



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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August 20, 2013

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Chair
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20 Carlton Street Suite 123
Toronto, Ontario
M5B 2H5

Ian McKinnon
Director
Canadian Bond Investors' Association
20 Carlton Street Suite 123
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Dear Mr. Morin and Mr. McKinnon,

We thank you for your letter dated April 8, 2013. Your letter drew our attention to a number of areas that will be taken under consideration. We also note that the examples and clear positions taken by the CBIA, as a voice for Canadian fixed income investors, were helpful for us to develop an understanding of the issues cited.

The responses below reflect the views of Staff of the Ontario Securities Commission (OSC) and have been provided in correlation with the numbering in your letter dated April 8, 2013. While we have provided some responses in connection with certain key questions raised in the letter, we will be working towards more fulsome responses in other areas that require additional analysis and consultation.

1. *Improved Disclosure with Regard to Credit Facilities*

Thank you for your comments. We continue to review and consider the issues you have raised. We will touch base with you at a later date.

2. *Improved Disclosure – Availability of Bond Indentures on SEDAR*

Thank you for your comments. We continue to review and consider the issues you have raised. We will touch base with you at a later date.

Refer to #3 for further information.

3. *Improved Disclosure Procedures during the New Issue Process*

Your letter indicates that you are specifically requesting that securities regulators ensure that bond indentures are provided to prospective investors concurrently with the Preliminary Prospectus.

Current Requirements

We note that many debt offerings are completed using a short form or base shelf prospectus. We do not review prospectus supplements. However, our requirements in Item 4.2(a)(x) of Form 44-101F1 and Part 7 of NI 44-102 state that if a document, being either a document affecting the rights of securityholders or material contracts, has not been executed or become effective before the filing of the final short form prospectus but will be executed or become effective on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the document promptly and in any event within seven days after the completion of the distribution.

As a result, there is no requirement for the issuer to file the indenture agreement at the time of the preliminary prospectus. It is our understanding that trust indentures associated with the issue of a new instrument are not finalized at the time of closing of the base shelf prospectus but rather at the time of closing of the distribution.

Observations

Based on review of a sample of debt prospectuses filed during the year, we observed that, where applicable, the indenture agreement was, in most cases, filed within seven days of the close of the distribution. As you have noted below, there are instances where the issuer has filed indenture agreements beyond the seven day period or not at all. We take compliance with our securities regulations very seriously. Material non-compliance will result in further regulatory action. This may include requests to file or re-file documents, and the referral of matters to our Enforcement Branch. We may also publish a staff notice or a practice directive to publicly communicate our expectations, if we determine there is a significant level of non-compliance.

In respect of the three files you had highlighted in your letter. We have addressed each below.

- *Couche-Tard (Principal regulator – Quebec)*

At the time of filing of the supplement, the indenture agreement was not final as the issuer was not required to file the document. However, in accordance with the requirement noted above, the issuer filed the indenture agreement five days after the completion of the distribution.

- *Corus Entertainment (Principal regulator – Ontario)*

We acknowledge the fact that Corus did not file the indenture agreement within the prescribed 7 day period. However, based on the description of securities provided in the prospectus supplement, it appears that the issuer has complied with the disclosure requirements in Item 7.2 of Form 44-101F1 as it disclosed the material attributes of the debt securities. In light of this fact, we ask that you bring to our attention any gaps in the disclosure (as compared to the indenture agreement) of concern to the CBIA.

- *Penske Canada (Not a reporting issuer – exempt distribution)*

We would like to highlight that the above offering was an exempt offering based on an offering memorandum.

Securities that are distributed in reliance on a prospectus exemption (also referred to as an "exempt distribution") are generally subject to more tailored regulation. For example, where a distribution is made under the accredited investor prospectus exemption, there are no mandated disclosure documents related to the use of that exemption. Furthermore, in the event that a non-reporting issuer is involved, there is no requirement under securities legislation for a non-reporting issuer to maintain a SEDAR profile or to file any ongoing continuous disclosure documents. The current requirements for continuous disclosure contained in National Instrument

51-102 only apply to reporting issuers. Mandating the filing of continuous disclosure documents on SEDAR by non-reporting issuers would be a significant change to the current regulatory regime.

