain investments that otherwise would better enable us to fulfill our mandates.

The Proposed Amendments are not Sufficient

As has been discussed with Staff and highlighted by various applications for exemptive relief over the past years, the proposed amendments are not themselves sufficient. While the proposed amendments address restrictions on our ability (and the ability of others) to access potential foreign investment, they do not address the restrictions that currently exist on our ability to sell foreign securities that we have acquired. The continuing existence of, and potential uncertainty associated with, those restrictions significantly undercut the impact that the Commission has stated that it intends the proposed amendments to have.

Under the existing regime, there is significant uncertainty associated with our ability to dispose of the securities, including through an exchange or market, or to a person, outside of Canada, to which the proposed amendments are stated to be intended to facilitate our access. The uncertainty associated with Interpretation Note 1 – *Distribution of Securities Outside Ontario*, which replaced Commission Policy 1.5 – *Distribution of Securities Outside Ontario*, continues. In responding to comments raised in the context of the finalization of Multilateral Instrument 45-102 – *Resale of Securities* in 2003, the CSA indicated that:

The issue of distributions outside the jurisdiction is being clarified in the context of the Uniform Securities Legislation Project. We will ensure that this comment [concerning whether the securities laws of a province apply to sales to purchasers outside the jurisdiction] is passed along to CSA staff working on the Uniform Securities Legislation Project for consideration in the context of that project.

A decade later, there has been no further clarification of this very real issue, and our ability to invest for the benefit of the beneficiaries of our respective plans continues to be compromised by the associated uncertainty. Among other things, our ability to purchase securities of foreign issuers that otherwise would be appropriate investments has been compromised by the difficulties of confirming the limited availability of the resale “safe harbour” in Section 2.14 of National Instrument 45-102. In various circumstances, an application to (and relief from) the Commission has been, and will continue to be, required to permit the sale of securities of a foreign issuer with *de minimis* connection to the Canadian markets apart from our investment.

These uncertainties will continue to limit the participation by us in offerings that no longer require the preparation of wrappers, with the result that the proposed amendments will not have the impact that is stated to be intended by the Commission, and the burden of continuing applications for exemptive relief (for us and the Commission and its Staff) will continue. Addressing these deficiencies, even incrementally, would be consistent with the intended impact of the proposed amendments and the purposes of the *Securities Act* (Ontario) and securities legislation in other Canadian jurisdictions.

Further Initiatives

In that context, we are intending to make a further submission to Staff to achieve those objectives and would welcome the opportunity to work with Staff of the Commission to develop and implement a solution, even if only on a local basis.

Yours very truly

**ALBERTA INVESTMENT MANAGEMENT
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Assistant General Counsel

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