

# ALBERTA SECURITIES COMMISSION

## DETERMINATION *Business Corporations Act (Alberta)*

**Citation: Total Capital Canada Ltd., Re, 2010 ABASC 379**

**Date: 20100813**

### **Total Capital Canada Ltd.**

#### **Background**

Total Capital Canada Ltd. (**Total Capital Canada**) has applied to the Alberta Securities Commission (the **Commission**) for a determination pursuant to subsection 3(3) of the *Business Corporations Act* (Alberta) (the **ABCA**) that the proposed distribution of unsecured debentures, notes or other evidences of indebtedness (the **Debt Securities**) by Total Capital Canada is not part of a distribution to the public under the ABCA.

#### **Representations**

This determination is based on the following representations by Total Capital Canada to the Commission:

1. Total Capital Canada is a corporation incorporated under the ABCA having its head office in Calgary, Alberta and is not a reporting issuer under the *Securities Act* (Alberta) (the **Act**).
2. Total Capital Canada is a direct wholly-owned subsidiary of Total S.A. (**Total**).
3. Total is a société anonyme incorporated under the laws of France having its head office in Courbevoie, France and is not a reporting issuer under the Act.
4. Total has American Depository Receipts (**ADRs**) listed on the New York Stock Exchange and Total is an SEC issuer within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations* because the ADRs are registered under section 12 of the United States (**US**) *Securities Exchange Act of 1934*.
5. The Debt Securities proposed to be issued by Total Capital Canada will be unconditionally and irrevocably guaranteed as to payment of principal and interest by Total.
6. Total Capital Canada proposes to distribute the Debt Securities under an automatic shelf registration statement on form F-3 (the **Registration Statement**) which was initially filed with the US Securities and Exchange Commission (the **SEC**) by Total and Total Capital (a wholly-owned subsidiary of Total) on 19 May 2009 and became effective upon filing. A post-effective amendment to the Registration Statement will be filed with the SEC in order to add Total Capital Canada as an additional registrant to the Registration Statement.

7. Upon filing with the SEC of the post-effective amendment to the Registration Statement, the Debt Securities may be distributed by Total Capital Canada as freely tradeable securities in the US.
8. The Debt Securities will be distributed primarily in the US. Any Debt Securities that may be distributed in one or more of the provinces of Canada will only be distributed to purchasers who are accredited investors as defined under the prospectus exemption in section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions*.
9. Total Capital Canada proposes to issue the Debt Securities under a trust indenture (the **Indenture**) to be entered into among it, Total, as guarantor, and The Bank of New York Mellon, a trustee resident in the US (the **Trustee**).
10. The Trustee will be appointed as trustee for the Debt Securities under the Indenture.
11. The Indenture will be subject to the provisions of the US *Trust Indenture Act of 1939* as amended by the US *Trust Indenture Reform Act of 1990* (the **TIA**).
12. In the absence of the requested determination, the distribution by Total Capital Canada of the Debt Securities would be part of a distribution to the public under subsection 3(2) of the ABCA and, as a result, section 83 of the ABCA would require the appointment under the Indenture of at least one trustee registered under the *Loan and Trust Corporations Act* (Alberta) (the **LTCA**).
13. The Trustee will not be registered under the LTCA, but will be authorized to act as a trustee under the TIA and will be subject to examination or supervision by the Superintendent of Banks of the State of New York, the Federal Reserve Bank of New York, the Federal Deposit Insurance Corporation and the New York Clearing House Association in the US.

### **Decision**

The Commission, being satisfied that granting this determination would not prejudice any securityholder of Total Capital Canada, determines under subsection 3(3) of the ABCA that the Debt Securities are not part of a distribution to the public.

### **For the Commission:**

“original signed by”  
William S. Rice, QC  
Chair

“original signed by”  
Stephen R. Murison  
Vice-Chair