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Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549
USA

Attention: Mr. Paul M Dudek
Chief, Office of International Corporate Finance

Re: Application of Rule 144(i) to Certain Canadian Issuers

Dear Sirs and Mesdames:

We write to seek the confirmation of the Staff that Rule 144 under Securities Act of 1933, as amended (the "**Securities Act**"), is available for the securities of Canadian issuers that meet the requirements set forth in this letter, notwithstanding that such issuers may have previously been "Shell Companies" (within the meaning of Rule 144(i) under the Securities Act and as defined below) and are not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

In particular, we seek the confirmation of the Staff that Rule 144 is available for the securities of any issuer that was previously a Shell Company, provided that the issuer:

(1) is organized under the laws of Canada;

(2) was, at the time it became a public company, a (i) "capital pool company" ("CPC"), which is a Shell Company that is regulated by the TSX Venture Exchange[1] or (ii) a "special purpose acquisition corporation" ("SPAC"), which is a Shell Company that is regulated by the Toronto Stock Exchange;

[1] The relief requested in this letter is also intended to extend to former Shell Companies that existed under (i) the "capital pool company" program (the "CDNX Program") previously administered by the Canadian Venture Exchange (the "CDNX"), which was a similar program that was replaced by the CPC program following the acquisition of the Canadian Venture Exchange by the Toronto Stock Exchange in 2001, (ii) the "venture capital pool" program (the "VCP Program") previously administered by the Vancouver Stock Exchange, and the "junior capital pool" program (the "JCP Program") previously adminstered by the Alberta Stock Exchange. In 2002, the Canadian Venture Exchange was renamed the TSX Venture Exchange. In 1999, the Canadian Venture Exchange was formed pursuant to the merger of the Vancouver Stock Exchange and the Alberta Stock Exchange. The CDNX Program was a hybrid of the VCP Program and the JCP Program. The applicable rules and administration of all such programs were similar to the current CPC program with respect to the

(3) has ceased to be a Shell Company and, since the date that it initially ceased being a Shell Company by virtue of completing a "qualifying transaction" under the CPC or SPAC programs, has never again been a Shell Company;

(4) is a "reporting issuer" under the laws of at least one Canadian province and is required to filed reports on SEDAR (which is the Canadian equivalent of EDGAR);

(5) has filed on SEDAR all reports and other materials required to be filed by it during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials);

(6) has filed an Annual Information Form, prepared in accordance with Canadian securities laws, on SEDAR during the preceding 16 months; and

(7) has filed on SEDAR at least one year prior to the action to be taken under Rule 144:

(i) an Annual Information Form prepared in accordance with Canadian securities laws;

(ii) audited annual financial statements, prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Boards, as currently required to be prepared by the issuer under Canadian securities laws; provided that, if permitted by Canadian securities laws, such audited annual financial statements may be prepared in accordance with (i) Canadian generally accepted accounting principles in effect from time to time (provided that such financial statements are accompanied by a reconciliation to United States generally accepted accounting principles), or (ii) United States generally accepted accounting principles;

(iii) Management's Discussion and Analysis relating to its audited annual financial statements required to be prepared by the issuer under Canadian securities laws; and

(iv) a Management Information Circular/Proxy Statement prepared by the issuer in connection with an annual or special meeting of shareholders of the issuer;

all of which information shall reflect the issuer's status as an entity that is no longer a Shell Company.

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application of investor protection rules related to matters such as the required escrow of funds, limitations on the spending of cash by the issuer, shareholder approval of "qualifying transactions", and other matters.

For certainty, the relief requested in this letter does not extend to any issuer that was not a CPC or SPAC, or has been a Shell Company at any time subsequent to the completion of the initial transaction pursuant to which it ceased to be a Shell Company, such as by virtue of, for example, undertaking a reorganization, sale of assets, bankruptcy or other corporate event.

Background and Context

The United States and Canadian capital markets are highly intertwined, and it is common for Canadian issuers to sell their securities in the United States on a private placement basis. As noted by the Staff in the Adopting Release for the Canada-United States Multi-Jurisdictional Disclosure System ("**MJDS**")[2]:

> In recent years, there has been substantial growth in both U.S. investors' purchases of foreign securities and offerings by U.S. issuers outside the United States. Part of the growth in such transactions has consisted of an increase in the number of offerings made simultaneously in two or more countries, one of which may be the country of the issuer. Such offerings typically are made when the issuer desires to expand the geographic base of its security holders, when the issuer wishes to increase the market for its securities internationally, or when strategic reasons exist (for example, to protect against takeover attempts). In other cases, such offerings are made because the relative cost of financing so dictates, the size of the offering is such that it cannot be absorbed by the issuer's domestic market, or the issuer needs to reach a particular group of securityholders or a broader investor base.

Many Canadian issuers that sell their securities in the United States are listed on stock exchanges in Canada. In addition, many of such issuers are subject to continuous reporting obligations under Canadian securities laws, which means that such issuers are required to make public filings on SEDAR, which is the Canadian equivalent of EDGAR. Most of such issuers are not listed on a United States stock exchange, do not have securities registered under Section 12 of the Exchange Act, and do not have any other filing obligation under the Exchange Act.

The issuers of such securities are often substantial operating companies that have been subject to the reporting requirements of Canadian securities laws for a significant period of time. However, as described further below, it is common for Canadian companies – even large, sophisticated companies – to have been a Shell Company at some point in the past.

Because they are issued in private placement transactions, the securities issued by such issuers in the United States are "restricted securities" within the meaning of Rule 144 under the Securities Act, and such securities may be sold only in transactions exempt from, or not subject to, registration under the Securities Act. However, where an issuer of the securities has at any time previously been a Shell Company, the application of Rule 144(i) under the Securities Act means that such securities cannot be sold under Rule 144. For example, pursuant to Rule

[2] Securities Act Release 33-6902 (June 21, 1991) at page 8.

144(b), the Rule 144 hold period for non-affiliates of non-Exchange Act reporting issuers would typically expire one year after the securities are purchased and the purchase price therefor fully paid. However, for issuers that have at one time been Shell Companies and do not file reports under the Exchange Act, the application of Rule 144(i) means that Rule 144(b) under the Securities Act is not available for the resale of securities of those issuers.

As a result, United States investors are adversely affected because they are unable to benefit from the provisions of Rule 144(b) with respect to their investments, notwithstanding the fact that the applicable issuer may be a substantial operating company that has not been a Shell Company for many years and is fully up to date in its Canadian public reporting obligations. In the past, in adopting rules the Staff has given consideration to areas in which the rules will enhance the interests of United States investors in connection with their investments in foreign issuers. For example, the Adopting Release for the MJDS cites the following as part of the background for the adoption of the MJDS (emphasis added):

> Rather than comply with the requirements of regulators in more than one country, foreign issuers choose at times to exclude jurisdictions such as the United States from their offerings. As a result, U.S. holders are denied the opportunity to realize significant value on their foreign investments.[3]

Rule 144(i)

As adopted in 2007, Rule 144(i) under the Securities Act generally provides that unless and until certain conditions are met, Rule 144 is not available for securities of issuers that is, or that has at any time previously been, an issuer with (i) no or nominal operations and (ii) either (1) no or nominal assets, (2) assets consisting solely of cash and cash equivalents, or (3) assets consisting of any amount of cash and cash equivalents and nominal other assets (a "**Shell Company**").

Notwithstanding the foregoing, such restrictions cease to apply to the applicable securities if the issuer of the securities:

(1) has ceased to be a Shell Company;

(2) is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;

(3) has filed all reports and other materials required to be filed by Section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports; and

[3] Securities Act Release 33-6902 (June 21, 1991) at page 9.

