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**BY E-MAIL**

October 30, 2003

Commissionner Frederik Bolkestein  
European Commission  
Rue de la Loi  
B-1049 Brussels  
Belgium

Alexander Schaub  
Director General, International Market  
Rue de la Loi  
B-1049 Brussels  
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David Wright  
Director, Internal Market Directorate General  
Directorate G - Financial Markets  
Rue de la Loi  
B-1049 Brussels  
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Mr. Fabrice Demarigny  
Secretary General  
CESR (Committee of European Securities Regulators)  
11-13 Avenue de Friedland  
75008 Paris  
France

Mr. Peter William Skinner MEP  
European Parliament  
142 Rue Wiertz  
B-1047 Brussels  
Belgium

Dear Sirs,

**Re: The Level 2 Implementing Measures of the EU Prospectus Directive and the draft  
EU Transparency Obligations Directive**

Farm Credit Canada ("FCC") is a frequent issuer of debt securities that are offered to investors in Europe. Therefore we are writing in response to (i) the Committee of European Securities Regulators ("CESR") Consultation Paper dated July 2003 (the "CP") relating to CESR's Advice on Level 2 Implementing Measures for the Prospectus Directive (the "PD") and (ii) the draft

Transparency Obligations Directive (the "TOD") released on March 26, 2003. In addition, we are also seeking clarification on certain related points in the PD itself and the Market Abuse Directive (the "MAD"). We do not propose to respond to all questions posed in the CP, but rather wish to highlight our more fundamental concerns regarding the above-noted documents.

As an issuer of debt securities that have been offered to the public in Europe we applaud the efforts that are being made by CESR to ensure that the PD's key objectives, to "encourage and build an efficient, cost-effective and competitive pan-European capital market on the one hand, and to provide the necessary levels of investor protection on the other", are achieved. Therefore in writing this letter, we are particularly mindful of those objectives.

## **1. Status of FCC and Disclosure relating to it**

First, we believe it would be useful to provide you with some background information regarding FCC and the debt securities that it issues from time to time. FCC is an agent of Canada and, as such, all assets held in our name are assets of Canada and all liabilities incurred by us are obligations of Canada. Under the *Farm Credit Canada Act* and *Financial Administration Act*, FCC has the power to issue debt securities either in its own name or in the name of Canada. All debt securities issued by us will directly bind Canada (as principal) and FCC. Payments of principal and interest on such debt securities constitute a charge on and are payable out of the Consolidated Revenue Fund of Canada. The Consolidated Revenue Fund is the aggregate of all moneys on deposit to the credit of Canada.

**Therefore, the relevant disclosure in respect of all debt securities issued by us as an agent of Canada should relate to (i) Canada and (ii) FCC's authority to issue debt securities on its behalf. Any other necessary disclosure regarding FCC itself should be left to the general disclosure obligation in Article 5 of the PD.**

Although FCC may, in fact, be a co-obligor on the debt it issues, we can safely assert that FCC's debt effectively represents the credit of Canada as FCC's debt has the same credit ratings as Canada. FCC is an emanation of the State that could just as well have been set up as an agency or department of the Canadian government itself, as opposed to a separate legal entity. Accordingly, disclosure on FCC itself (except the limited disclosure noted above) is irrelevant in the circumstances and it is clearly unnecessary to treat it as an independent corporate entity for disclosure purposes in order to ensure investor protection.

## **2. Incorporation by Reference**

We are concerned that Article 11 of the PD does not, in fact, permit foreign issuers to incorporate by reference continuous disclosure documents filed pursuant to any foreign securities laws. Article 11 specifically refers to filings made under Article 10, but a number of questions arise. First, as the annual update document specified therein may simply be a list of all documents filed anywhere pursuant to national laws dealing with securities over the preceding 12 months, the question arises as to whether documents on that list may themselves be incorporated by reference. Second, the annual update document is only required to be filed "after publication of the financial statements". This raises the question as to whether documents filed in non-EU jurisdictions could be incorporated right from the date of the implementation of the PD in 2005 or only up to 12 months later when the first post-PD financial statements are filed, with the latter scenario not being very helpful. As States are not currently required to file any continuous disclosure under Directive 2001/34/EC, FCC could not rely on that branch of Article 11 either.



