Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Ottawa
Calgary
New York

May 28, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Dept. of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon
Superintendent of Securities, Nunavut

c/o Leslie Rose
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia, V7Y 1L2
lrose@bcsc.bc.ca

and

c/o The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H3S8
comments@osc.gov.on.ca

and

c/o Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: Request for Comment – Proposed Amendments to National Instrument 45-106 - *Prospectus and Registration Exemptions* Relating to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions

This letter is provided to you in response to the CSA Notice and Request for Comment – Proposed Amendments to National Instrument 45-106 - *Prospectus and Registration Exemptions* ("**NI 45-106**") Relating to the Accredited Investor and Minimum Amount Investment Prospectus Exemptions (the "**Proposed Amendments**"), published on February 27, 2014.

Proposed amendments to the definition of "accredited investor" in Ontario

We are very supportive of the proposal to amend the definition of "accredited investor" in Ontario to allow fully managed accounts to purchase investment fund securities using the managed account category of the accredited investor exemption in section 2.3 of NI 45-106 and section 73.3 of the Securities Act (Ontario) (the "**AI Exemption**"), as is permitted in other Canadian jurisdictions. We greatly appreciate any efforts to harmonize the accredited investor definition and other aspects of Canada's exempt market regime.

Proposal for certain accredited investors to sign a risk acknowledgement

We have concerns with the proposal to require persons relying on the AI exemption to obtain a signed risk acknowledgement in Form 45-106F9 *Risk Acknowledgement Form for Individual Accredited Investors* ("**Form 45-106F9**") from individual accredited investors who are not permitted clients. The CSA carried out a thorough review of the accredited investor definition and has chosen not to propose any changes to the income or asset thresholds used in the definition. However, we expect that the new procedural requirements tied to Form 45-106F9, if adopted, will have a dramatic effect on the ability for individual accredited investors who are not permitted clients to participate in exempt distributions.

As a general matter, we do not object in principle to an additional requirement for the delivery of a supplemental risk disclosure statement to an individual accredited investor who is not a permitted client. However, we respectfully submit that the proposed procedural requirements for Form 45-106F9 are unduly onerous and inconsistent with modern commercial practices. In particular, we are concerned that the form must be: (i) a physical document and not electronic, (ii) signed in original (and duplicate) by the purchaser, the salesperson and the issuer (no counterparts) and (iii) kept for eight years after the date of distribution. In our view, these paper-based record-keeping requirements are incompatible with present-day record-keeping practices, policies and procedures followed by securities dealers and issuers. A requirement for paper-based record-keeping

is also inconsistent with recent efforts by members of the CSA, in particular British Columbia and Ontario, to move from paper-based filings to electronic filings.

We expect that it would be unlikely for an issuer or selling securityholder to be willing to comply with the procedural requirements proposed for Form 45-106F9. As a result, should these requirements be adopted, most exempt distributions will likely exclude individual accredited investors who are not permitted clients. We believe that the unintended consequence of imposing these procedural requirements will be that individual accredited investors who are not permitted clients will not in practice be able to participate in most exempt distributions, and that result is inconsistent with the CSA's decision not to propose any changes to the income or asset thresholds used in the AI definition.

For the reasons set forth above, we respectfully request that the CSA re-consider the proposed procedural requirements for Form 45-106F9, and whether the investor protection benefits that they are intended to achieve could be satisfied through more modern and less onerous alternative means.

Proposed changes to the minimum amount investment prospectus exemption

We acknowledge the CSA's rationale for restricting the minimum amount investment prospectus exemption in section 2.10 of NI 45-106 to distributions to non-individual investors. We have no comments on this proposed change, other than to note that the removal of this exemption for individual investors underscores the importance of their continued ability to utilize the accredited investor exemption, without the need for compliance with unduly burdensome procedural requirements.

Proposed changes to Form 45-106F1

We note that there is a long established market practice of U.S. and other non-Canadian securities dealers making sales of securities of non-Canadian issuers into Canada on a private placement basis, in reliance on the "international dealer" exemption and using a "wrapper" or Canadian supplement to an offering document prepared for use in other countries. The CSA has recently considered initiatives to facilitate these activities, recognizing their importance to the functioning of the Canadian capital markets by allowing institutional and other Canadian investors to access to foreign securities for their investment portfolios, helping them to remain competitive globally. These non-Canadian dealers have well established practices and procedures in place for collecting the information necessary to comply with current trade reporting requirements. We urge the CSA to consider the impact that any changes to current requirements will have on non-Canadian dealers making "wrapper" sales, and recognize that the addition of new form requirements is likely to have the effect of making it more difficult, if not impossible, for these sales into Canada to continue. Specifically and most importantly, under their

current practices and procedures foreign dealers will not be able to identify all of the categories of the "accredited investor" exemption that a particular Canadian investor may be eligible to rely on, as such an exercise has never previously been necessary.

While we wished to note this general concern in the context of the Proposed Amendments, at this time we are not supplying further specific comments regarding the trade report form as the Proposed Amendments overlap with and to a large degree are superseded by the proposed amendments published by the Ontario Securities Commission on March 20, 2014 (the "**March 20th Proposal**"). We will be providing separate comments regarding the March 20th Proposal, including more detailed and specific comments with respect to its proposed changes to exempt trade reporting requirements.

* * * *

We would like to take this opportunity to thank the CSA for its continued efforts to pursue improvements to Canada's exempt market regime. Should you wish to discuss any of our comments, please direct your inquiries to Rob Lando at (212) 991-2504, or by e-mail at rlando@osler.com or Blair Wiley at (416) 862- 5989 or by email at bwiley@osler.com.

Yours very truly,

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP