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Dear Ms Beaudoin:

Proposed Multilateral Instrument 61-101 "Protection of Minority Security Holders in Special Transactions"

We are pleased to provide the Autorité des marchés financiers ("AMF") and the Ontario Securities Commission ("OSC") with our comments on Proposed Multilateral Instrument 61-101 "Protection of Minority Security Holders in Special Transactions" ("MI 61-101").

We begin by commending the AMF and the OSC for their initiative to harmonize the requirements in Québec and Ontario for enhanced disclosure, independent valuations and majority of minority security holder approval for special types of transactions.

1. Definition of "related party transactions".

MI 61-101 proposes to expand the definition of related party transactions in subsections (n) and (o) to include a transaction in which the issuer directly or indirectly retains the services of the related party for valuable consideration or provides services to the related party. We do not disagree with including services in the definition of related party transactions, but disagree that all services should be subject to minority approval. In particular, we do not believe that services provided in the ordinary course of business should be subject to any form of minority approval. We are also concerned that it will be difficult to value services provided for purposes of calculating the 25% of market capitalization exemption.

In light of the foregoing, we would suggest that services from or to related parties not be subject to shareholder approval and that instead such related party transactions should be subject to the approval of the independent directors of the issuer.

2. Section 4.1(c).

Section 4.1(c) has been redrafted from the form currently found in OSC Rule 61-501 so as to provide that the exemption is available only where the securities held by beneficial owners in a local jurisdiction constitute less than two percent of the outstanding securities of each class of affected securities of the issuer. In practice it is very difficult to look to beneficial ownership to determine definitively whether the two percent test has been met. Under current OSC Rule 61-501 the issuer is permitted to look to the register of shareholders and is permitted to come to a "reasonable" belief as to whether the two percent threshold has been exceeded. We strongly urge the AMF and the OSC to develop a test which is pragmatic in the circumstances and which can be ascertained in an expeditious manner: beneficial ownership as a test is not pragmatic nor can the results be easily ascertained.

3. Section 4.4(1)(d).

The auction exemption has been amended by adding the phrase "and ascribe a per security value to those securities" at the end of 4.4(1)(d)(i)(A)(I). We are not certain what purpose the phrase has. In a transaction where the consideration offered is shares, for example, it is not a value which is ascribed but rather consideration which has been ascribed. The value of the consideration will fluctuate throughout the course of the bid depending upon the price of the shares offered as consideration.

4. Redrafting of section 7.1(3).

Section 7.1(3) has been redrafted to prohibit an independent director of an issuer from receiving any benefit as a consequence of the transaction or as payment for completion of the transaction. Independent directors on a special committee are frequently required to devote significant amounts of time in a very time-sensitive and pressure-filled situation in discharging their obligations on behalf of the shareholders of the target issuer. We believe it is appropriate that they be compensated in a manner that acknowledges the time and effort they discharge on behalf of the shareholders. We believe it is acceptable for an incumbent board of a target company to determine, at the outset of the transaction, if additional fees are to be paid to special committee members for the work they are about to undertake and the methodology for determining the fees. We similarly believe it is appropriate for an incumbent board of a target, at the conclusion of the special committee's work, but prior to completion of the transaction, to fix remuneration for the members of the special committee based on the board's analysis of the time and effort which the independent directors have just devoted to discharging their mandate and acting in the best interests of the shareholders of the target. We do not believe either of these scenarios places the independent directors in a position where their interests would be in conflict with the interests of the shareholders of the target company as this type of

remuneration is compensation for time and talent expended and is not a "benefit" or a "payment for completion of the transaction" within the meaning of this section. It is a simple acknowledgement that the time, effort and expertise of the independent directors on the special committee should be appropriately compensated. We believe this point should be acknowledged in the Companion Policy.

5. Former section 5.5(9).

We note that the exemption provided currently in section 5.5(9) of OSC Rule 61-501 has been removed from the exemptions applicable to related party transactions and instead included in the section relating to business combinations. We believe that this type of transaction will not necessarily be a business combination and accordingly we recommend leaving the exemption in the related party transaction section as well as including it under the business combinations section.

6. Valuation exemption – section 4.4(1)(b) and section 5.7(c)(1).

Section 4.4(1)(b) provides an exemption from the valuation requirement for business combinations involving an issuer listed on the TSX Venture Exchange ("TSXV"). The exemption provides that a valuation is not required where "no securities of the issuer are listed or quoted on the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States".

Where a TSXV issuer also has securities listed or quoted on a stock exchange outside of Canada and the United States, however, the exemption is no longer available. We submit that this result is at odds with the policy rationale behind exempting TSXV issuers from the valuation requirement. If an issuer that is only listed on the TSXV, with 100% of the trading occurring in Canada, is exempt from the valuation requirement, it does not make sense to subject a TSXV issuer that is also listed or quoted on a foreign exchange to the valuation requirement.[1]

We submit that the AMF and OSC should clarify that the valuation exemption in section 4.4(1)(b) is still available even if a TSXV issuer is cross-listed. A similar clarification should also be made in respect of the exemption in section 5.7(1)(c)(i).

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[1] We note that in recent amendments to NI 51-102 the definition of "venture issuer" has been amended to provide that an issuer will remain a venture issuer even if its securities are listed on the Alternative Investment Market of the LSE or OFEX. We are not certain why the amendments were restricted to AIM or OFEX but believe that our argument that it does not make sense to subject a TSXV issuer that ~~is also listed on~~ any ~~foreign exchange to the valuation requirement is the better argument, from a~~ policy perspective, in the context of this instrument.

We are pleased to have had the opportunity to provide you with out comments on MI 61-101. If you have any questions or comments please feel free to contact Stan Magidson at 403-260-7026.

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP
JS:vkl