UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

July 12, 2012

D. Grant Vingoe, Esq.
Arnold & Porter LLP
399 Park Avenue
New York. NY 10022-4690

Re: Merger and Acquisition Activities of Foreign Firms in Reliance on Rule 15a-6

Dear Mr. Vingoe:

In your letter dated July 10, 2012, on behalf of your client, Ernst & Young Corporate Finance (Canada) Inc. ("EYCF(C)") and certain other members of Ernst & Young Global Limited ("E&Y"), you request assurances from the staff of the Division of Trading and Markets ("Staff") that it would not recommend enforcement action to the Securities and Exchange Commission ("Commission") under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") if certain non-U.S. resident E&Y member firms (the "Foreign E&Y Member Firms") engage in the activities described in your letter with EYCF(C) without registering as broker-dealers under Section 15(b) of the Exchange Act.

EYCF(C) is a broker-dealer registered with the Commission and is a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"). EYCF(C) is a member of E&Y, as is each Foreign E&Y Member Firm. As part of their accounting, advisory, and consulting services, the Foreign E&Y Member Firms advise companies with respect to merger and acquisition transactions, and provide advice regarding changes in control, expansion of business lines, acquisition of "hard" facilities, geographic expansion, taxation, and other matters ("M&A Activities").

In some instances, the M&A Activities conducted by a Foreign E&Y Member Firm are cross-border arrangements that, absent an exemption, would require the Foreign E&Y Member Firm to register with the Commission as a broker-dealer under Section 15(b) of the Exchange Act. In these situations, the Foreign E&Y Member Firm relies on the exemption from broker-dealer registration in Rule 15a-6(a)(3) of the Exchange Act (and related no-action letters) by employing the services of EYCF(C), which acts as a "chaperone" to the Foreign E&Y Member Firm. EYCF(C)'s Rule 15a-6(a)(3) arrangements have been limited to situations in which the U.S. person in the transaction comes within the meaning of the term "Major U.S. Institutional

Investor," as defined in Rule 15a-6, or is treated as such pursuant to no-action positions taken by the Staff in the 1997 "Nine-Firms Letter."[1]

Under Rule 15a-6(b)(4), a "Major U.S. Institutional Investor" is defined as an institutional investor that has, or has under management, total assets in excess of $100 million, or a registered investment adviser with total assets under management in excess of $100 million. Rule 15a-6(b)(7) defines the term "institutional investor" to include specified financial entities.[2] Among other things, the Nine-Firms Letter permits treatment of any entity that owns or controls (or in the case of an investment adviser, has under management) $100 million in aggregate financial assets as a Major U.S. Institutional Investor. In the Nine-Firms Letter, "financial" assets are limited to "cash, money-market instruments, securities of unaffiliated issuers, futures and options on futures and other derivative instruments."[3]

EYCF(C) proposes to act as a chaperone under Rule 15a-6(a)(3) in situations in which a U.S. person that is a potential party to a merger and acquisition does not meet the criteria to be a "Major U.S. Institutional Investor" under Rule 15a-6(b)(4) or the Nine-Firms Letter. You state that such a party is sophisticated with respect to its business and holds more than $100 million in total assets (excluding cash and cash equivalents) that include, but are not limited to: plant; equipment; real estate; intellectual property; and unimpaired goodwill arising from prior acquisitions, among other assets.

You request assurances that the Staff would not recommend enforcement action to the Commission if EYCF(C) and the Foreign E&Y Member Firms treat customers with $100 million in total assets, including assets that are not "financial" assets (but excluding cash and cash equivalents), as Major U.S. Institutional Investors solely in the context of a Foreign E&Y Members Firm's M&A Activities. You represent that total assets would be calculated before giving effect to a potential transaction in the manner described in the Nine-Firms Letter: "total assets calculated on a gross basis, without deduction for liabilities of the company, based on the balance sheet or comparable financial statements of the company prepared in the ordinary course of business."[4] You further represent that for purposes of the relief requested in your letter, the customer's balance sheet or comparable financial statement would be prepared by a certified public accountant ("CPA") (or the non-U.S. equivalent of a CPA if the customer is an entity whose balance sheet or financial statements are appropriately prepared under non-U.S. standards, such as a subsidiary of a non-U.S. entity that prepares its financial statements in accordance with the standards used by its parent), and prepared in accordance with applicable generally accepted