The sole criteria governing admissibility of a document to be incorporated by reference should be that such document be filed with the relevant home Member State's competent authority, and be published, prior to or simultaneously with the filing of the prospectus and nothing more. The general disclosure standard provided by Article 5 of the PD would still apply; so whether a document is incorporated by reference or the relevant information is included in the prospectus itself, the issuer still has to ensure that its disclosure meets the required standard.

We would therefore be grateful if you could clarify in the Level 2 Implementing Measures permitted by Articles 10 and 11 of the PD that foreign issuers may, in fact, incorporate by reference documents according to the sole criteria stated in the previous paragraph. It would also be helpful to clarify that any continuous disclosure document so filed may be incorporated by reference, whether required by any foreign securities law (and not just its own national securities laws) or any other law governing the issuer (such as FCC's special incorporating legislation).

### **3. Article 16 of the PD - Supplemental Prospectus**

We understand that Canada has submitted its own comment letter in which it essentially proposes an integrated disclosure system similar to that currently existing in the US in which future amendments or supplements to Canada's proposed annual filing pursuant to Article 10 of the PD (the "**Canada Updates**") filed with the competent authority of the home Member State are automatically incorporated by reference in FCC's programme base prospectus without any further approval of such competent authority (the "**Integrated Disclosure System**").

While we would prefer such an Integrated Disclosure System for both our own disclosure as well as that of Canada as principal, we are however concerned that such an Integrated Disclosure System may be impossible in light of the clear wording of Articles 10 and 16 of the final PD specifically dealing with incorporation by reference and supplemental prospectuses ("**SP**"), respectively. That being said, one cannot ignore that the requirement for an SP in Article 16 could delay the launch of a retail deal and thereby cause the issuer to miss opportunistic pricing in any volatile market. As such, it may render the EU markets uncompetitive vis-à-vis the US market where even retail deals can be launched immediately under a shelf prospectus without any further approval of an SP.

Accordingly, we strongly suggest that, to the extent possible, you provide for such an Integrated Disclosure System in the Level 2 Implementing Measures dealing with disclosure requirements of States and their regional and local authorities and their agents or guaranteed issuers (the "**Public Sector Issuers**"). If this is impossible at this juncture, we would ask that you please at least confirm in the Level 2 Implementing Measures that Public Sector Issuers such as FCC are permitted to meet the SP requirement by merely attaching any Canada Updates to a one page cover sheet identifying the issuer and the debt programme, including any required responsibility statement and no material change statement. This simplified approach might at least enable a diligent Public Sector Issuer to keep retail issuance blackouts to a minimum.

### **4. Article 6 of the MAD - Timely Disclosure of Price Sensitive Information**

We are concerned with the format of the disclosure required by Article 6 of the MAD. We should be able to meet this requirement by merely filing any Canada Updates with the relevant competent authority in the home Member State without having to prepare any additional document for this purpose, such as a press release summarising the specific price sensitive information contained therein, and ask that you kindly confirm that this will be acceptable.



## 5. The TOD

Article 8 should provide that State-guaranteed entities and agents of the State are also specifically exempted from the periodic financial reporting requirements provided by Articles 4 through 6 of the TOD. This is particularly necessary as most State-guaranteed entities or State agents (such as FCC) are only required to submit annual reports, but not interim reports, to Parliament under their special incorporating legislation. The home Member State can still require such issuers to publish whatever they file elsewhere in the world "which may be of importance for the public in the Community" pursuant to Article 19(2) of the TOD or simply rely on disclosure pursuant to Article 6 of the MAD discussed above.

FCC is very interested in continuing the relationships which it has established with the European Union and in working with CESR on a mutually beneficial resolution of these EU Directives.

Yours truly,

A handwritten signature in black ink, appearing to read 'Moyez Somani', with a large, stylized flourish at the end.

Moyez Somani  
Executive Vice-President and Chief Financial Officer



Agriculture. It's all we do.