(4) has filed current "Form 10 information" with the SEC reflecting the issuer's status as an entity that is no longer a Shell Company, and at least one year has elapsed since such Form 10 information was filed.

As defined in Rule 144(i), "Form 10 information" means information that is required by Form 10 or Form 20-F to register under the Exchange Act each class of securities being sold under Rule 144. The issuer may provide the Form 10 information in any filing of the issuer with the Commission. The Form 10 information is deemed filed when the initial filing is made with the Commission.

Therefore, pursuant to Rule 144(i), regardless of whether or not the issuer remains a Shell Company, the securities of any issuer that has previously been a Shell Company may not be resold under Rule 144 unless the issuer has been subject to Exchange Act reporting for at least one year and has met all of its filing obligations thereunder.

Canadian Filing Requirements and SEDAR

Publicly reporting companies in Canada are required to meet a robust set of disclosure requirements that are similar to the disclosure requirements applicable to foreign private issuers required to make filings under the Exchange Act. For example, Canadian public companies listed on the Toronto Stock Exchange are required to file on SEDAR, among other documents:

(1) Annual Information Forms describing the business and operations of the issuer;[4]

(2) Annual and quarterly Management's Discussion and Analysis describing the business of the issuer;

(3) Annual audited financial statements and quarterly unaudited financial statements prepared under International Financial Reporting Standards, as issued by the International Accounting Services Board; and

(4) Management Information Circulars/Proxy Statements in connection with annual and special meetings of shareholders.

Although the specific information required to be included in the above documents is not identical to the information that constitutes Form 10 information for purposes of Rule 144(i), we respectfully submit that for all purposes material to investors, such information should be treated similarly to Form 10 information.

[4] Issuers listed on the TSX Venture Exchange are not required to file Annual Information Forms, and many of such issuers do not make such filings. However, as discussed in this letter and based on prior discussions with the Staff, we have included the filing of Annual Information Forms as a condition to the use of Rule 144 by Canadian former Shell Companies because the filing of such documents is necessary in order to ensure that the public disclosure made on SEDAR consists of information that is as equivalent as possible as Form 10 information.

The SEC has acknowledged that disclosure prepared under Canadian standards is sufficiently robust to meet United States disclosure standards. For example, under the MJDS, the SEC accepts eligible Canadian issuers' public filings under Canadian law in satisfaction of such issuer's disclosure obligations under the Exchange Act, and just as importantly, under the Securities Act. Indeed, the Adopting Release for the MJDS explicitly states that for purposes of the MJDS, Canadian disclosure documents prepared in accordance with Canadian law are satisfactory to meet United States disclosure requirements:

> The Commission finds that permitting certain Canadian issuers to register securities under the MJDS using their home jurisdiction disclosure documents instead of using disclosure document prepared in accordance with the Securities Act specifications is in the public interest and fully adequate for the protection of U.S. investors.

Although it is true that Canadian issuers that are former Shell Companies do not necessarily meet the MJDS eligibility requirements, many of them do meet such requirements.

Canadian Shell Companies

Many public Canadian issuers commence their operations as Shell Companies.[5] Indeed, unlike in the United States, it is very common in Canada for companies to "go public" through a "reverse takeover" of a publicly traded Shell Company. For example, but without limitation, many Canadian issuers start out as CPCs or SPACs. A CPC and a Canadian SPAC are each generally similar to a United States SPAC, but on a smaller scale (in the case of a CPC, a much smaller scale). The Toronto Stock Exchange and the TSX Venture Exchange actively market these programs, and the Toronto Stock Exchange, the TSX Venture Exchange and Canadian securities regulatory authorities view the programs as an appropriate method for "going public". For example, the following is a description of some of the key aspects of the CPC program, as taken from the website of the TMX Group Limited (the owner of the TSX Venture Exchange):

