



Reply to the Attention of: Sasa Jarvis
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Dear Sirs/Mesdames,

Re: Canadian Securities Exchange (“CSE”) Notice and Request for Comment – Proposed Amendments to CSE Listing Policies (the “Request for Comment”)

We submit the following comments in relation to the Request for Comment and the proposed amendments to the CSE Listing Policies to introduce resale restrictions on prospectus exempt issuances of listed securities, excluding issuances by “non-venture” issuers (the “**Proposed Amendments**”). Capitalized terms used herein and not otherwise defined in this letter have the meaning given to them in the Request for Comment.

This letter represents the general comments of specific members of McMillan LLP (“**McMillan**”), rather than McMillan generally or any one of its clients. Our comments are submitted without prejudice to any position taken, or that may be taken by McMillan on its own behalf or on behalf of any client. We appreciate the opportunity to contribute to this discussion.

Impact of Exchange Hold on Foreign Distributions

The Proposed Amendments introduce resale restrictions that could impact the ability of Listed Issuers to distribute free-trading listed securities in connection with foreign distributions, which are often conducted under BC Instrument 72-503 – Distributions Outside of British Columbia (“**BCI 72-503**”), or under a similar rule contained in Ontario Securities Commission Rule 72-503 – *Distributions Outside Canada* (“**Rule 72-503**”). BCI 72-503 and Rule 72-503 differ in their treatment of distributions under a private placement into a foreign distribution where local laws are observed in completing the placement – specifically, BCI 72-503 imposes a statutory four month hold period while Rule 72-503 does not. Where the rules provide similar treatment however is for distributions of securities in connection with a foreign public offering, such as a distribution that involves the filing of a registration statement in the United States. In a situation where a private placement is completed to U.S. persons, and a registration statement filed for the re-sale of the securities, such as the completion of a Private Investment in Public Equity, or PIPE, the exemption in section 4 of BCI 72-503 would otherwise allow for the resale of the securities to occur notwithstanding that the original four month hold imposed on the distribution of the securities had not elapsed. As such there is an exemption from prospectus requirements for the first trade of restricted securities in this context. Our view is that at this time, any Exchange Hold Period imposed by the CSE should fall away to allow resale under the registration statement.

We recommend achieving this by first, including a definition for “disclosure document” that includes foreign documents, including those that register previously issued securities for re-sale, to confirm that the Exchange Hold will not inadvertently impose resale restrictions on public distributions in a foreign country, including on first trades by investors under BCI 72-503 (or similar provincial rules) where the trade was part of a PIPE. Secondly, the filing of a disclosure document in a foreign jurisdiction qualifying previously issued securities for re-sale would then be specified as a trigger that automatically terminates any Exchange Hold Period.

Scope of Extended Hold

The Proposed Amendments allow for the imposition of a hold period greater than 4 months, without specifying the length and scope of the Extended Hold. The Request for Comment states that an Extended Hold will be applied until appropriate disclosure is made for transactions where the CSE deems additional disclosure as necessary. However, the lack of guidance on what the CSE will deem as a transaction that requires the Extended Hold could create uncertainty for Listed Issuers and investors. We recommend that the Proposed Amendments include guidance, either within the Proposed Amendments or as a separate interpretative document similar to a companion policy, on the circumstances that would trigger the Extended Hold to reduce potential uncertainty for Listed Issuers and investors as it relates to the scope of the Extended Hold, and the factors to consider.

Additionally, the Proposed Amendments contemplate that an Extended Hold would be for a period greater than four months, while an Exchange Hold is for a period of four months. Section 6.1(d) of the Proposed Amendments provides that the Extended Hold will last until a minimum of 10 days after the disclosure document is filed with the CSE. We assume this is to allow the market to digest the information contained

in that document. In situations where filing of the disclosure document occurs in advance of the “greater than four-month” Extended Hold period, we submit that it would be appropriate for any hold period to end after the market has had sufficient time to consider the contents of the disclosure document. Such an example is the completion of a transaction that requires a Form 51-102F4 *Business Acquisition Report* (“**BAR**”) to be filed, which may be completed in advance of four months. If, for example, a BAR is filed two months after the completion of a transaction, and as such the market is assumed to have greater knowledge of the transaction after a minimum of 10 days after such filing date, then we are not sure who is protected, or whose interests served, by an additional 1 month and 20 day hold. This is due to our belief that once the market has more complete knowledge of the transaction, the appropriate value for the transaction will be priced into the trading decisions being made.

We recommend that the Extended Hold Period be directly tied to the filing of a disclosure document, or otherwise be for a length determined by the CSE, as opposed to definitionally needing to be greater than four months, to allow for the CSE to exercise discretion and flexibility in determining the appropriate length of a hold in circumstances where four months may be unnecessary.

Summary of Comments

In summary, we respectfully submit the following recommendations regarding the Proposed Amendments:

1. (a) Include a definition for “disclosure document” that includes foreign documents to confirm that the Exchange Hold will not inadvertently impose resale restrictions on public distributions in a foreign country, and (b) expressly permits Exchange Hold Periods to expire in connection with filing a foreign prospectus or a registration statement in transactions such as PIPEs.
2. Provide guidance on the circumstances that would trigger the Extended Hold to reduce potential uncertainty for Listed Issuers and investors as it relates to the scope of the Extended Hold.
3. Revise the definition of Extended Hold to be directly tied to the timing of the necessary disclosure and other CSE requirements to account for situations where Listed Issuers file disclosure documents in advance of four months, or alternately, provide a definition that allows the CSE to exercise discretion to have a hold period shorter than 4 months.

We appreciate the opportunity to contribute to this discussion and look forward to further discussions with the CSE as it relates to the Proposed Amendments. Should you require any additional clarification on our comments, please contact Sasa Jarvis at 778.328.1489 or sasa.jarvis@mcmillan.ca.

Yours truly,



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