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1 *See* Letter re: *Securities Activities of U.S.-Affiliated Foreign Dealers* (April 9, 1997) ("Nine-Firms Letter"), *as supplemented by* Letter re: *Securities Activities of U.S.-Affiliated Foreign Dealers* (April 28, 1997).

2 These entities include registered investment companies, banks, savings and loan associations, insurance companies, business development companies, small business investment companies, certain employee benefit plans, private business development companies, and certain trusts and charitable organizations.

3 *See* Nine-Firms Letter.

4 *Id.*

accounting principles.[5] You represent that where goodwill and/or intangibles are relied upon to reach the $100 million threshold, the customer financial statements would be (a) audited and (b) prepared in accordance with, or reconciled to, U.S. Generally Accepted Accounting Principles (or International Financial Reporting Standards if the customer is an entity whose balance sheet or financial statements are appropriately prepared under non-U.S. standards, as described above).

You request relief only in the context of private placements of stock or other forms of equity securities, and only in the context of mergers or acquisitions that would result in the transfer of control of an entire company or business unit.[6] For these purposes, where a company is transferred, "control" would be measured by ownership of over 50% of its equity securities. Where a business unit is transferred in exchange for securities, the assets comprising an entire, distinct business unit would be owned outright by the selling entity and acquired outright by the purchasing entity. In all other respects, you represent that EYCF(C)'s activities would comport with the provisions of Rule 15a-6 and related no-action letters.

Response:

Based on the facts and representations contained in your letter, the Staff will not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act against a Foreign E&Y Member Firm for engaging in the M&A Activities described in your letter with EYCF(C) without registering as a broker-dealer in accordance with Section 15(b) of the Exchange Act, in reliance on the exemption from registration in Rule 15a-6(a)(3).

In taking this position, we note in particular your representation that a customer with $100 million in total assets, as calculated in the manner and under the conditions described in your letter, will be treated as a Major U.S. Institutional Investor solely in the limited situation where a Foreign E&Y Member Firm is engaged in M&A Activities with one of these customers. In addition, the relief you request would only be available in the context of a private placement and only in the context of a merger or acquisition that would result in the transfer of control of an entire company or business unit. As you represent in your letter, should a review of financial statements uncover that they were not prepared by a CPA (or non-U.S. equivalent as described

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5 You state that at the beginning stages of a transaction, EYCF(C) and the Foreign E&Y Firms do not know whether the asset threshold is met or if a business's financial statements are prepared by a CPA (or non-U.S. equivalent of a CPA if the customer is an entity whose balance sheet or financial records are appropriately prepared under non-U.S. standards, as described above). You state that financial statements would be reviewed and if the financial statements were not prepared by a CPA (or non-U.S. equivalent as described above), or the required assets thresholds are not met, then the transaction would not be eligible for the requested relief.

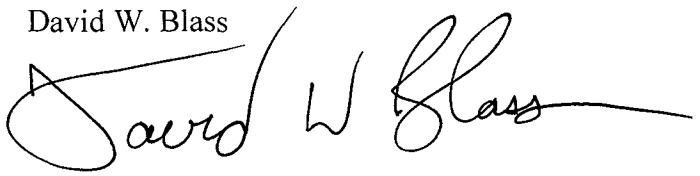
6 You represent that settlement in such transactions is effected on a delivery versus payment basis (generally in the offices of legal counsel), with funds transferred between accounts by banks. If a transaction were to arise where EYCF(C) were to participate in a transaction's settlement by handling funds or securities, you acknowledge that EYCF(C) would also be responsible for receiving, delivering, and safeguarding those funds and securities. You state that, in such a case, EYCF(C) would ensure that it has received all necessary approvals from FINRA and that it complies with all relevant provisions of the Exchange Act and the rules thereunder, including the Net Capital and Customer Protection Rules (17 CFR 240.15c3-1 and 240.15c3-3), as well as Rule 15a-6 (17 CFR 240.15a-6(b)(3)) and related interpretations.

