



VIA E-MAIL

March 29, 2007

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Dear Madames:

**Re: Proposed National Instrument 41-101 *General Prospectus Rules***

Please accept this letter as our comments on proposed National Instrument 41-101 *General Prospectus Requirements* (“NI 41-101”) and related policy and instrument amendments as outlined in the Notice and Request for Comment dated December 21, 2006 (the “Notice”).

As a general comment we are pleased to see a concerted effort on behalf of the members of the Canadian Securities Administrators (the “CSA”) to harmonize the rules applicable to long form prospectus offerings in all Canadian jurisdictions. We are also pleased to see the proposed adoption of a uniform long form prospectus form.

However, one specific requirement in proposed NI 41-101 causes us significant concern. Specifically, we note the CSA's proposal to require, in all provinces except Ontario, a certificate requirement from "substantial beneficiaries" of a prospectus offering (the "Certificate Requirement") filed within the previous year of a significant acquisition or where the prospectus proceeds will be used to acquire a significant business or assets. We note that the CSA has restricted the requirement to persons who will receive 20% or more of the proceeds of the offering and who are control persons of the issuer or the acquiree.

Leaving aside the obvious undesirability of having different requirements in different jurisdictions (once again), we do not believe that the Certificate Requirement is necessary or appropriate for the reasons outlined below. In fact, contrary to the CSA's assertions in the Notice, we believe that the addition of this requirement will have a detrimental impact on the ability of issuers to raise capital via prospectus to fund acquisitions of new business and assets. Further, contrary to the assertion in the Notice that this new requirement will "reduce impediments for issuers accessing our capital markets", we believe the opposite to be true - i.e., that this requirement will present a formidable obstacle to issuers seeking to raise funds via prospectus offering to fund the acquisition of new assets or businesses because the vendors of those assets or business will not be willing to sign the certificate.

We are not aware of any precedent for requiring the recipients of funds raised in a public offering to sign the certificate page of the offering document.

The only other analogous requirement in Canadian securities legislation is the requirement for the preparation and filing of a business acquisition report under National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102") in those instances where a reporting issuer makes a significant acquisition based on the tests outlined in that instrument. The business acquisition report is not required to be signed or certified by the principals of the vendor of the business or assets being acquired. Further, as you are aware, the NI 51-102 provides an exemption from this requirement where the required information for the acquired business or assets has been disclosed in an information circular or filing statement and the acquisition is within nine months of the date of the disclosure document. In other words, the issuer can make the disclosure about the acquired business or assets in either a business acquisition report or an information circular/filing statement (as the case may be), neither of which is required to be certified by the acquiree.

We note that proposed NI 41-101 also contains a requirement for a certificate to be signed by a promoter of the issuer. Given that the definition of promoter encompasses persons who receive 10% or more of the of the proceeds of a securities offering and who participate in the founding, organizing or re-organizing of the issuer, we query why the promoter certificate requirement is not sufficient to catch the persons contemplated in the Certificate Requirement.

As you know, in the context of a long form prospectus offering, extensive due diligence is performed by the issuer of the securities and the underwriter(s) involved in the offering. As you also know, both parties are required to sign the certificate page of the prospectus. We believe that this makes sense in principle because those parties are and act as agent on behalf of, respectively, the issuer of the securities being offered for sale. Requiring a substantial beneficiary of the offering proceeds to perform the same level of due diligence and to be responsible for the entire contents of the prospectus is inappropriate, especially in those cases where the business or assets being acquired by the offering issuer represent a small portion of the substantial beneficiary's business or assets.

No information has been provided by the CSA about the mischief the Certificate Requirement is attempting to address. The only discussion about the Certificate Requirement is found in the Notice, which simply infers (without stating directly) that the current practice by the CSA of determining whether the acquiree takes promoter liability or provides a contractual indemnity to the issuer in the event of a misrepresentation is insufficient. Has the CSA encountered wide spread examples of misrepresentations in prospectuses about the assets or business to be acquired with the prospectus proceeds? We assume that the CSA would not impose a new and significant requirement such as this in the absence of empirical data or specific examples of situations where the omission of a certificate signed by the acquiree has caused significant harm to investors or others. Assuming that to be the case, it would be helpful if the Notice contained a more fulsome explanation of the reasons behind imposing this new requirement.

Based on the foregoing, we believe that the CSA should not impose the Certificate Requirement and respectfully submit that it be removed altogether from proposed NI 41-101.

Thank you for giving us the opportunity to provide comments on proposed NI 41-101. We hope that you will find our feedback helpful.

Yours truly,

**FIRSTENERGY CAPITAL CORP.**

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