

January 13, 2014

[TRANSLATION]

Maître Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

**RE: Notice and Request for Comment - Proposed Replacement of Regulation 52-108
respecting Auditor Oversight
Our File: 1160.1.17**

Dear Maître Beaudoin:

The *Ordre des comptables professionnels agréés du Québec* (the "Order") would like to comment on the above-captioned proposed amendments dated October 17, 2013.

The Order would like to begin by stating that it is generally in agreement with the draft amendments to Regulation 52-108.

However, we feel it necessary to comment on certain proposed amendments which, if adopted as is, could lead to a violation of section 9 of the *Quebec Charter of Human Rights and Freedoms* and of the obligation imposed on chartered professional accountants to protect their clients' confidential information and documents that are covered by professional secrecy.

In 2008, the *Chartered Accountants Act* was amended at the request of the Order so as to allow the Canadian Public Accountability Board (CPAB) to have access to the audit files of CA auditors, notwithstanding professional secrecy, but solely within the scope of the inspection of accounting firms that audit reporting issuers. These legislative amendments also allowed the CPAB and the Order to exchange certain information related to their respective inspections within the framework of a well-defined agreement which came into effect pursuant to the adoption of an Order in Council. The agreement set out the specific conditions for the exchange of information covered by professional secrecy as well as the obligations of confidentiality imposed on each of the parties.

In May 2012, these legislative provisions were incorporated as sections 9 and 10 of the *Chartered Professional Accountants Act*. An agreement between the Order and the CPAB was also adopted by the government via Order in Council 610-2013.

Over the course of 2007 and 2008, the *Ordre des comptables agréés du Québec*, in co-operation with certain chartered accounting firms, worked with the AMF to draft amendments to *An Act respecting the Autorité des marchés financiers* (Bill 64 of 2008) so as to allow the AMF to have access to the audit files of reporting issuer clients of chartered accountants for the purposes of an investigation or a search authorized by specifically identified statutes.

In all the situations in which the Order participated in drafting legislative amendments, its principal concern was to infringe as little as possible on the professional secrecy of accountants and only when absolutely necessary. In these cases, strict guidelines were established to limit the dissemination of the confidential information and strict obligations of confidentiality were imposed on the various stakeholders.

The proposed amendment which the Order believes to be problematic is found in paragraph 5(2)(a), which obliges audit firms to notify the AMF that the CPAB has imposed certain remedial actions on them. In particular, it is the content of the notice that is problematic. According to the proposed amendment, the notice must explain how the audit firm failed to comply with professional standards.

This explanation could very well refer to confidential information or documents obtained from the audit firm's client within the scope of the audit. The information could also be covered by the professional secrecy requirements applicable to other professionals.

One must also consider the risk that the notice could become public. If that were to happen, it would inevitably result in the loss of the protection conferred by professional secrecy for all other purposes.

It is important to remember that in the agreement between the Order and the CPAB and in the specific legislative provisions allowing the AMF to access the files of auditors, specific conditions respecting access to, and dissemination of information covered by professional secrecy were established and strictly delineated. None of these protections is found in the proposed amendments. Moreover, there is nothing justifying the absolute necessity for the AMF to have access to information covered by professional secrecy within the scope of applying Regulation 52-108.

The Order believes that in order to minimize and preferably avoid any violation of professional secrecy, it is important to specify that the notice must only refer to the failure to comply with auditing or accounting standards, by identifying those standards, but the notice must not contain any information or document covered by professional secrecy or with respect to which there is reasonable cause to believe that it is covered by professional secrecy.

Please do not hesitate to contact us should you require any further information.

Yours truly,

[signed] Daniel McMahon, FCPA, FCA
President and Chief Executive Officer