above), or the required asset thresholds are not met, then a proposed transaction would not be eligible under the assurances provided by this letter. Finally, we note your representation that if transactions are not settled directly between the parties and if EYCF(C) participates in a transaction's settlement by handling funds or securities, EYCF(C) will be responsible for receiving, delivering, and safeguarding those funds and securities in accordance with the requirements of Rule 15a-6(a)(3) (and related no-action letters) and any other requirements imposed under the federal securities laws and by self-regulatory organization rules.

This position is based strictly on the facts and representations you have made in your letter and any different facts and circumstances may require a different response. This response, furthermore, expresses the Staff position regarding enforcement action only and does not purport to express any legal conclusions on the question presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

If you have any questions regarding this letter, please call Joseph Furey, Assistant Chief Counsel, Ignacio Sandoval, Special Counsel, or me at (202) 551-5550.

David W. Blass



Chief Counsel

cc: Andrew J. Shipe, Esq., Arnold & Porter LLP

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July 10, 2012

David W. Blass
Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Ernst &Young Corporate Finance (Canada) Inc.: Request for No-Action Relief

Dear Mr. Blass:

On behalf of our client, Ernst & Young Corporate Finance (Canada) Inc. ("EYCF(C)"), and certain other member firms of Ernst & Young Global Limited ("E&Y"), we respectfully request your assurance that the staff of the Division of Trading and Markets of the Securities and Exchange Commission ("Commission") would not recommend enforcement action under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act")[1] against the E&Y Member Firms (as defined below) if the E&Y Member Firms were to engage in the activities discussed below without registering as broker-dealers under Section 15(a) of the Exchange Act provided that those activities are conducted with EYCF(C) in accordance with the exemption from broker-dealer registration in Rule 15a-6(a)(3)[2] under the Exchange Act, except as discussed below.

Description of EYCF(C) and Its Present Activities.

EYCF(C) is a securities broker-dealer registered as such with the Commission and a member of the Financial Industry Regulatory Authority ("FINRA"). Among other things, EYCF(C) engages in merger and acquisition activities, conducts due diligence and valuations, and is authorized by FINRA to act as a private placement agent.

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[1] 15U.S.C. 78a et seq.

[2] 17 CFR §240.15a-6.

EYCF(C) is a member of Ernst & Young Global Limited, a global accounting, advisory and consulting business with member firms located around the world. As part of their accounting, advisory and consulting services, various E&Y member firms ("E&Y Member Firms") advise companies with respect to merger and acquisition transactions. With respect to such transactions, the E&Y Member Firms provide advice regarding changes in control, expansion of business lines, acquisition of "hard" facilities, geographic expansion, taxation and other matters ("M&A Activities"). The E&Y Member Firms are not United States-resident persons.[3]

On various occasions, such merger and acquisition transactions are cross-border arrangements that, in the absence of an exemption, would require the E&Y Member Firms to register with the Commission as broker-dealers under Exchange Act Section 15(a)(1). In these transactions, the E&Y Member Firms may be retained by either the buyer or seller of such businesses. The seller may be selling stock of a company that it controls, and the buyer may be offering securities to acquire a business or business unit from another party. In cases where their advisory activities would cause these E&Y Member Firms to meet the definition of a "foreign broker-dealer" under Rule 15a-6(b)(3),[4] the E&Y Member Firms employ the services of EYCF(C) in order to avail themselves of the exemption from the broker-dealer registration requirement provided by Rule 15a-6(a)(3).