[5] The CPC program described in this letter is the current program operated by the TSX Venture Exchange. The SPAC program described in this letter is the current program operated by the Toronto Stock Exchange. As described in more detail in footnote 1, similar programs operating under different names and under the administration of different stock exchanges, but under similar rules to the current rules for CPCs, have been in effect in the past. As indicated above, the relief requested in this letter is intended to extend to former Shell Companies that existed under the CDNX Program, the VCP Program or the JCP Program. Notwithstanding the foregoing, there are cases where a Canadian issuer could be deemed to be a Shell Company, such as in the case of an issuer that has ceased business as a result of insolvency or bankruptcy or otherwise, but remained in existence. Such issuers may subsequently become operating companies, and are subject to the same Canadian reporting requirements as former CPCs and SPACs, but the relief requested in this letter is not intended to extend to such issuers. Similarly, the relief requested in this letter is not intended to extend to a former CPC or SPAC that, following its qualifying transaction, again becomes a Shell Company for any reason.

"The Capital Pool Company (CPC) program is a unique listing vehicle offered exclusively by TSX Venture Exchange. The program is a two-phased process, involving the following steps

<u>Phase 1 – The Capital Pool Company</u>

Creating the CPC:

- Three to six individuals with an appropriate combination of business and public company experience put up a minimum of the greater of $100,000 and 5% of total funds raised.

- These founders incorporate a shell company - the Capital Pool Company (CPC) - and issue shares in exchange for seed capital at a minimum price between the greater of $0.05 and 50% of the price at which subsequent shares are to be sold via prospectus.

- The CPC and its advisors prepare a prospectus that outlines management's intention to raise between $200,000 and $4,750,000 by selling CPC shares at typically twice the issuance price of the seed shares, and to use the proceeds to identify and evaluate potential acquisitions.

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- Once the distribution has been completed and closed, the CPC is listed for trading on TSX Venture Exchange. The symbol includes a .P to identify the company as a CPC.

<u>Phase 2 – The Qualifying Transaction</u>

Announcing the acquisition:

- Within 24 months, the CPC identifies an appropriate business as its "qualifying transaction" and issues a news release to announce that it has entered an agreement in principle to acquire the business.

- The CPC prepares a draft filing statement or information circular providing prospectus-level disclosure on the business that is to be acquired.

- TSX Venture reviews the disclosure document and evaluates the business to ensure it meets minimum listing requirements.

Often, CPC companies eventually grow into publicly traded operating companies, sometimes large ones, and those companies (as well as former Canadian SPACs) often sell securities to United States investors on a private placement basis. However, as described above, in such cases the securities of those issuers are ineligible for Rule 144 due to the application of Rule 144(i).

Conclusion

Rule 144(i) appears to have been adopted in 2007 in order to combat fraud in connection with reverse takeovers, by requiring former Shell Companies to become seasoned public companies before their securities are eligible for sale pursuant to Rule 144 – and particularly Rule 144(b). However, the adoption of this Rule inadvertently caught a large subsection of issuers that we submit should not be targets of the Rule – in particular, Canadian foreign private issuers that were at one time Shell Companies by virtue of being CPCs or SPACs, but which have become seasoned public companies in Canada and that have not elected to cross-list their securities in the United States.

Given that, as described above, Canadian securities laws impose robust disclosure obligations on issuers, and the information required to be filed by Canadian issuers is very similar to the Form 10 information, we respectfully submit that there is no public policy benefit to continuing to prevent United States investors from relying upon Rule 144 – and, in particular, Rule 144(b) – in order to resell securities of Canadian issuers that meet all of the requirements of the exemption from Rule 144(i) except for the requirement that such issuers make their public filings pursuant to Canadian securities laws rather than pursuant to the Exchange Act.

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As always, should you have further comments or require further information, or if any questions should arise in connection with this submission, please call the undersigned at (604) 630-5199. You also may email me at miller.dan@dorsey.com or fax me at (604) 687-8504.

Yours truly,

Daniel M. Miller