

Toronto

July 25, 2013

Montréal

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Ottawa

Ontario Securities Commission

Calgary

The Secretary

Ontario Securities Commission

New York

20 Queen Street West

19th Floor, Box 55

Toronto, ON M5H3S8

comments@osc.gov.on.ca

Dear Sirs and Mesdames:

Re: Request for Comment – Proposed Amendments to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* and National Instrument 45-106 *Prospectus and Registration Exemptions*

This letter is provided to you in response to the Notice and Request for Comment – Proposed Amendments to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* (“**Rule 45-501**”) and National Instrument 45-106 *Prospectus and Registration Exemptions* (the “**Proposed Amendments**”) published at (2013) 36 OSCB 4465 (the “**Notice**”).

We are very supportive of the Proposed Amendments and agree that they will facilitate participation in the exempt market by sophisticated Ontario investors seeking to invest in foreign securities.

Our first comment regarding the Proposed Amendments relates to proposed Section 5.6(d) of Rule 45-501. We urge the Commission to reconsider imposing a requirement to have the permitted client sign a one-time acknowledgement, and revise Section 5.6(d) to allow for the disclosure requirement to be satisfied through the provision of a one-time notice that does not require the recipient’s signature. In requesting that the Commission consider making this change to Section 5.6(d), we note that:

- the time-limited exemptive relief referred to in the Notice that was granted to a number of dealers imposed a requirement that the dealers obtain a one-time signed acknowledgement and consent form from each permitted client purchasing securities, and that requirement has created a significant administrative burden for the dealers who received that relief. We understand that many of them are still in the process of distributing such forms, soliciting their signature and return and developing systems for the storage and indexing of

the returned forms. In consequence, many of these dealers have not yet been able to commence utilizing the exemptive relief;

- there is currently no requirement in Rule 45-501 or any other instrument requiring an investor to provide a signed acknowledgement that statutory rights have been disclosed to it in connection with a specific transaction, so it is unclear what benefit is served by requiring a signed acknowledgement in connection with the provision of a one-time statement describing the statutory rights of action and disclosing that they will apply to all future transactions;
- unlike the situation that prevailed when the rights of action for misrepresentation in an offering memorandum were required to be granted by contract (that is, through contractual rights of action), the absence of disclosure of a statutory right of action would not affect the availability of the right or the investor's ability to rely on it;
- the permitted clients to which sales would be made under the Proposed Amendments will be sophisticated investors who should be reasonably expected to already be aware of the rights and remedies available to them under Ontario securities laws in the event that they receive an offering document which contains a misrepresentation; and
- the administrative burdens imposed on registered dealers and international dealers by requiring that one-time signed acknowledgement forms from each prospective purchaser be solicited, obtained and thereafter retained, as well as the administrative burdens imposed on permitted clients by requiring that they sign and return such an acknowledgment form to each dealer or international dealer from which they propose to purchase securities, do not appear to be justified by any corresponding investor protection benefit in the circumstances.

Alternatively, and if you do not accept our recommendation, we believe there is a problem with the drafting of Section 5.6(d). It appears that the words "and signed by the permitted client" have been inserted in a manner that makes the section difficult to follow and grammatically incorrect. We therefore recommend that Section 5.6(d) be revised as follows:

(d) a notice and acknowledgment that has been delivered to the permitted client by a registered dealer or an international dealer that proposes to make future distributions of securities to the permitted client, which notice and acknowledgement contains a statement to the effect that the disclosure will apply to all such future distributions and is signed by the permitted client;

Secondly, we note that Section 5.6(c) concludes with the words “for which no offering memorandum is being used.” If there is no offering memorandum being used in connection with a distribution then there is no need for statutory rights disclosure; we therefore recommend deleting these words.

We would like to take this opportunity to thank the Commission for its efforts to pursue improvements to the efficiency of Ontario’s exempt market regime, and also wish to express our support for the related proposed amendments to National Instrument 33-105 *Underwriting Conflicts* referred to in the Notice which we understand are under consideration by the Canadian Securities Administrators.

We would be happy to discuss our comments with you; please direct any inquiries to Rob Lando at (212) 991-2504, or by e-mail at rlando@osler.com or Mark DesLauriers at (416- 862- 6709 or by email at mdeslauriers@osler.com.

Yours very truly,

Osler, Hoskin & Harcourt LLP

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