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Securities Act of 1933
Section 4(3);
Rules 144, 174(b) and 414;
Forms S-3, S-4 and S-8

Securities Exchange Act of 1934
Section 12(b);
Rules 12b-2 and 12g-3(a);
Schedules 13D and 13G

September 9, 2009

Via Overnight Courier and e-mail to OICFInterps@sec.gov

Thomas J. Kim, Esq.
Chief Counsel

Paul M. Dudek, Esq.
Chief, Office of International Corporate Finance

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Tim Hortons Inc.

Dear Messrs. Kim and Dudek:

We are acting as U.S. counsel to Tim Hortons Inc., a Delaware corporation ("***THI USA***"), and its proposed new holding company also named Tim Hortons Inc. ("***New THI***"), a corporation incorporated under the Canada Business Corporations Act (the "***CBCA***") and currently a wholly-owned subsidiary of THI USA, in connection with a proposed plan to reorganize the corporate structure of the group of companies THI USA controls under New THI (the "***Reorganization***"). On behalf of THI USA and New THI, we are hereby requesting confirmation from the Division of Corporation Finance (the "***Staff***") of our conclusions that, after the Reorganization, New THI will be the successor registrant to THI USA for various purposes under the Securities Act of 1933, as amended (the "***Securities Act***"), and the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), as well as certain other matters arising out of the Reorganization, all as more fully described below. This letter replaces our letter of July 9, 2009 and reflects oral comments received from the Staff.

In connection with this request, the THI USA and New THI have authorized us to make on their behalf the factual representations herein.

I. BACKGROUND

THI USA is the fourth largest quick service restaurant chain in North America based on market capitalization. It appeals to a broad range of consumer tastes, with a menu that includes premium coffee, flavoured cappuccinos, specialty teas, home-style soups, fresh sandwiches and fresh baked goods, including its trademark donuts. The chain was founded in 1964 and sold to Wendy's International, Inc. ("***Wendy's***") in 1995, and in connection therewith, THI USA was incorporated as a Delaware corporation and became a wholly-owned subsidiary of Wendy's. In March 2006, THI USA completed an initial public offering of its common stock, $0.001 par value per share (the "***THI USA Common Stock***"), representing approximately 18% of the outstanding shares of THI USA Common Stock; the THI USA Common Stock became publicly traded on the New York Stock Exchange ("***NYSE***") and the Toronto Stock Exchange ("***TSX***"); and THI USA became subject to the reporting requirements of Section 13 of the Exchange Act. In September 2006, Wendy's distributed all of the shares of THI USA Common Stock that it had continued to hold following the initial public offering (approximately 82% of all of the outstanding shares of THI USA) to its stockholders in a tax-free spinoff under Section 355 of the Internal Revenue Code of 1986, as amended, and since that time, THI USA has operated as a standalone public company.

THI USA has no securities outstanding other than shares of THI USA Common Stock, preferred share purchase rights (which trade together with the THI USA Common Stock until the occurrence of certain events) and equity awards granted under the Tim Hortons Inc. 2006 Stock Incentive Plan (the "***Incentive Plan***"). The only active effective registration statement of THI USA under the Securities Act is its registration statement on Form S-8 (No. 333-133663), covering the Incentive Plan (the "***Form S-8***").

To facilitate the Reorganization, THI USA has formed New THI as a wholly-owned subsidiary and THI Mergeco Inc., a Delaware corporation ("***THI Mergeco***"), as a wholly-owned subsidiary of New THI. New THI has no assets or liabilities other than nominal assets or liabilities and has not engaged in any business since its formation other than activities associated with its anticipated participation in the Reorganization. THI Mergeco has no assets or liabilities other than nominal assets or liabilities and has not engaged in any business since its formation other than activities associated with its anticipated participation in the Merger (as defined below).

