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Via e-mail to: rule-comments@sec.gov

US Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Security Ratings (Release No. 33-9286; 34-63874; Reference File Number S7-18-08)

Ladies & Gentleman:

We are responding to the invitation of the Securities and Exchange Commission (Commission) for comments regarding the above-referenced proposing release. Our comments are directed to the Commission's proposal to rescind Form F-9 and to eliminate the reference to Form F-9 in Form 40-F.

As background to our interest in these matters, Davies Ward Phillips & Vineberg LLP is a law firm with offices in Toronto, Montreal and New York City. The firm's clients include a wide variety of publicly held Canadian companies, a number of which maintain listings on U.S. stock exchanges and frequently access the U.S. private and public equity and debt markets. We counsel clients regularly on the legislative initiatives and rulemakings arising out of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Our comments on the Commission's proposal to rescind Form F-9 focus on two primary areas. First, rescinding Form F-9 may make it more difficult and expensive for certain Canadian issuers to access the U.S. public markets for debt and preferred securities offerings. Second, the proposed changes will effect a substantial change in the annual disclosure requirements applicable to certain Canadian issuers without any articulated policy reason for the change.

1. Access to U.S. Capital Markets.

As noted in the proposing release, Form F-9 permits registration of investment-grade debt and preferred securities without the requirement to reconcile the issuer's financial statements to U.S. GAAP. Because, as also noted in the proposing release, most Canadian issuers are now required to prepare their financial statements for periods commencing on or after January 1, 2011 pursuant to International Financial Reporting Standards as issued by the International Accounting Standards Board, which are not required by Form F-10 to be reconciled to U.S. GAAP, the disclosure requirements for investment-grade securities registered on Forms F-9 and F-10 will be the same.

The proposing release, however, overlooks another difference between Form F-9 and F-10. Issuers using Form F-9 are not required to have a public equity float. Issuers using Form F-10 must either have a $75 million public float or, if they are registering debt or preferred securities, the securities must be fully and unconditionally guaranteed by a parent company that itself meets all of the eligibility requirements of Form F-10. Accordingly, if Form F-9 is rescinded, and Form F-10 is retained in its current form, high-quality, investment grade companies (*e.g.*, wholly or majority-owned subsidiaries not required by the market to provide a parent company guarantee) will be foreclosed from using MJDS to access the U.S. public markets unless they provide a parent guarantee, which sometimes may not be commercially acceptable, while less credit-worthy companies with guaranteed securities will continue to be able to register those securities on Form F-10. We think it unlikely that this result was intended simply as a consequence of Dodd-Frank's mandate to remove references to credit ratings from the Commission's rules and forms.

This anomalous result will be compounded further by removing the reference to Form F-9 in General Instruction A(2)(iv) of Form 40-F. As revised, Form 40-F could still be used as an annual report for registrants subject to the reporting requirements of Section 15(d) of the Exchange Act and Rule 15d-4 thereunder solely by reason of having filed a registration statement on Form F-10, regardless of whether it had any public equity float. However, an issuer that registers a debt or preferred offering on Form F-10 and lists the securities on a U.S. stock exchange (thus suspending its Section 15(d) obligation in favor of registration under Section 12(b)) would not be eligible to use Form 40-F (instead, having to use Form 20-F) as an annual report if it did not have the required $75 million public float. We are not aware of any policy rationale requiring different disclosures from the two types of issuers, and the proposing release does not provide a reason for doing so.

We believe there is a practical solution that avoids the above-described consequences of the proposed rule changes. In the principal section of the release, the Commission has proposed replacing the references to security ratings in Forms S-3 and F-3 with a minimum registered debt issuance of $1.0 billion over the three years preceding the filing of the registration statement.[1] That measure is the same one by which an issuer of debt securities, that does not meet the public equity test would be deemed to be a well-known seasoned issuer (WKSI). Accordingly, we respectfully propose that the Commission consider adopting an alternative eligibility criterion that would permit an issuer that does not meet the $75 million public float requirement to register non-guaranteed debt or preferred securities on Form F-10 (or Form F-9, if it is retained) if it is a wholly or majority-owned subsidiary of a parent company that (i) satisfies all of the F-10 eligibility requirements and (ii) is a WKSI or would be a WKSI but for the fact that it files its annual report on

[1] We do not believe that replacing the "investment grade" criterion with the registered debt issuance measure is a practical alternative for many wholly or majority-owned Canadian subsidiaries.

Form 40-F. We think it fair to assume that such parent companies would, as the proposing release notes regarding WKSIs, "have their Exchange Act filings broadly followed and scrutinized by investors and the markets" in the United States and Canada, and thus would presumably provide investors with relevant information about the business, operations and financial condition of their subsidiaries. In addition, these larger companies would have substantial reputational reasons for not allowing their subsidiaries to default on their publicly traded debt or preferred securities. The proposal could be implemented either by substituting it for the security rating criterion of Form F-9 or, if Form F-9 is rescinded, by amending Form F-10. In the latter case, General Instruction A(2)(iv) of Form 40-F could simply be revised to reflect the amendment to Form F-10.

2. Appropriate Disclosure by Canadian Reporting Issuers.

For almost 20 years, MJDS-eligible Canadian companies have satisfied their reporting requirements under the Exchange Act by filing annual reports on Form 40-F. In doing so, U.S. investors have been provided with the same disclosure as investors in Canada, and with such additional information (primarily as a result of the enactment of the Sarbanes-Oxley Act in 2002) as is required by the Commission. As the Canadian securities regulatory authorities have largely (if not entirely) revised and supplemented their annual disclosure requirements (for example, in matters of executive compensation, internal control over financial reporting and other areas) in response to changes in U.S. disclosure requirements, the MJDS reporting system has generally worked well.

In footnote 74 of the proposing release, the Commission states that as a result of the proposed changes, Form F-9 filers (and, as we have noted above, Form F-10 registrants lacking a public float) will be required to file annual reports on Form 20-F rather than on Form 40-F, as currently permitted. We are not aware of any policy justification for this change, and the proposing release does not articulate any reason for mandating the change other than as a consequence of removing the reference to Form F-9 in Form 40-F, which the Commission is compelled to do pursuant to Dodd-Frank.

We do not believe that imposing arguably more onerous disclosure requirements on Canadian issuers of investment grade rated securities, with the resultant increases in costs and management time devoted to such efforts, will provide appreciably more useful disclosure to U.S. investors. This is particularly true for companies that have (or will have, prior to the effectiveness of the proposed form changes) incurred Exchange Act reporting obligations. Accordingly, we respectfully suggest that, in the interest of fairness to those companies, the Commission consider adopting a grandfathering provision. Specifically, we propose that companies that are eligible, as of the effective date of the final rules, to satisfy their reporting obligations under section 15(d) (arising from the filing a Form F-9 registration statement) or section 12(b) (arising from filing a Form 40-F registration statement in connection with a stock exchange listing of investment-grade debt), be permitted to continue to satisfy their reporting obligations by filing annual reports on Form 40-F. In the absence of a clear showing that this would result in demonstrably less complete and accurate disclosure to U.S. investors and markets, we believe that this would be fair and equitable result for those companies.

We appreciate the opportunity to comment on the proposed rule and would be please to answer any questions that the Commission or the Staff might have regarding our comments. Please contact Scott M. Tayne at (212) 588-5520 , Jeffrey Nadler at (212) 588-5505 or Gerald Shepherd at (212) 588-5540.

Respectfully submitted,

Davies Ward Phillips & Vineberg LLP