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BY FACSIMILE

December 5, 2003

Ontario Securities Commission
Cadillac Fairview Tower
Suite 800, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

Attention: John Stevenson, Secretary

Quebec Securities Commission
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, QC H4Z 1G3

Attention: Denise Brousseau

Re: Proposed Multilateral Instrument 52-109 ("MI 52-109")

I am writing in my personal capacity (and not on behalf of the firm or any client) to comment on proposed Multilateral Instrument 52-109.

Proposed MI 52-109 presents a problem to certain issuers that comply with the CEO/CFO certification requirements under US rules, but that have chosen to not become electronic filers under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* ("**NI 13-101**") that arises due to the fact that the related US certifications must, in order to rely on the exemption, be filed on SEDAR.

Issuers that meet the requirements of the definition of "foreign issuer (SEDAR)" in NI 13-101 only become electronic filers upon filing a notice of election to become an electronic filer. Certain issuers, for a variety of reasons, do

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not make such election. This is often the case for foreign acquirors of Canadian reporting issuers that, as a result of the definition of “reporting issuer” under relevant provincial securities acts, become reporting issuers themselves. It is often the case that following such acquisition, the acquiror has a very small number of securityholders resident in such province. Certain provinces are able to deem the acquiror to have ceased to be a reporting issuer, however, the legislation often requires an issuer to have fewer than a certain specified number of securityholders (registered or beneficial) in order for this order to be issued. While National Instrument 71-101 *The Multijurisdictional Disclosure System* (“**NI 71-101**”) provides most of the necessary relief for a US issuer (as defined therein), for a non-US issuer, relief from reporting requirements on a discretionary basis is often necessary. Proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* would extend similar relief to NI 71-101, but as I have pointed out in a comment letter on that instrument, it provides an incentive not to become an electronic filer, as the insiders of an electronic filer would be required to comply with Canadian insider reporting requirements. A copy of this letter is attached.

Proposed MI 52-109 does not, as drafted, provide an exemption to its application to a reporting issuer that reports in the United States, but that is not an electronic filer. This would force such an issuer to either comply with the Canadian requirements or become an electronic filer and rely on compliance with the US requirements to avail itself of the exemption. This is an odd result, as an issuer that is a “designated foreign issuer” would not be required to comply with any certification requirements in Canada, unless and until it has a class of securities registered under section 12 of the *Securities Exchange Act of 1934* or is required to file reports under section 15(d) of the *Securities Exchange Act of 1934*. Upon this occurring, a reporting issuer that is a foreign issuer (SEDAR) and that is not an electronic filer would have to choose either to comply with the requirements of proposed MI 52-109 or become an electronic filer. It is unclear why the issuer’s changed status in the United States should impact on its choice to remain a paper filer or upon the need for it to comply with proposed MI 52-109.

I would then, recommend that in order to rely on the exemption in Part 4 of proposed MI 52-109, that an issuer be required to file the certificates on SEDAR, only if it is an electronic filer under NI 13-101.

I would be pleased to discuss this further with you, should you so desire.

Yours truly,

"Greg Hogan"

cc. Simon Romano, *Stikeman Elliott LLP*