As noted above, EYCF(C) is a broker-dealer registered with the Commission and a member of FINRA. EYCF(C) acts as a "chaperone" pursuant to subparagraph (a)(3) of Rule 15a-6[5] (and related no-action letters) for the E&Y Member Firms when they participate in M&A Activities that would otherwise require them to register as broker-dealers with the Commission. Under these arrangements, EYCF(C) is responsible for, among other things, participating in communications, obtaining consents to service of process, and maintaining required books and records. The merger and acquisition transactions are invariably settled between the parties, without intermediation by EYCF(C).[6]

At present, EYCF(C)'s chaperoning activities are limited to transactions where the U.S. parties to any transaction are "Major U.S. Institutional Investors" as defined in Rule 15a-

[3] The E&Y Member Firms are not registered with the Commission as broker-dealers, or in any other capacity.

[4] 17 CFR §240.15a-6(b)(3).

[5] 17 CFR §240.15a-6(a)(3).

[6] Settlement in such transactions is effected on a delivery versus payment basis (generally in the offices of legal counsel), with funds transferred between accounts by banks. If a transaction were to arise where EYCF(C) were to participate in a transaction's settlement by handling funds or securities, EYCF(C) recognizes that it would also be responsible for receiving, delivering, and safeguarding those funds and securities. In such a case, EYCF(C) would ensure that it has received all necessary approvals from FINRA, and that it complies with all relevant provisions of the Exchange Act and the rules thereunder, including the Net Capital and Customer Protection Rules (17 CFR §§ 240.15c3-1 and 240.15c3-3), as well as Rule 15a-6 (17 CFR §240.15a-6(b)(3)) and related no-action letters.

6(b)(4),[7] or may be treated as "Major U.S. Institutional Investors" pursuant to no-action positions taken by the staff in 1997 ("the Nine Firms Letter").[8] Under Rule 15a-6(b)(4), a "Major U.S. Institutional Investor" is defined as an institutional investor that has, or has under management, total assets in excess of $100 million, or a registered investment adviser with total assets under management in excess of $100 million. However, under Rule 15a-6, "institutional investors" only include certain financial entities: registered investment companies, banks, savings and loan associations, insurance companies, business development companies, small business investment companies, certain employee benefit plans, private business development companies, and certain trusts and charitable organizations.[9]

The "Nine Firms Letter" permits treatment of any entity that owns or controls (or in the case of an investment adviser, has under management) in excess of $100 million in aggregate financial assets as a Major U.S. Institutional Investor. However, "financial" assets are limited to "cash, money-market instruments, securities of unaffiliated issuers, futures and options on futures and other derivative instruments."[10]

Nature of, and Representations Related to, the Request.

EYCF(C) proposes to act as a chaperone under Rule 15a-6(a)(3) where certain potential parties to mergers and acquisitions may not be deemed "Major U.S. Institutional Investors" under the above formulations, but are nonetheless sophisticated with respect to their businesses. These entities may not be treated as Major U.S. Institutional Investors under the Nine Firms Letter because their financial assets may not exceed $100 million. They may not meet the definition of a "Major U.S. Institutional Investor" under Rule 15a-6(b)(4) because they are not financial firms. However, these entities hold more than $100 million in total assets (excluding cash and cash equivalents), including assets that are not "financial" assets, including, but not limited to, plant, equipment, real estate and intellectual property, and unimpaired goodwill arising from prior acquisitions, among other assets.

Therefore, we request that the staff not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act if EYCF(C) treats customers with $100 million in total assets, including assets that are not "financial" assets (but excluding cash and cash equivalents), as Major U.S. Institutional Investors solely in the context of M&A Activities. Total assets would be calculated before giving effect to the potential transaction, and in the manner described in the Nine Firms Letter: "the asset test would be calculated on a gross basis, without deduction for liabilities of the institution, based on the balance sheet or comparable

[7] 17 CFR §240.15a-6(b)(4).

[8] 1997 SEC No-Act Lexis 525 (Apr. 9, 1997), *as supplemented* 1997 SEC No-Act Lexis 573 (Apr. 28, 1997).

[9] Rule 15a-6(b)(7); 17 CFR §240.15a-6(b)(7).