Certain existing prospectus exemptions, such as the accredited investor exemption, are based on the concept that the purchaser is sophisticated, has the ability to withstand financial loss or the financial resources to obtain expert advice. Generally speaking, it is up to the purchaser in an exempt distribution to determine what information is necessary to the purchaser to make an investment decision and to negotiate accordingly with the issuer. With limited exceptions, current prospectus exemptions generally do not prescribe requirements in that regard.

Finally, we would like to note that related disclosure documents, such as material contracts, are not generally required to be provided to purchasers under the terms of existing prospectus exemptions. To the extent investors would like to receive additional information related to an offering, the distribution must usually be made in the public, non-exempt market.

4. New Issue Process- Access to Legal Counsel

Thank you for your comments. We continue to review and consider the issues you have raised. We will touch base with you at a later date.

5. Regulatory Oversight of the Fixed Income Market

We acknowledge your concerns in respect of regulatory oversight of the fixed income market and we note that you are reaching out to the Investment Industry Regulatory Organization of Canada (IIROC).

Regulation of fixed income securities has been established as a priority in the OSC's Statement Priorities (SOP) for fiscal 2014. The SOP indicates that the OSC "needs to better understand the significant issues affecting fixed income securities and those who invest in them, and to review its current approach to regulation to determine if any changes are required."¹ As part of the process, we will be seeking feedback from key stakeholders. We will contact the CBIA when such consultations take place as we value your feedback.

6. CDOR

On January 10, 2013, IIROC published a Notice entitled *IIROC review of CDOR supervisory practices*. The Notice discusses the formal review that IIROC launched in August 2012 of the CDOR rate-setting process. It sets out "suggestions regarding key areas for enhancement to strengthen the integrity of and confidence in CDOR."² During their review, "representatives of IIROC and Bank of Canada met with each of the firms that participate in the CDOR rate-setting process."³ IIROC has shared the results of its review with various regulators and other interested parties and these parties have agreed to consider them further. We refer you to the following link for a copy of this Notice. www.iiroc.ca/Documents/2013/

Certain jurisdictions of the CSA are also members of the International Organization of Securities Commissions (IOSCO) Task Force on Financial Market Benchmarks. The IOSCO Board created the Task Force "in light of investigations and enforcement actions regarding attempted manipulation of major interest rate benchmarks."⁴ The objective is to create an "overarching framework of principles for benchmarks used extensively in financial markets."⁵ The IOSCO Board "seeks to articulate policy guidance and principles for benchmark-related activities that will address conflicts of interest in the

¹ OSC Notice 11-768, Notice of Statement of Priorities for Financial Year to End March 31, 2014.

² IIROC Notice, *IIROC Review of CDOR Supervisory Practices*, January 10, 2013, online: www.iiroc.ca/Documents/2013/.

³ *Ibid.*

⁴ OICU-IOSCO Consultation Report, *Principles for Financial Benchmarks*, April 2013, online: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD409.pdf>

⁵ *Ibid.*

benchmark setting process, transparency and openness to consider issues related to transition.”⁶ The Task Force issued the principles in July 2013. These same principles will be relevant for the work we will accomplish domestically.

Our work at the international level on financial benchmarks has practical implications for Canada and our examination of the administration, oversight and price setting arrangement for CDOR.

The OSC SOP for fiscal 2014 also addresses the recent issues related to the setting of LIBOR and our increased focus on the integrity and accuracy of financial benchmarks. The SOP indicates that the “OSC will continue to work with other regulatory authorities to develop a clear framework that addresses the integrity and accuracy of financial benchmarks globally.”⁷ This work will also provide guidance for the development of a proposed regulatory framework for the oversight of key financial benchmarks in Canada.

We would welcome your assistance in our review.

For a copy of the OSC Statement of Priorities, please refer to the following link:

http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20130627_11-768_sop-fiscal-2013-2014.htm

We once again thank you for your letter. We look forward to continued dialogue with you in order to protect investors from unfair, improper or fraudulent practices and to foster fair, efficient and vibrant capital markets,

Sincerely,

A handwritten signature in black ink, appearing to read 'Huston Loke', with a stylized flourish extending to the right.

Huston Loke
Director, Corporate Finance Branch
Ontario Securities Commission

⁶ *Ibid.*

⁷ OSC Notice 11-768, Notice of Statement of Priorities for Financial Year to End March 31, 2014.