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June 27, 2008

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Securities and Exchange Commission
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Attention: Nancy M. Morris, Secretary

File Number S7-10-08 – Release Nos. 33-8917; 34-57781; Revisions to the Cross-Border Tender Offer, Exchange Offer, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions

Ladies and Gentlemen:

We are submitting this comment letter in response to Release Nos. 33-8917 and 34-57781, Revisions to the Cross-Border Tender Offer, Exchange Offer, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions (the “Proposing Release”), which requests comment on proposed revisions to the Tier I and Tier II cross-border exemptions and the exemptions from the Securities Act of 1933 (the “Securities Act”) registration requirements provided in Rules 801 and 802, and related forms. Our firm has offices in both Canada and the United States (where we advise our clients on both Canadian provincial securities laws and the U.S. federal securities laws), and we have a substantial number of clients that are foreign private issuers (each, an “FPI”) that either have in the past relied upon the Tier I or Tier II cross-border exemptions or may do so in the future. Many of our clients also avail themselves of the Canada/U.S. Multijurisdictional Disclosure System (“MJDS”).

We most certainly welcome the Commission’s substantial efforts to expand and refine the current cross-border exemptions for the benefit of FPIs claiming exemptions and U.S. investors who hold their securities. We support the adoption of the proposed revisions to the cross-border exemptions, and especially endorse the proposal to allow calculation of U.S. ownership levels within a 60-day range preceding the announcement of the transaction, a change which we believe will substantially improve the operation of the Tier I and Tier II exemptions.

Our more specific comments relate to MJDS and other issues of particular significance to our Canadian clients.

Date for Determination of U.S. Ownership Levels Under MJDS

Under the current cross-border exemptions for Tier I and Tier II transactions, the availability of the exemption is based in part on the percentage of target securities of an FPI held by U.S. investors as determined exactly 30 days prior to the date of the commencement of the offer. The proposed amendment would permit U.S. ownership levels to be tested as of any date within a 60-day range before the public announcement of the transaction.

The current test for determining MJDS eligibility, which would remain unchanged by the adoption of the revisions put forth in the Proposing Release, requires a consideration of U.S. ownership levels both as of the date of commencement, in accordance with Rule 14d-1(b) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and also as of the end of the issuer’s last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer’s preceding quarter, in accordance with the instructions to Schedule 14D-1F promulgated under the Exchange Act and Form F-8 and Form F-80 promulgated under the Securities Act.

We believe that the reasons for changing the U.S. ownership level determination date for the Tier I and Tier II exemptions to a 60-day range prior to announcement would equally support a corresponding change to the U.S. ownership determination dates under MJDS. We also believe that there is no policy reason why it would be appropriate to test U.S. ownership levels as at a different date for the purposes of MJDS than the date that would be used for purposes of the Tier I and Tier II exemptions. Accordingly, we respectfully request that the Commission consider amending Rule 14d-1(b), Schedule 14D-1F, Form F-8 and Form F-80 to conform to the Tier I and Tier II exemptions by providing for the target’s U.S. ownership level to be tested as of any date in the period 60 days prior to announcement.

This change to the MJDS rules would have the additional benefit of eliminating the current discrepancy between Rule 14d-1(b) and the instructions to Schedule 14D-1F, Form F-8 and Form F-80.

The “Hostile Presumption” Under the MJDS Eligibility Test

The current rule for determining Tier I and Tier II eligibility in hostile transactions, as provided under Securities Act Rule 802(c)(2) and Instruction 3.ii. to Exchange Act Rules 14d-1(c) and 14d-1(d), allows a third-party offeror to rely on the “hostile presumption” by assuming that U.S. ownership in the target company does not exceed ten percent or 40 percent, the thresholds for Tier I and Rule 802, and Tier II respectively, so long as certain conditions are satisfied, including the condition that the offeror has no reason to know that actual U.S. ownership exceeds the relevant threshold. Currently, the time at which

the “no reason to know” component of the disqualification must be tested is unclear. It is proposed to amend the disqualification based on actual knowledge to provide that only information available before the announcement will disqualify the offeror from relying upon the presumption.

There is a similar “actual knowledge” disqualification from the presumption of MJDS eligibility set out under the instructions to Exchange Act Rule 14d-1(b), in Schedule 14D-1F, and in Form F-8 and Form F-80. We respectfully submit that, for all of the same reasons the Commission is considering limiting the knowledge-based disqualification under the Tier I and Tier II exemptions to information available prior to announcement, a corresponding change should be made to the MJDS knowledge-based disqualification.

Exemption From Rule 14e-5 for MJDS Transactions

At the time that MJDS was originally adopted, the Commission granted relief from what was then Rule 10b-13 so as to allow Canadian bidders to make purchases outside the tender offer, provided that those purchases were made outside the United States, were effected in accordance with the restrictions and requirements of the applicable Canadian securities laws, and certain other conditions were satisfied. Since the adoption of Rule 14e-5 in replacement of Rule 10b-13, the status of that relief has been unclear.

Although we are unaware of any published guidance on this point, we understand from discussions with the Division of Trading and Markets (in December of 2007) that its position was that purchases outside the tender offer could be made by a Canadian offeror effecting a tender offer in reliance upon MJDS, subject to the following conditions:

1. The offeror must disclose in the offering materials disseminated to U.S. securityholders the possibility of, or the intent to make, purchases of the subject securities as permitted by applicable Canadian securities laws.
2. The offeror must disclose in the United States information regarding purchases of the subject securities on the same basis as those purchases are required to be disclosed, or otherwise are disclosed, pursuant to Canadian regulations.
3. Bids or purchases of the target’s securities must not be made in the United States otherwise than pursuant to the offer.
4. Target securities must not be purchased for the purpose of creating actual or apparent trading activity in or raising the price of such securities.

We were further advised that no filing with or submission to the Commission would be required in order to provide relief from Rule 14e-5 so as to permit purchases to be made outside the tender offer in accordance with these conditions.

We respectfully request that the Commission consider adopting an amendment to Rule 14e-5 to codify this position, or otherwise provide published guidance supporting reliance upon this position, if it continues to accurately reflect the views of the Division of Trading and Markets.

Permitting Foreign Institutions to Report on Schedule 13G

We strongly support the Commission's proposal to permit foreign institutions to report on Schedule 13G to the same extent as their U.S. counterparts, without the need for individual no-action relief. As the Commission has come to the view that there is no policy reason to distinguish between U.S. and foreign institutions for the purposes of Schedule 13G eligibility, the proposed rule change will eliminate the unnecessary cost and delay of the no-action letter process for foreign institutions seeking to report ownership on Schedule 13G.

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We sincerely thank you for considering our comments. Please do not hesitate to contact the undersigned in our New York office at (212) 991-2504 if you would like to discuss any of our comments further.

Yours very truly,

/s/ Rob Lando

Rob Lando
RCL: