# Manulife Financial

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

Attention: Ms. Florence E. Harmon, Acting Secretary

Ladies and Gentlemen:

**Re: Security Ratings**
**File Number: S7-18-08**
**SEC Release No. 33-8940 (the "Release")**

Thank you for the opportunity to comment on the SEC's proposal to replace the rule and form requirements under the Securities Act of 1933 that rely on security ratings (the "Proposal"). The following submission is on behalf of Manulife Financial Corporation ("Manulife").

Manulife is a leading Canadian-based financial services group serving millions of customers in 19 countries and territories worldwide. Operating as Manulife Financial in Canada and Asia, and primarily through its John Hancock subsidiaries in the United States, Manulife offers a diverse range of financial protection and wealth management products through an extensive network of employees, agents and distribution partners. Manulife Financial is listed on the Toronto Stock Exchange, the New York Stock Exchange, The Stock Exchange of Hong Kong and the Philippine Stock Exchange.

Manulife is a foreign private issuer that files its annual reports with the SEC on Form 40-F under the Canada-U.S. Multi-jurisdictional Disclosure System ("MJDS"). Manulife's primary basis of accounting follows Canadian GAAP.

Primary Offerings of Non-convertible Securities – Form F-3

We urge the Commission to reconsider the broad scope of its present proposal, and to narrow its focus to eliminate the investment grade transactional provision only as it currently applies to issuers of asset-backed securities, since most of the problems in the market occurred with respect



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to asset-backed issuers (see page 23 of the Release). In the event the Commission determines to maintain the broad scope of the current proposal, our general comment is that the proposed eligibility criteria in General Instruction I.B.2. of Form F-3 unfairly prejudices foreign private issuers since the criteria is based on U.S. registered offerings and many foreign private issuers conduct a significant portion of their financing activities outside of the United States. Below are our responses to certain specific Requests for Comment contained on page 25 of the Release that elaborate further on this general comment.

**Request for Comment**: Should there be a different standard for foreign private issuers eligible to use Form F-3? If so, explain why and what would be a more appropriate criteria.

**Response**: We believe that there should be a different standard for foreign private issuers eligible to use Form F-3. Foreign private issuers may conduct a significant portion of their financing activities outside of the United States rather than through U.S. registered offerings. These financings may include public offerings of debt or preferred securities in the foreign private issuer's home country. If the SEC is intent on amending the current eligibility criteria, a number of alternatives that are not based on U.S. registered offerings would work better than what has been proposed, including (1) having public offerings outside of the United States count in determining whether the $1 billion threshold has been met, and (2) basing the test on the total amount of non-convertible securities outstanding (irrespective of jurisdiction) rather than issuances over three years. Since foreign private issuers may conduct U.S. financing activities through subsidiaries, in determining whether the relevant threshold has met, it would also make sense to include registered public offerings of subsidiaries (including registered offerings of variable annuities and variable life products in which a subsidiary acts as the depositor) even if the parent has not fully and unconditionally guaranteed the non-convertible security. In addition, if a policy goal is to find a threshold that captures issuers whose filings under the Securities Exchange Act of 1934 are broadly followed and scrutinized by investors and markets (as suggested on page 21 of the Release), an alternative threshold (for those foreign private issuers who are unable to meet the basic criteria) based on equity market capitalization would also work to achieve this goal. However, we believe a Canadian issuer filing annual reports on Form 40-F under the MJDS should not be disqualified from meeting any such equity market capitalization test as is the case under the current definition of "well-known seasoned issuer".

As discussed below, those issuers who meet the transaction requirement under General Instruction I.B.2. of Form F-3, as it may be revised, should in our view continue to be eligible for U.S. GAAP reconciliation under Item 17 of Exchange Act 40-F for financial statements included in the registration statement. This should especially be so for MJDS filers, since MJDS filers would be eligible for Item 17 reconciliation even under the SEC's proposal in Release No. 33-8900 that would, if adopted, eliminate the ability of other foreign private issuers to comply with Item 17 reconciliation.

