

August 23, 2011

SEC Rescission of Form F-9

I. Introduction

In its release dated July 27, 2011, the U.S. Securities and Exchange Commission (the “SEC”) announced that, effective as of December 31, 2012, it will be rescinding Form F-9. Form F-9 is the Multijurisdictional Disclosure System (“MJDS”) form currently used by certain eligible Canadian issuers to register investment grade debt and preferred securities under the Securities Act of 1933, as amended.

II. Rationale and Certain Details

Rationale for the Rescission. The decision to eliminate Form F-9 stems, in part, from the SEC’s response to Section 939A of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, which requires the SEC to replace rule and form requirements for securities offering or issuer disclosure rules that rely on, or make special accommodations for, security ratings. Although this review has typically led the SEC to propose alternative criteria in place of ratings-based criteria, applied to Form F-9, this review led the SEC to conclude that, in light of certain regulatory changes, Form F-9 had become largely duplicative of Form F-10 and could be rescinded. Unlike Form F-10 — the general MJDS registration statement that may be used by Canadian issuers for a variety of offerings — Form F-9 currently allows eligible issuers to register investment grade securities using audited financial statements prepared in accordance with Canadian GAAP without having to include a reconciliation to U.S. GAAP. As of January 1, 2011, most Canadian reporting companies are required to prepare their financial statements in accordance with International Financial Reporting Standards (“IFRS”). Under SEC rules, foreign private issuers that prepare their financial statements in accordance with IFRS are not required to prepare a U.S. GAAP reconciliation. Since Canadian issuers will no longer need to perform a U.S. GAAP reconciliation once they have fully transitioned to reporting under IFRS, the primary difference between Form F-9 and F-10 will be eliminated. As a result, the SEC has decided to rescind Form F-9.

Delayed Effectiveness. The rescission of Form F-9 will not take effect until December 31, 2012. This delayed effectiveness is in consideration of Canadian issuers that do not have a fiscal year end of December 31. Without this delayed effectiveness, such issuers would be required to provide a reconciliation to U.S. GAAP in connection with the filing of a registration statement during the interim period before their IFRS financial statements are available.

“Grandfather” provision. In addition to the delayed effectiveness, the SEC has also adopted a three-year “grandfather” period to address issues relating to the different public float requirements of Form F-9 and F-10. Currently, issuers using Form F-9 are not required to have a public float, whereas issuers using Form F-10 must either have a \$75 million public float or be debt issuers with a guarantee from a parent meeting the requirements of Form F-10. During the “grandfather” period, any issuer that would have been eligible to use Form F-9

as of December 31, 2012 will be permitted to file a final prospectus for an offering on Form F-10 even if such issuer does not satisfy the public float or parent guarantee requirements of Form F-10. An issuer taking advantage of this “grandfather” provision must disclose in the applicable registration statement that it has a reasonable belief that it would have been F-9 eligible as of December 31, 2012, and must also disclose the rationale for such belief. The final prospectus for any offering being made in reliance on this temporary “grandfather” provision must be filed on or before December 31, 2015.

Form 40-F Amendment. The SEC has also decided to remove the reference to Form F-9 from Form 40-F — the MJDS form that allows eligible Canadian issuers to file an annual report with the SEC based largely on their home jurisdiction disclosure documents. To ensure that removing the reference to Form F-9 from Form 40-F does not result in former F-9 filers who do not have a public float of \$75 million or a parent guarantee of their debt losing eligibility to file annual reports on Form 40-F, the SEC has adopted a permanent “grandfather” provision that will allow currently eligible Form 40-F filers to continue to use Form 40-F to satisfy their reporting obligations under the U.S. Securities Exchange Act of 1934 if they had filed and sold securities under a Form F-9 before December 31, 2012. Unlike the public float “grandfather” provision, this Form 40-F “grandfather” provision is permanent.

III. Special Considerations for SEC Registrants in the Oil and Gas Industry

F-9 filers in the oil and gas industry are not currently required to provide the disclosure required by Accounting Standards Codification 932 “Extractive Activities – Oil and Gas” (“ASC 932”), whereas F-10 filers in the oil and gas industry are required to make ASC 932 disclosure. Paul, Weiss raised this issue in a letter to the SEC dated March 28, 2011. At this time, the SEC is not making any changes to the requirement for Form F-10 filers to provide ASC 932 disclosure or otherwise making special accommodations for previous Form F-9 filers. The SEC is also not adopting a grandfather provision with respect to ASC 932. As a result, former Form F-9 filers in the oil and gas industry will have to provide ASC 932 disclosure in their future Form F-10 filings. The SEC believes that the burden on former F-9 filers will not be significant and will impact a very small number of issuers. The SEC has indicated that it will continue to monitor the necessity of providing ASC 932 disclosure as regulatory changes occur.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Any questions concerning issues addressed in this memorandum should be directed to:

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