[10] 1997 SEC No-Act Lexis 525, *2 (Apr. 9, 1997).

financial statement of the institution prepared in the ordinary course of its business."[11] However, for purposes of the relief requested in this letter, the customer's balance sheet or comparable financial statement would be required to be prepared by a Certified Public Accountant (CPA) (or the non-U.S. equivalent of a CPA if the customer is an entity whose balance sheet or financial statements are appropriately prepared under non-U.S. standards, such as a subsidiary of a non-U.S. entity that prepares its financial statements in accordance with the standards used by its parent), and prepared in accordance with applicable generally accepted accounting principles.[12] In addition, where goodwill and intangibles are relied upon to reach the $100 million threshold, the customer financial statements would be required to be (a) audited and (b) either prepared in accordance with or reconciled to U.S. Generally Accepted Accounting Principles (U.S. GAAP) (or International Financial Reporting Standards (IFRS) if the customer is an entity whose balance sheet or financial statements are appropriately prepared under non-U.S. standards, as described above).

The requested relief would only apply in the context of private placements of stock or other forms of equity securities, and only in the context of mergers or acquisitions that would result in the transfer of control of an entire company or business unit. For these purposes, where a company is transferred, "control" would be measured by ownership of over 50% of its equity securities. Where a business unit is transferred in exchange for securities, the assets comprising an entire, distinct business unit would be owned outright by the selling entity and acquired outright by the purchasing entity. In all other respects, EYCF(C)'s activities would comport with the provisions of Rule 15a-6 and related interpretations.

In support of our request, we note that the Major U.S. Institutional Investor "financial asset" test in Rule 15a-6(b)(4) is intended to ensure a level of sophistication as to securities and related instruments. Defining a Major U.S. Institutional Investor by reference to a threshold level of financial assets in this manner is appropriate where there is trading in financial instruments.[13] However, the transfers of securities in the transactions that are the subject of this request are only the means to effect changes in ownership and control of a business, and the entities that EYCF(C) intends to treat as Major U.S. Institutional Investors are large entities that

[11] 1997 SEC No-Act Lexis 525, *4 n. 3 (Apr. 9, 1997).

[12] Where, such as in the beginning stages of a transaction, EYCF(C) and the Member Firms do not know, and could not reasonably know, whether the asset threshold is met or if a business's financial statements are prepared by a CPA (or the non-U.S. equivalent of a CPA if the customer is an entity whose balance sheet or financial statements are appropriately prepared under non-U.S. standards, as described above), financial statements would have to be reviewed, and if it is determined that they were not prepared by a CPA (or the non-U.S. equivalent as described above) or the required asset threshold was not met, then the transaction would not be eligible for the requested relief.

[13] Consistent with this policy, for purposes of transactions under SEC Rule 144A (17 CFR §230.144a), "Qualified Institutional Buyers" must own or invest on a discretionary basis, threshold amounts "in securities." Securities transferred pursuant to Rule 144A include not only equities, but bonds, notes, debentures, convertible securities and others.

are sophisticated with respect to their businesses, whether they are buyers or sellers of such businesses. In cases where E&Y is advising the seller in a sale of a business implemented as a stock sale, equity would be transferred so as to effect a change of control. In cases where E&Y is representing the buyer and securities form part of the consideration, the buyer is acquiring control of a business, either in a stock or asset transaction, in return for consideration that includes securities. These transactions constitute the sale or purchase of a business rather than investment activities for the buyer or seller.

Conclusion.

For the foregoing reasons, we respectfully request that the staff not recommend to the Commission that it take enforcement action against the E&Y Member Firms under Section 15(a) of the Exchange Act when the E&Y Member Firms engage in the M&A Activities described above in reliance on the exemption from broker-dealer registration in Exchange Act Rule 15a-6(a)(3).

If you have any questions regarding this request, please feel free to contact me (212) 715-1130 or Andrew Shipe at (202) 942-5049.

Sincerely,

D. Grant Vingoe

cc: Joseph Furey, Esq.
Ignacio Sandoval, Esq.