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March 28, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
USA

Dear Madam:

**Subject: File Number S7-18-08
Proposed Rescission of MJDS Form F-9**

We refer to Release No. 33-9186; 34-63874 (the "Release") issued by the Securities and Exchange Commission (the "Commission"). We wish to comment specifically on issues relating to the proposed rescission of MJDS Form F-9 on the terms outlined in the Release (the "Proposal"), and in particular requests for comment 23 through 25 appearing on pages 32 and 33 of the Release. The numbering below refers to the corresponding number of the Requests for Comment in the Release.

23. We understand that the Commission is generally required to remove references to credit ratings contained within your existing rules and to replace them with alternative criteria. We agree that the rescission of Form F-9 makes sense given that the principal difference between Forms F-9 and F-10, the U.S. GAAP reconciliation requirement, will no longer be relevant. As noted in our next comment, we suggest that the Commission rescind Form F-9 but then add additional eligibility requirements in respect of Form F-10 specific to offerings of non-convertible debt.

24. As noted in the Release, the Proposal in its current form will also have the effect of denying access to the MJDS system to a class of Canadian issuers who to date have been eligible to access the system, being issuers whose non-convertible debt is investment grade but who do not have publicly traded equity and therefore will not qualify to use Form F-10 under the current eligibility requirements.

Our submission is that concurrently with the rescission of Form F-9 the eligibility requirements for Form F-10 should be expanded to include issuers meeting the existing 12 month reporting requirements who meet a test based on the issuer's outstanding debt securities. In Request for Comment 24, the Commission asks whether the test should be the same test proposed elsewhere in the Release in respect of eligibility to use Form S-3 and F-3, that the issuer has issued for cash at least \$1 billion in non-convertible debt securities through registered primary offerings over the prior three years.

In our view, the test proposed in Request for Comment 24 is not appropriate. The \$1 billion amount is completely disproportionate to the \$75 million public float test with respect to equity securities. Further, the limitation to securities issued within the preceding three years is much too restrictive and will raise a number of definitional issues for Canadian issuers and other foreign private issuers who may have completed public offerings outside the United States.

We submit that Form F-10 should be available for the issuance of non-convertible debt securities by issuers who (i) have previously issued non-convertible debt for net proceeds exceeding a stated threshold amount pursuant to one or more prospectus offerings qualified in Canada and (ii) continue to have non-convertible debt securities outstanding with a face amount exceeding that threshold amount (excluding securities held by affiliates of the issuer) in respect of which no default or event of default, as defined in the instruments under which the debt was issued, has occurred and is continuing.

With respect to the appropriate threshold amount, we would expect this amount to be more than the \$75 million threshold that applies to equity securities. However, as noted above we recommend that the threshold be substantially lower than \$1 billion. Clearly, the threshold should not be higher than the Commission ultimately elects to adopt with respect to Forms S-3 and F-3, but given the relatively smaller Canadian capital markets we submit that the threshold amount should be meaningfully lower. We have not attempted to develop an empirical basis to justify any particular threshold amount, but we would submit that something in the range of \$200 million to \$300 million would be sufficient to achieve the objective of the MJDS in limiting access to entities that will have sufficient size to ensure a wide following in the marketplace. In the context of the MJDS, this means a wide following in the Canadian capital markets.

The Release notes a number of times that Form F-9 has only been used 21 times since 2007. However, we would caution against the Commission placing too much focus on market experience over this time frame, given that the period included a prolonged market disruption during which market access was significantly restricted. This was simply not a typical period for the markets on either side of the border.

In our experience, issuers whose equity is closely held but who have issued non-convertible debt securities to the public ("Debt-Only Issuers") are not uncommon in Canada. While some Debt-Only Issuers are straightforward examples where the issuer and its affiliates are all closely held, there are many situations where the Debt-Only Issuer may be a specific operating company within a larger corporate group or the special purpose owner of a specific capital-intensive project (often in the energy, utility or infrastructure sectors) that is appropriately financed by long-term fixed rate debt. There can be various reasons for debt to be incurred at the level of a particular operating company, including the avoidance of structural subordination by ensuring *pari passu* credit protection with existing bank debt or, in rate-regulated industries, ensuring that debt is incurred at the level of the appropriate regulated entity.

We have attached as Schedule "A" an illustrative list of some existing Canadian Debt-Only Issuers that we believe would remain eligible to use the MJDS for debt offerings if our submission is accepted. Some of these issuers have, and some have not, accessed the U.S. market through an F-9 offering in the past. Please note that this list is not in any way comprehensive and is intended for illustration only. Further, for clarity our submission is not made by or on behalf, or at the request, of any of the issuers listed in Schedule "A".

If Form F-9 is rescinded and the eligibility criteria for Form F-10 are not expanded as we have suggested, then we expect the practical outcome to be that Debt-Only Issuers will either decide not to access the U.S. market or will restrict their offerings to Qualified Institutional Buyers who are eligible to invest under Rule 144A. We submit that for the Commission to, in effect, force Debt-Only Issuers to restrict their offerings in this manner is not in the interests of either the Debt-Only Issuers or the U.S. capital markets.

In addition to increasing the cost of market access for Debt-Only Issuers through the higher coupons required for 144A offerings as compared to registered offerings, this approach will effectively mean that many U.S. based investors that may wish to invest in these securities will not have an opportunity to do so. Further, those who do invest pursuant to Rule 144A, or perhaps under private placements, will have a less liquid investment, will not have the protection of the statutory remedies integral to a prospectus offering and will not have the benefit of the enhanced ongoing reporting obligations arising from an MJDS offering as compared to an offering completed under Rule 144A.

25. In general, if the Commission removes the criterion relating to securities having been rated investment grade by an NRSRO from the eligibility criteria, we would not quarrel with eliminating reference to an investment grade rating from an Approved Rating Organization at the same time, even though the latter term is defined by Canadian law. The rationale for the criteria are the same and in some cases the rating agencies are effectively the same.

* * *

Thank you for providing the opportunity to comment.

Yours very truly,

FRASER MILNER CASGRAIN LLP

A handwritten signature in black ink that reads "Bill Jenkins". The signature is written in a cursive style with a large, sweeping "B" and "J".

Wm. K. Jenkins
WKJ/hm

Schedule A

Canadian Examples of Debt-Only Issuers

Alliance Pipeline Limited Partnership
Bell Canada
Canadian Pacific Railway Company
Enbridge Pipelines Inc.
Enbridge Gas Distribution Inc.
FortisAlberta Inc.
FortisBC Inc.
Gaz Metro Inc.
Nova Gas Transmission Ltd.
Nova Scotia Power Incorporated
Total Capital Canada Ltd.
TransCanada Pipelines Limited
Trans Quebec & Maritimes Pipeline Inc.