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March 28, 2011

VIA E-MAIL

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Attention: Elizabeth M. Murphy, Secretary

File Number S7-18-08 – Release No. 33-9186; 34-63874; Security Ratings

Ladies and Gentlemen:

We are submitting this comment letter in response to Release No. 33-9186; 34-63874 Security Ratings (the "Proposing Release"), which requests comments on proposed revisions to rule and form requirements under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for securities offering or issuer disclosure rules that rely on, or make special accommodations for, security ratings. Specifically, we are writing in response to the Securities and Exchange Commission's (the "Commission's") proposal to eliminate Form F-9, which is the form under the Canada/U.S. Multijurisdictional Disclosure System ("MJDS") that allows eligible Canadian issuers to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer, and which are either non-convertible or not convertible for a period of at least one year from the date of issuance.

We recognize that the Commission has prepared the Proposing Release in response to the requirement of Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), which directs the Commission to "review any regulation issued by [it] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings." We are concerned, however, that absent transitional provisions, the proposed elimination of Form F-9 would impose a substantial hardship on those Canadian issuers that rely on Form F-9 to conduct registered offerings of securities in the United States but do not yet have available audited financial statements that have been prepared pursuant to International Financial Reporting Standards as issued by the International Accounting Standards Board ("IFRS") or a reconciliation of their financial statements to U.S. generally accepted accounting principles ("U.S. GAAP").

As stated in the Proposing Release, under Form F-9, an eligible issuer is able to register investment grade securities using audited financial statements prepared pursuant to Canadian generally accepted accounting principles as in effect prior to January 1, 2011 ("Canadian GAAP") without having to include a U.S. GAAP reconciliation, whereas MJDS Form F-10 does require a U.S. GAAP reconciliation. Foreign private issuers that prepare their financial statements in accordance with IFRS are not required to prepare a U.S. GAAP reconciliation for

the purposes of their registration statements. The Canadian Securities Administrators ("CSA") have recently adopted rules that will require Canadian reporting companies to prepare their financial statements pursuant to IFRS for periods beginning on and after January 1, 2011, although certain issuers with a non-calendar year end, and issuers in certain industries, may continue to use Canadian GAAP for some period thereafter. The Commission observes in the Proposing Release that once the Canadian IFRS-related amendments become effective, the disclosure requirements for an investment grade securities offering registered on Form F-10 will be the same as the disclosure requirements for one registered on Form F-9.[1] As a result (and due to the relatively limited use of Form F-9 by Canadian MJDS issuers) the Commission indicates that Form F-9 will become dispensable. Presumably, the former Canadian Form F-9 filers will migrate to the use of Form F-10 or other available forms.

While the CSA's new IFRS requirements generally apply for financial years beginning on or after January 1, 2011 (so that companies with a year-end of December 31 will initially report their interim financial statements under IFRS for the quarter ended March 31, 2011), not all Canadian issuers are required to immediately comply with the IFRS requirements. For example, the timeline for changeover to IFRS for entities with rate-regulated activities has been delayed by the CSA for one year to financial years beginning on or after January 1, 2012.[2] In addition, some Canadian issuers (such as Canadian chartered banks) have year ends for fiscal 2010 that will not occur until later in the 2011 calendar year, thereby extending their initial IFRS compliance dates. As a result, the earliest date by which IFRS-compliant audited financial statements for Canadian issuers will be available will be in early 2012 when the majority of Canadian issuers will next file their audited financial statements pursuant to Canadian securities law requirements. As noted above, in certain cases, the availability of audited financial statements prepared pursuant to IFRS for Canadian reporting companies and registrants will not occur until an even later date. If Form F-9 is eliminated without transitional provisions to account for the timing (and differences in timing) of the application of the Canadian IFRS requirements, some Form F-9 filers will be prevented from conducting registered offerings of their securities in the United States using MJDS unless they have either prepared audited financial statements pursuant to IFRS early on a voluntary basis or they prepare U.S. GAAP reconciliations for the financial statements that are included in their registration statement. We respectfully submit that requiring the preparation of such a U.S. GAAP reconciliation during the IFRS change-over period would represent an unreasonable hardship for affected Form F-9 issuers. Recognizing that the Commission must follow the directive contained in Section 939A of the Dodd-Frank Act, one manner in which the Commission's mandate to remove references to credit ratings in the Commission's rules and forms might be achieved, while providing appropriate transitional relief for Canadian Form F-9 filers, would be to temporarily amend Form F-10 concurrently with the repeal of Form F-9 to include a temporary instruction permitting any Canadian reporting issuer to use Form F-10 for the issuance of debt or preferred securities based on the Form F-9 eligibility criteria in effect as of the

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[1] We note, however, that there are certain other substantive eligibility differences between Form F-9 and Form F-10. For example, Form F-10 cannot be used for the registration of derivative securities (subject to specified exceptions). Form F-9 contains no corresponding prohibition. In addition, unlike Form F-10, use of Form F-9 does not require the issuer to meet a public float test of US$75 million or more if the securities being registered are not convertible into another security.

[2] See Part 5.4 of National Instrument 52-107.

date immediately prior to the date of Form F-9's elimination (and excepting the application of the U.S. GAAP reconciliation requirements of Item 2 of Form F-10) until all of the financial statements included in such Canadian issuer's home jurisdiction documents that would be incorporated by reference into Form F-10 are presented in IFRS in accordance with the requirements of the CSA, as applied by the CSA to that issuer.

We also note that the proposed removal of references to Form F-9 from General Instruction A of Form 40-F could have the effect of causing some Canadian reporting issuers and registrants to lose their ability to use Form 40-F to satisfy their annual reporting obligation under the Exchange Act. We see no policy reason why a Canadian reporting issuer and registrant that has acquired a reporting obligation under the Exchange Act solely though the filing of a Form F-9 registration statement should have its ability to use Form 40-F to satisfy its Exchange Act reporting obligations retroactively taken away. As such, we respectfully submit that the reference to Form F-9 in paragraph (1) of General Instruction A should be retained. In addition, if our recommendation described above regarding temporary permitted use of Form F-10 based on the previous Form F-9 eligibility criteria is implemented, we submit that a temporary instruction should be added to paragraph (2) of General Instruction C to Form 40-F indicating that no U.S. GAAP reconciliation is required in connection with Form 40-F filings by issuers availing themselves of such temporary use.[3]

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We sincerely thank you for considering our comments. Please do not hesitate to contact Jason Comerford at (212) 991-2533 if you would like to discuss any of our comments further.

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

[3] We note that the Proposing Release does not contemplate the removal of the reference to "F-9" in paragraph (1) of General Instruction C to Form 40-F, which may have been an inadvertent omission.