**Request for Comment**: Does the $1 billion threshold of offering in the prior three years present any issues that are unique to foreign private issuers, especially those that may undertake U.S. registered public offerings as only a portion of their overall plan of financing, and how might

these problems be addressed? Would it be appropriate to provide a longer period for measurement, or to include public offerings of securities for cash outside the United States?

**Response**: The Request for Comment correctly identifies the issue with the proposed $1 billion threshold as it relates to foreign private issuers. We agree that the concern is greatest for those issuers that may undertake U.S. registered public offerings as only a portion of their overall plan of financing and believe that including public offerings of non-convertible securities for cash outside the United States in determining if the $1 billion threshold has been met would be an appropriate way to address this issue. The policy argument in favor of including such offerings in the threshold is particularly strong in the case of public offerings made in Canada, since the MJDS system is based on the premise that the disclosure and other protections built into the securities regulatory system in Canada are sufficiently similar to those afforded by the U.S. regulatory regime. In our response above, we have also suggested basing the test on the total amount of non-convertible securities outstanding rather than issuances and/or including the registered public offerings of subsidiaries and adding an alternative threshold based on equity market capitalization. To the extent that the Commission is intent on adopting the test as currently structured, reducing the $1 billion threshold and increasing the period of measurement would alleviate some of the practical concerns with the Proposal (but would not solve the problem for many foreign private issuers).

<u>Primary Offerings of Non-convertible Securities – U.S. GAAP Reconciliation Requirements</u>

Below is our response to the Request for Comment on page 28 of the Release relating to eligibility for U.S. GAAP reconciliation under Item 17 of Exchange Act 40-F:

**Request for Comment**: If the Commission does not adopt the proposal in Release No. 33-8900 that would eliminate the ability of a foreign private issuer to comply with the less extensive U.S. GAAP reconciliation requirements under Item 17 for filings with respect to investment grade securities, should the Commission revise the requirements as proposed to permit a foreign private issuer to comply with the less extensive U.S. GAAP reconciliation requirements under Item 17 if the issuer has met the proposed F-3 eligibility criteria for debt issuers? Are there different criteria that should be used?

**Response**: We agree that foreign private issuers that meet the proposed Form F-3 eligibility requirements should be permitted to provide Item 17 reconciliation. To the extent that the SEC amends General Instruction I.B.2 to replace the investment grade eligibility criteria with new eligibility criteria, Item 17 reconciliation should continue to be permitted for those issuers that meet the new criteria. Consistent with our comments elsewhere in this letter, we trust that any such replacement criteria adopted by the SEC would be sensitive to the unique issues faced by foreign private issuers. In particular, this should be the case for MJDS filers under Form 40-F who would be permitted to continue to use Item 17 reconciliation even under Release No. 33-8900 in light of the special recognition accorded to MJDS filings.

Primary Offerings of Non-convertible Securities – Form F-9

Below is our response to the Request for Comment on page 30 relating to eligibility to use Form F-9 under the MJDS:

**Request for Comment**: The Commission requests comment on whether the proposed threshold for issuances of debt or preferred securities in the three years immediately preceding the filing of the registration statement is appropriate. Should the Form F-9 eligibility requirements continue to permit the use of ratings by Approved Rating Organizations? Is a different threshold or measurement period more appropriate for Form F-9?

**Response**: As we have commented above in relation to Form F-3, we are of the view that a threshold that is tied solely to U.S. registered offerings is inappropriate and unfairly prejudicial to foreign private issuers since foreign private issuers may conduct a significant portion of their financing activities outside of the United States. At the least, Canadian issuers should be permitted to include issuance of debt or preferred securities made pursuant to prospectus offerings in Canada in determining whether the eligibility threshold has been met. We do support the SEC's proposal, as being consistent with the intent of the MJDS, to continue to permit the use of ratings by Approved Rating Organizations, as an alternative criteria, to determine a Canadian issuer's ability to use Form F-9 to register debt or preferred securities meeting the requirements of current General Instruction I.A.

Thank you for considering our views with respect to the Proposal. If you have any questions regarding these comments, please do not hesitate to contact us.

Yours truly,

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Senior Vice President &
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