



GARDINER ROBERTS

**William R. Johnstone**  
Direct Line: 416.865.6605  
bjohnstone@gardiner-roberts.com

February 29, 2012

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Superintendent of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

c/o Gordon Smith  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2  
Fax: 604-899-6814  
e-mail: gsmith@besc.bc.ca

-and-

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  
Fax: 514-864-6381  
e-mail: consultation-en-cours@lautorite.qc.ca

*Via E-mail*

**RE: CSA Staff Consultation Notice 45-401, Review of Minimum Amount and Accredited Investor Exemptions (the “Consultation Notice”)**

GARDINER ROBERTS LLP

Scotia Plaza, 40 King Street West, Suite 3100  
Toronto, ON, Canada M5H 3Y2  
Tel. 416 865 6600 Fax: 416 865 6636 www.gardiner-roberts.com





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This submission is made on behalf of Gardiner Roberts LLP (“**Gardiner Roberts**”) and William R. Johnstone, LLB in response to the request for comments published on November 10, 2011 (the “**Request for Comments**”) with respect to the Consultation Notice.

I was a member of the original Ontario Securities Commission Small Business Advisory Committee. I have been involved as a lawyer, officer and director of junior public companies for over 25 years. Gardiner Roberts acts for many small cap public companies and private entities that rely upon the prospectus exemption regime in National Instrument 45-106 - *Prospectus and Registration Exemptions* (“**NI 45-106**”) to raise capital.

### **General Observations**

We support the initiatives of the Canadian Securities Administrators (the “**CSA**”) in its attempts to address risks to investors in the capital markets and to ensure that any such initiatives are proportionate to the cost to industry and the restrictions such initiatives may impose on capital market participants. Given the current uncertainty in the world financial markets, the corollary effect this is having on the raising of capital in Canada and the size of issuers in the Canadian market, we are concerned that any changes made to NI 45-106 that narrows the available exemptions would make it more difficult for market participants to raise capital and for capital markets to function efficiently in the context of the investor protection mandate. We encourage the CSA to renew its efforts to harmonize the current exemptions that exist in NI 45-106, some of which contain some of the additional disclosure suggestions that have been referred to in the Consultation Notice, (e.g. s. 2.9 - the Offering Memorandum exemption and s. 5.2 the TSX Venture Exchange Offering).

We also encourage the CSA to continue to monitor compliance with the National Instrument 31-103 - *Registration Requirements, Exemptions And Ongoing Registrant Obligations* (“**NI 31-103**”), which incorporates the investor protection principles know-your-client, know-your-product and suitability analysis. We encourage the CSA to continue to harmonize the implementation of NI 31-103 so that it is applicable in all provinces and territories in Canada.

### **Comments On Proposed Changes To NI 45-106**

#### **Minimum Exemption Amount**

We are of the view that changing the threshold amounts would unnecessarily restrict the ability of Canadian investors to participate in exempt market product offerings and that would unnecessarily reduce the ability of market participants to access capital. While we note that most investors that rely on this exemption are also “accredited investors”, we are opposed to the elimination of this exemption as there are certain situations where this exemption is of use to facilitate financing of market participants.



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### **Accredited Investor (“AI”) Exemption**

We are of the view that the AI Exemption is an integral part of fundraising for issuers in the Canadian marketplace. It is our view that changing any threshold amounts in the AI Exemption would unnecessarily restrict the ability of Canadian investors from participating in exempt market product offerings and that would unnecessarily interfere with the ability of market participants to access capital. It is our view that the current thresholds are appropriate metrics for determining the suitability of an investor to subscribe for exempt market product offerings.

We agree that the additional categories suggested in the Consultation Notice that recognize investor sophistication based on: (i) investment experience; (ii) work experience; or (iii) education should be added as additional categories to the AI Exemption. We believe that investor sophistication has a much broader base than just wealth accumulation and that the addition of these categories to the AI Exemption would enhance the AI Exemption’s functionality for both investors and for market participants. The suggested categories in the Consultation Notice should not be looked at as replacements for the current categories that are listed in the AI Exemption, but as a way to extend the AI Exemption.

Thank you for this opportunity to comment. If you have any questions, please contact me at 416-865-6605.

Yours truly,

**GARDINER ROBERTS LLP**

William R. Johnstone  
Partner  
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