On June 29, 2009, New THI filed a registration statement on Form S-4 (No. 333-160286) (the "***Registration Statement***") under the Securities Act, with the Securities and Exchange Commission (the "***Commission***"), which Registration Statement was subsequently amended on July 27, 2009, August 7, 2009 and August 12, 2009, and declared effective by the Commission on August 12, 2009. The Registration Statement, as amended, contains the definitive proxy statement of THI USA and the final prospectus of New THI (the "***Proxy Statement/Prospectus***"), each addressing different aspects of the Reorganization, as more fully described below. On August 17, 2009, THI USA filed the Proxy Statement/Prospectus under

Schedule 14A under the Exchange Act for the special meeting of THI USA's stockholders (the "***Meeting***") to be held on September 22, 2009 for the purpose of voting on the proposal to adopt the Merger Agreement contained in the Proxy Statement/Prospectus.

II. THE REORGANIZATION

THI USA intends to effect the Reorganization through a series of transactions, including the Merger and subsequent reorganizations of THI USA and certain of its subsidiaries. In connection with the Reorganization, by way of the Merger, New THI will become the parent holding company of THI USA and the group of companies THI USA now controls. Upon consummation of the Merger and thereafter, New THI, together with its subsidiaries, will own and continue to conduct THI USA's business in substantially the same manner as it is currently being conducted by THI USA and its subsidiaries, and New THI will be managed by the same officers and directors as THI USA had immediately prior to the Merger, subject to resignations, removals and other changes in such positions following (but not related to) the Reorganization. The consolidated capitalization, assets and liabilities of New THI immediately following the Merger will be the same as those of THI USA immediately prior to the Merger.

The Reorganization will commence with the merger of THI Mergeco with and into THI USA (the "***Merger***"), with THI USA surviving the merger as a wholly-owned subsidiary of New THI, pursuant to the Agreement and Plan of Merger (the "***Merger Agreement***"), dated August 6, 2009, among THI USA, New THI and THI Mergeco. Pursuant to Section 3.1(b) of the Merger Agreement, each outstanding share of THI USA Common Stock will automatically convert into one common share of New THI (together with the associated share purchase rights of New THI described in the next sentence, "***New THI Common Shares***"). The preferred share purchase rights attached to the THI USA Common Stock will expire upon the Merger and New THI will issue with each common share of New THI issued in the Merger and thereafter a share purchase right of New THI under a rights plan recently adopted by New THI. In addition, as part of the Merger, New THI will assume all of THI USA's rights and obligations under the employee benefit plans to which THI USA was a party, including the Incentive Plan, and New THI Common Shares will be issuable to settle all equity awards previously granted under the Incentive Plan or to be granted under the Incentive Plan following the Merger, rather than shares of THI USA Common Stock.

Due to the differences between the CBCA and Delaware law, as well as differences between New THI's and THI USA's charter documents, the Merger will effect some changes in the rights of THI USA's stockholders. The comparative differences between the CBCA and DGCL and the charter documents of New THI and THI USA have been summarized under the headings "Description of Share Capital of New THI" and "Comparison of Rights of Stockholders/Shareholders" in the Proxy Statement/Prospectus.

The Merger and the Reorganization cannot be completed unless the proposal to adopt the Merger Agreement contained in the Proxy Statement/Prospectus is approved by the holders of a majority of THI USA's outstanding shares entitled to vote at the Meeting ("***Stockholder Approval***").

The future issuance of the New THI Common Shares in the Merger has been registered under the Registration Statement. Immediately following the Merger, the New THI Common Shares will be listed on the NYSE and TSX under the symbol "THI," the same symbol under which the THI USA Common Stock is currently listed and traded. Following the Merger, it is anticipated that New THI will qualify as a "foreign private issuer" as defined in Rule 3b-4 of the Exchange Act. However, as indicated in the Registration Statement, New THI expects that it will continue to file annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K for purposes of providing continuity with THI USA's previous Exchange Act filings. For similar reasons, New THI currently intends to file Securities Act registration statements on Forms S-3, S-4 and S-8, rather than the corresponding forms for non-domestic issuers, in the event it decides to register its securities in the future. In addition, for so long as New THI has a class of securities listed on the NYSE, New THI will be subject to the corporate governance requirements of the exchange and the U.S. Sarbanes-Oxley Act of 2002.

While New THI will not be subject to Section 14(a) of the Exchange Act as a foreign private issuer, under Canadian law, New THI will be required to prepare and file through the Canadian equivalent of the Commission's Next-Generation EDGAR System at least annually a management proxy circular and related materials in connection with its solicitation of proxies for meetings of New THI's shareholders. Such filings are also expected to be made available on the Commission's Next-Generation EDGAR System for purpose of providing continuity with THI USA's previous Exchange Act filings.

III. RELIEF REQUESTED

We request interpretive or no-action letter relief from the Staff through concurrence with each of the following conclusions, as discussed more fully under Section IV below.

A. Rule 12g-3(a) and 12b-2. The Merger constitutes a "succession" for purposes of Rule 12g-3(a) under the Exchange Act, and the New THI Common Shares will be deemed registered under the Exchange Act by operation of Rule 12g-3(a) of the Exchange Act upon the fling of the Form 8-K containing the requisite statements on which reliance on Rule 12g-3(a) is conditioned. Further, as a result of the Merger, New THI will be deemed a "large accelerated filer" for purposes of Rule 12b-2 of the Exchange Act.

B. Rule 414. The Form S-8 at the time of the Merger will thereafter, upon the filing by New THI of an amendment thereto expressly adopting that registration statement as its own and the effectiveness of such amendment, be deemed to be a registration statement of New THI as successor issuer for the purpose of continuing the offering under that registration statement.

C. Forms S-3, S-4 and S-8. The activities and status of THI USA prior to the Merger may be considered in determining whether the requirements for the use of various forms of registration statements under the Securities Act, including Forms S-3, S-4 and S-8, are met by New THI.

D. Rule 144(c)(1) and (e). THI USA's prior activities and the most recent report or statement published by THI USA prior to the Merger and the average weekly reported trading volume in THI USA's common stock during the time periods specified in Rule 144(e)(1) may be taken into account in determining whether New THI has complied with the current public information availability requirements of Rule 144(c)(1) under the Securities Act and the limitation on the amount of New THI Common Shares that may be sold pursuant to Rule 144(e) under the Securities Act.

E. Schedules 13D and 13G. Persons who have filed statements on Schedules 13D or 13G reporting ownership interests in THI USA Common Stock will not be required to file any additional or amended statements or forms as a result of the Merger, provided they note in their next amendment filings that New THI is the successor issuer to THI USA.

F. Section 4(3) Prospectus Delivery Requirement and Rule 174(b). With respect to the New THI Common Shares issued in connection with the Merger, New THI need not comply with the prospectus delivery requirements of Section 4(3) of the Securities Act.

G. Commission File Number. After consummation of the Merger, New THI will succeed to the Commission file number currently used by THI USA.

We note that the Staff has granted relief similar to that requested by this letter in many holding company formations and reincorporation transactions, consummated both with and without shareholder approval, including those involving foreign private issuers. All of the no-action letters to which we refer in Section IV below are examples of letters that provide such relief.

IV. DISCUSSION

A. Rule 12g-3(a) and Rule 12b-2.

Rule 12g-3(a) under the Exchange Act provides that, where in connection with a succession by merger, securities of an issuer that are not already registered under Section 12 of the Exchange Act (such as the New THI Common Shares) are issued to holders of any class of securities of another issuer that are already registered under Section 12(b) or 12(g) (such as the THI USA Common Stock), then the class of unregistered securities so issued shall be deemed to

be registered under the same paragraph of Section 12.[1] In such a case, Rule 12g-3(f) requires the issuer of the class of securities deemed registered under Section 12 according to Rule 12g-3(a) to indicate in the Form 8-K required to be filed in connection with the succession the paragraph of Section 12 under which the class of securities of the successor issuer is deemed issued.

A "succession" is defined in Rule 12b-2 as "the direct acquisition of assets comprising a going business, whether by merger, consolidation, purchase or other direct transfer." While New THI's acquisition through the Merger will not be "direct" because, as discussed above, it is acquiring ownership of THI USA and its subsidiaries in the Merger, rather than the assets comprising a going business, New THI will acquire such assets on a consolidated basis. Based on our review of the no-action letters listed below, we are of the view that this definition and Staff's interpretation thereof is broad enough to permit reliance on Rule 12g-3 under circumstances similar to those present in the Merger and Reorganization. Accordingly, we believe that New THI may rely on Rule 12g-3 to register the New THI Common Shares under the Exchange Act. The Staff has taken a similar position with respect to Rules 12b-2 and 12g-3 in the context of transactions similar to the Merger. See, *e.g.*, *Hungarian Telephone and Cable Corp., Invitel Holdings A/S* (available February 27, 2009) (relating to a change in domicile from Delaware to Denmark, where successor is a foreign private issuer); *Weatherford International, Inc. and Weatherford International, Ltd.* (available June 25, 2002) (relating to a change in domicile from Delaware to Bermuda); and *Nabors Industries, Inc. and Nabors Industries Ltd.* (available April 29, 2002) (relating to a change in domicile from Delaware to Bermuda). See also *Oncothyreon Inc. and Biomira Inc.* (available January 31, 2008) (relating to a change in domicile from Canada to Delaware) and *Nortel Networks Corporation* (available April 28, 2000) (relating to a reorganization of Canadian foreign private issuers that voluntarily file U.S. domestic forms). For examples of instances in which the Staff has taken a similar position with respect to concurrent common stock and preferred share purchase right issuances in connection with domestic holding company formations and reincorporation mergers, please see *Pediatrix Medical Group, Inc.* (available December 22, 2008); *ABX Air, Inc.* (available June 13, 2007); *Southwestern Energy Company* (available June 29, 2006); *Russell Corporation* (available March 18, 2004); *Ampco-Pittsburgh Corporation* (available January 22, 2004); and *Crown, Cork & Seal Company, Inc.* (available February 25, 2003). See also *ConocoPhillips* (available August 23, 2002) (interpretative relief requested for purposes of Rule 12g-3(c)).

THI USA is a "large accelerated filer" as defined by Rule 12b-2 of the Exchange Act. Because New THI will be the successor issuer to THI USA, we believe New THI should be deemed a large accelerated filer. The Staff has taken a similar position on prior occasions that a successor issuer would be a successor to a company's status as a large accelerated filer under Rule 12b-2 of the Exchange Act. See, *e.g.*, *Willbros Group, Inc.* (available February 27, 2009); *Galileo Holding Corporation* (available December 19, 2008); and *Roper Industries, Inc.*

[1] This rule is not applicable if, upon consummation of the succession, (i) such class of securities is exempt from such registration other than by Rule12g3-2 under the Exchange Act; (ii) all securities of such class are held of record by less than 300 persons; or (iii) the securities issued in connection with the succession were registered on Form F-8 or Form F-80. However, none of these conditions will exist upon consummation of the Merger.

(available July 1, 2007). See also *Hungarian Telephone and Cable Corp., Invitel Holdings A/S*, supra (relating to succession to accelerated filer status).

Based upon the foregoing, we respectfully request confirmation of the conclusions set forth in Section III.A. above.

B. Rule 414.

Rule 414 under the Securities Act provides that, where one issuer, except a foreign issuer exempted by Rule 3a12-3 under the Exchange Act, has been succeeded by another for the purpose of changing the State or country of incorporation of the enterprises, or its form of organization, the registration statement of the predecessor issuer will be deemed the registration statement of the successor for purposes of continuing the offering if, in relevant part: (1) immediately prior to the succession the successor had no assets or liabilities other than nominal assets or liabilities; (2) the succession was effected by a merger or similar succession pursuant to statutory provisions under which the successor acquired all the assets and assumed all the liabilities and obligations of the predecessor; (3) the succession was approved by security holders of the predecessor at a meeting for which proxies were solicited pursuant to Section 14(a) of the Exchange Act; and (4) the successor files an amendment to the registration statement of the predecessor expressly adopting such registration statement as its own for all purposes of the Securities Act and the Exchange Act and such amendment has become effective. Notwithstanding the exception to this Rule, the Staff has permitted foreign private issuers to rely on Rule 414. See, *e.g.*, *Shire Pharmaceuticals Group Plc and Shire Plc* (available November 17, 2005); *Nortel Networks Corporation*, supra; *Reuters Holdings PLC and Reuters Group PLC* (available February 17, 1998); and *NOVA Corporation of Alberta* (available April 1, 1994). The Staff has also permitted reliance on Rule 414 under circumstances similar to those present in the Merger and Reorganization. See, *e.g.*, *Willbros Group, Inc.*, supra; *Mentor Corporation* (available September 26, 2008); and *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra.

Upon consummation of the Merger, we believe the first three of these requirements will be satisfied. As noted above, New THI was formed for the purpose of facilitating the Reorganization and does not have, and prior to the consummation of the Merger will not have, any assets or liabilities other than nominal assets or liabilities. With regard to the second requirement, the Merger will result in New THI acquiring the same consolidated capitalization, assets and liabilities that THI USA had immediately prior to the Merger. While the Merger will not result in the direct acquisition of assets and assumption of liabilities and obligations of THI USA, based on our review of the above-referenced no-action letters, it appears that the Staff has previously not viewed this technicality of Rule 414(b) as preventing reliance on Rule 414 under circumstances similar to those present in the Merger and Reorganization. As noted above, THI USA will hold a special meeting of its stockholders for the purpose of obtaining Stockholder Approval and will solicit proxies for that meeting pursuant to Section 14(a) of the Exchange Act. As the Merger and Reorganization cannot be effected without Stockholder Approval and stockholders are receiving full information about the Merger and Reorganization in the Proxy

Statement/Prospectus, we believe that if Stockholder Approval is obtained it would constitute approval of the succession for purposes of the third requirement.

Following the Merger, to satisfy the fourth requirement of Rule 414, New THI, as successor issuer, will file a post-effective amendment to the Form S-8 expressly adopting that registration statement as its own registration statement for all purposes of the Securities Act and the Exchange Act.

Accordingly, we respectfully request confirmation of the conclusion set forth in Section III.B. above.

C. S-3, S-4 and S-8 Eligibility Requirements.

General Instruction I.A.7. to Form S-3 under the Securities Act deems a successor registrant to have met the conditions for eligibility to use Form S-3 set forth in General Instructions I.A.1., 2., 3. and 5. to Form S-3 if (a)(i) its predecessor and it, taken together, meet such conditions; (ii) the succession was primarily for purposes of changing the state of incorporation or forming a holding company; and (iii) the assets and liabilities of the successor at the time of the succession were substantially the same as those of the predecessor; or (b) if all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

Consistent with General Instruction I.A.7 to Form S-3, the proposed succession of New THI to the business, operations, assets and liabilities of the THI USA will be primarily for the purpose of changing its jurisdiction of incorporation from Delaware to Canada,[2] and the consolidated assets and liabilities of New THI immediately after the consummation of the Merger will be the same as the consolidated assets and liabilities of THI USA immediately before the consummation of the Merger. Further, THI USA currently meets the conditions for use of Form S-3 and expects to do so immediately prior to the consummation of the Merger. Consistent with prior no-action letters, the fact that the succession involves a holding company formation and reincorporation merger should not affect the analysis. See, *e.g.*, *Mentor Corporation*, supra; *Weatherford International, Inc. and Weatherford International, Ltd.*, supra; and *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra. Accordingly, we believe that after the Merger and Reorganization are completed, New THI will be entitled to take into account THI USA's acts and status prior to the effective time of the Merger in determining whether New THI is eligible to use Form S-3, and in determining whether New THI "meets the requirements for use of Form S-3" as such phrase is used in General Instructions B.1.a. and B.1.b. to Form S-4. Such determinations would be consistent with prior determinations of the Staff with respect to the eligibility for use of Forms S-3 and S-4 in the context of transactions similar to the Merger and Reorganization. See, *e.g.*, *Willbros Group, Inc.*, supra; *Mentor Corporation*, supra;

[2] In prior no-action letters, the Staff has permitted reliance on General Instruction I.A.7 in cases where the company is changing its country of incorporation, rather than its "state" of incorporation. See, *e.g.*, *Willbros Group, Inc.*, supra; *Weatherford International Inc.*, supra; and *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra.

Oncothyreon Inc. and Biomira Inc., supra; *Weatherford International, Inc. and Weatherford International, Ltd.*, supra; and *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra. See also *Nortel Networks Corporation*, supra.

Similarly, it is our view that, upon consummation of the Merger, New THI will be entitled to rely on the prior activities and annual reports of THI USA in determining whether it shall be deemed to have met the requirements of General Instruction A.1 to Form S-8. We note, as discussed above, that the Staff has on numerous occasions permitted a holding company to file registration statements on Form S-8 or post-effective amendments to a Form S-8 following a succession transaction to register shares to be issued pursuant to assumed employee benefit plans. See, *e.g.*, *Hungarian Telephone and Cable Corp., Invitel Holdings A/S*, supra; *Willbros Group, Inc.*, supra; *Oncothyreon Inc. and Biomira Inc.*, supra; *Weatherford International, Inc. and Weatherford International, Ltd.*, supra; and *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra.

Based upon the foregoing, we respectfully request confirmation of the conclusions set forth in Section III.C. above.

D. Rule 144(c)(1) and (e).

Rule 144(c) under the Securities Act requires that, in order for sales of securities to be made in reliance on the "safe harbor" provided by Rule 144, "adequate current public information with respect to the issuer of the securities must be available." Pursuant to Rule 144(c)(1), this requirement will be deemed to be satisfied where the issuer (i) is, and has been for a period of at least 90 days immediately before the sale of the securities, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, (ii) has filed all of the reports required to be filed by it under Section 13 for the 12 months preceding such sale (or for such shorter period that it was required to file such reports); and (iii) submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T, during the 12 months preceding such sale (or for such shorter period that it was required to submit and post such files).

In the circumstances of the Merger and Reorganization, we believe that Rule 144 should be available to affiliates of New THI during the first 90 days after the consummation of the Merger, even though as a technical matter, the requirements of Rule 144(c)(1) will not have been met by New THI. We believe that New THI should be entitled to take the prior activities of THI USA into account for purposes of determining whether or not the Rule 144(c)(1) eligibility requirements have been satisfied. In the case of this Reorganization, we believe the information to be furnished to the public concerning New THI would be adequate and current. THI USA has been a reporting company under the Exchange Act since 2006. All reports required to be filed by THI USA under the Exchange Act have been timely filed or will be timely filed prior to the Merger, including a current report on Form 8-K with respect to THI USA's consummation of the Merger. Every Interactive Data File required to be submitted and posted by THI USA pursuant

to Rule 405 of Regulation S-T also has been or will be timely submitted electronically and posted on THI USA's corporate Web site prior to the Merger. In addition, immediately after the Merger, New THI will have the same consolidated assets, businesses, management and operations as THI USA had immediately prior to the Merger. Since the purpose of Rule 144(c)(1) is to ensure that adequate information about the issuer and its securities is available, we believe strict compliance with the 90-day waiting period in the case of the Reorganization is not necessary to effectuate the purpose of the Rule 144 because THI USA prior to the Merger and New THI after the Merger and their respective securities at such times represent substantially the same company or securities from an investor's perspective, and there will be no break in the amount and quality of current public information about THI USA before the Merger and about New THI after the Merger.[3] Accordingly, we believe that THI USA's prior activities and the most recent report or statement published by THI USA prior to the Merger may be taken into account in determining whether New THI has complied with the current public information availability requirements of Rule 144(c)(1) under the Securities Act. The Staff has taken similar positions in the context of comparable transactions. See, *e.g.*, *Hungarian Telephone and Cable Corp., Invitel Holdings A/S*, supra; *Willbros Group, Inc.*, supra; *Oncothyreon Inc. and Biomira Inc.*, supra; *Weatherford International, Inc. and Weatherford International, Ltd.*, supra; *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra.; and *PXRE Corporation and PXRE Group Ltd.* (available September 23, 1999).

In addition, because the same number of New THI Common Shares will be outstanding immediately after the Merger as the number of shares of THI USA Common Stock immediately prior to the Merger, and because the New THI Common Shares will represent an investment that is substantially the same as an investment in THI USA Common Stock for the reasons discussed above, we believe that the most recent report or statement published by THI USA prior to the Merger may be taken into account by holders of New THI Common Shares in determining the applicable limitation on the amount of New THI Common Shares which may be sold in compliance with Rule 144(e)(1). We also believe that the average weekly reported volume of trading in THI USA Common Stock during the time periods specified in Rule 144(e)(1) occurring immediately prior to the Merger may be taken into account by holders of New THI Common Shares in determining the applicable limitation on the amount of New THI Common Shares which may be sold in compliance with Rule 144(e)(1). The Staff has taken a similar position with respect to Rule 144 in the context of transactions similar to the Merger and Reorganization. See, *e.g.*, *Hungarian Telephone and Cable Corp., Invitel Holdings A/S*, supra; *Oncothyreon Inc. and Biomira Inc.*, supra; *Weatherford International, Inc. and Weatherford International, Ltd.*, supra; and *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra.

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[3] In this regard, as a "well-known seasoned issuer" as defined in Rule 405 under the Securities Act, THI USA is among the issuers that are "presumptively the most widely followed in the marketplace," and in fact has frequent dialogue with investors and market participants through the press and other media and its communications are scrutinized and written about by the press and investing community. *Release No. 33-8591* (July 19, 2005) at page 23. As THI USA's successor issuer following the Merger and Reorganization, New THI will be subject to the reporting requirements of Section 13 of the Exchange Act and is expected to have the same following among, and ongoing dialogue with, investors and market participants.

Based upon the foregoing, we respectfully request confirmation of the conclusions set forth in Section III.D. above.

E. Schedules 13D and 13G.

Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder require that a person who acquires more than five percent of an equity security registered pursuant to Section 12 of the Exchange Act file a statement on Schedule 13D or 13G. Section 13(d)(2) of the Exchange Act and Rule 13d-2 thereunder require the Schedule 13D to be amended promptly when material changes in ownership occur and require the Schedule 13G to be amended within 45 days after the end of each calendar year. Although these requirements would obligate persons who have filed a Schedule 13D or 13G for securities of THI USA to amend or file a new Schedule 13D or 13G for securities of New THI promptly following the Merger, we believe that such prompt action is not required, as immediately following the Merger, New THI will represent the same company on a consolidated basis as did THI USA immediately prior to the Merger and, if the Staff confirms the conclusion set forth above in Section III.G, will have the same Commission file number as its predecessor. Previous no-action letters support the conclusion that persons who have filed a Schedule 13D or 13G for securities of THI USA should not be required to file a new or amended Schedule 13D or 13G as a result of the Merger, provided they state in their next amendment to Schedule 13D or 13G that New THI is deemed the successor issuer to THI USA for purposes of filings under Section 13(d). See, *e.g.*, *Hungarian Telephone and Cable Corp.*, *Invitel Holdings A/S*, supra; *Willbros Group, Inc.*, supra; *Oncothyreon Inc. and Biomira Inc.*, supra; *Weatherford International, Inc. and Weatherford International, Ltd.*, supra; *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra; and *Nortel Networks Corporation*, supra.

Based upon the foregoing, we respectfully request confirmation of the conclusions set forth in Section III.E. above.

