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

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c/o

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

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: (514) 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Request for Comment – CSA Notice and Request for Comment – Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 – *General Prospectus Requirements Related to Financial Statement Requirements*

This letter is provided to you in response to the CSA Notice and Request for Comment in respect of proposed changes to Companion Policy 41-101CP ("**41-101CP**") to National Instrument 41-101 – *General Prospectus Requirements Related to Financial Statement Requirements*.

We appreciate the opportunity to provide this comment letter and hope that our submissions will be of assistance.

We are highly supportive of the CSA's proposed amendments to 41-101CP. If adopted, we believe the amendments would be one of the most impactful initiatives of the CSA to date to reduce the regulatory burden on issuers seeking to become reporting issuers by way of a long form prospectus. Inconsistent interpretation of the primary business requirements set out in NI 41-101 and of the CSA guidance set out in 41-101CP has resulted in uncertainty, an unlevel playing field and increased costs for issuers when additional financial statements and MD&A are required as a result of the primary business requirements. We believe the CSA's proposal will remove a significant burden on Ontario-based issuers seeking to pursue an initial public offering and facilitate greater harmonization with the interpretation of the primary business requirements in jurisdictions outside of Ontario.

We support the confirmation by the CSA of the circumstances set forth in Section 5.3(1) of 41-101CP for which the primary business requirements are considered to be triggered. We also support the confirmation by the CSA of the circumstances set out in example 1 where a reasonable investor would not regard Acquisition A to be the primary business of the issuer.

Given the significant burden that issuers face when complying with the primary business requirements, we strongly support the implementation of the proposed changes to 41-101CP as soon as possible.

At the same time, however, we note that the proposed amendments to 41-101CP create a small number of ambiguities that could continue to impose additional burden upon issuers seeking to conduct an initial public offering which could continue to result in the need to engage in discussions with Staff. We believe that limited revisions to address the issues below should not result in a material delay in the adoption of the changes to 41-101CP by the CSA.

Section 5.3(1)

We have concerns regarding the change in current section 5.3(1)(c) to its new formulation in 5.3(1)(d). In particular, the removal of the reference to "significant acquisition" in the new formulation potentially creates a different standard for the application of the rules for financial statement inclusion. We suggest that the CSA consider reinserting reference in section 5.3(1)(d) to "significant acquisition" and further that the CSA make clear that the application of section 5.3(1)(d) is relevant only to a transaction that constitutes a "significant acquisition" under National Instrument 51-102 (i.e. that it must exceed at least two of the three significance tests set out in NI 51-102 in

order to potentially be considered an acquisition that could engage the requirements of section 5.3(1)(d).

Further, while we appreciate the CSA may be seeking to create a "catch-all" clause through the inclusion of new section 5.3(1)(e) to allow the CSA to apply the primary business requirements in appropriate cases, we have questions as to how this section should and will be interpreted given its potentially broad scope. Although new example 2 is a helpful fact pattern with respect to the CSA's views regarding the application of section 5.3(1)(e), there is no clear guidance as to how "changes the primary business of the issuer" may be interpreted by staff, particularly in light of the reference to a transaction that is "less than the 100% significance threshold....". We do not believe that the CSA was seeking to create a "backdoor" primary business trigger with the inclusion of section 5.3(1)(e), but do suggest that 41-101CP would benefit from further clarification as to what changes may trigger the application of the primary business requirements at a percentage below 100%. For example, at a minimum, we recommend that the CSA apply a "fundamental change" standard in this new language to ensure that acquisitions or changes that modify or supplement the primary business not be inadvertently captured.

We also submit that the paragraph immediately following the enumerated examples in section 5.3(1) creates the potential for further uncertainty. We understand that one of the principal benefits of the proposed amendments to 41-101CP is to reduce the burden on issuers and CSA staff of engaging in pre-filing discussions. The reference in the paragraph following the enumerated examples (with several other references in the proposed 41-101CP to such discussions) suggests that there may be ambiguity in the rules. While it may be challenging to provide additional guidance with respect to the areas of concern that the CSA may be seeking to address through the inclusion of the paragraph, we suggest that both the CSA and issuer community are better served with more explicit guidance.

Section 5.7

We are concerned with the expansion of section 5.7 of 41-101CP and the change in tone of the language (for example, changing references from "an issuer may find it necessary" to "an issuer may be required" and "we may require") and suggest that the section be reverted with respect to the formulation of these expressions to put the onus on an issuer to make applicable determinations. However, more concerning, notwithstanding the references to "in exceptional circumstances" are the new obligations in section 5.7(2), which could require the inclusion of additional financial information in order to meet the full, true and plain disclosure standard. The inclusion of this new section also has the potential to create, rather than reduce, uncertainty for issuers, particularly given that the examples provided are not uncommon. We encourage the CSA to review the enumerated

list carefully with a view to narrowing the scope of the examples, or potentially removing section 5.7(2) altogether. In the alternative, we believe that the CSA should provide clear guidance as to the interpretation of these requirements and when the CSA believes they could be triggered.

We are very supportive of the CSA's efforts to harmonize the approach to the interpretation of the primary business requirements, and strongly encourage the CSA to implement changes to 41-101CP as soon as possible. We believe the changes can be implemented in an expeditious manner while also addressing the limited issues noted above.

We would be happy to discuss our comments with you; please direct any inquiries to James R. Brown (jbrown@osler.com or 416.862.6647) or Desmond Lee (dlee@osler.com or 416.862.5945).

Yours very truly,

Osler, Hoskin & Harcourt LLP

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