F. Section 4(3) Prospectus Delivery Requirement and Rule 174(b).

Rule 174(b) under the Securities Act provides that no prospectus need be delivered pursuant to Section 4(3) of Securities Act if the issuer is a reporting company under the Exchange Act immediately prior to the filing of the registration statement. As noted above, THI USA is a reporting company under the Exchange Act and has been such for several years. New THI will, immediately after the Merger, have, on a consolidated basis, the same assets, liabilities, business and operations as THI USA had, on a consolidated basis, immediately before the Merger, and will be the successor to THI USA. Accordingly, we believe New THI should be exempt from the prospectus delivery requirement of Section 4(3) of the Securities Act by reason of Rule 174(b). The Staff has taken similar positions with respect to Section 4(3) in the context of transactions similar to the Merger. See, *e.g.*, *Oncothyreon Inc. and Biomira Inc.*, supra; *Weatherford International, Inc. and Weatherford International, Ltd.*, supra; *Nabors Industries, Inc. and Nabors Industries Ltd.*, supra.

Based upon the foregoing, we respectfully request confirmation of the conclusion set forth in Section III.F. above.

G. Commission File Number

In *Release No. 34-38850* (July 18, 1997), the Commission eliminated Form 8-B, which pertained to the registration of securities of certain successor issuers under Sections 12(b) and 12(g) of the Exchange Act, effective September 2, 1997. In connection with such action, the Commission adopted amendments to Rule 12g-3 under the Exchange Act to include any transactions or securities that previously were covered by Form 8-B, but not by Rule 12g-3. Under Rule 12g-3, as amended, the securities of a successor to an issuer whose securities are registered under Section 12(b) also will be deemed registered under Section 12(b) and listed on the same national securities exchange. Under this Rule, successor issuers automatically inherit the Exchange Act reporting obligations of their predecessors and file a Form 8-K to note the succession.

In this regard, the Commission had previously assigned a "Commission File Number" to registrants at the time they file a Form 8-A or Form 8-B for purposes of Exchange Act reporting purposes. The Release discussed above did not specifically address how, in light of the elimination of Form 8-B, a Section 12(b) successor registrant would obtain a Commission file number. However, *SEC Division of Corporation Finance Compliance and Disclosure Interpretations* (updated September 30, 2008) (the "***C&DIs***"), at Section 150 (Rule 12g-3), Interpretation No. 150.01 (under "Exchange Act Rules"), relating to the succession of an issuer pursuant to Rule 12g-3 under the Exchange Act, states that "[t]he securities of a successor issuer described in Rule 12g-3 are deemed to be registered under Section 12 by operation of law, and no Exchange Act registration statement on Form 8-A or any other form therefore need be filed. Under Rule 12g-3(f), the successor must file a Form 8-K with respect to the succession transaction using the predecessor's file number. After the Form 8-K is filed, a new file number will be generated for the successor company." Interpretation 150.01 of the C&DIs does not specifically address the question of whether a Section 12 successor registrant can succeed to the Commission file number of its predecessor.

Because New THI will be the successor to THI USA and it is our view that shareholders of the successor company would benefit from the convenience and simplicity of being able to access all of THI USA's and New THI's filings under the Exchange Act in one location on the Commission's Next-Generation EDGAR System, we believe that New THI can assume and use the Commission file number currently used by THI USA. We note that the Staff has taken similar positions with respect to successors in situations similar to the Merger and Reorganization. See, *e.g.*, *Willbros Group, Inc.*, supra; *Ford Motor Credit Co.* (available March 21, 2007); and *Southwestern Energy Company* (available June 29, 2006).

Based upon the foregoing, we respectfully request confirmation of the conclusion set forth in Section III.G. above.

V. Conclusion.

For the reasons set forth above, we respectfully request that the Staff concur with our views on the matters discussed herein. If for any reason you do not concur with our conclusions, we would appreciate the opportunity to discuss these matters with members of the Staff by telephone prior to any written response to this letter. If you require additional information or would like to discuss any of the foregoing matters, please do not hesitate to contact the undersigned at (415) 875-2479 or my partner, Daniel J. Winnike, at (650) 335-7657.

Sincerely,

William L. Hughes

cc: Jill E. Aebker, Esq., Associate General Counsel and Secretary, Tim Hortons Inc.
Daniel J. Winnike, Esq., Fenwick & West LLP