

Ontario Securities Commission

National Instrument 71-101

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**NATIONAL INSTRUMENT 71-101
*THE MULTI JURISDICTIONAL DISCLOSURE SYSTEM***

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Part 2 MJDS Prospectus Supplement

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PART 1 DEFINITIONS

Definitions

1.1 In this Instrument

"acting jointly or in concert" has the same interpretation as in securities legislation;

"affiliated party", for an issuer, means a person or company that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the issuer;

"bid" means a take-over bid or an issuer bid;

"bid circular" means a take-over bid circular or an issuer bid circular as those terms are used in securities legislation;

"business combination" means a statutory merger or consolidation or similar plan or acquisition requiring the vote or consent of securityholders of a person or company, in which securities of the person or company or another person or company held by the securityholders will become or be exchanged for securities of any other person or company;

"commodity pool issuer" means an issuer formed and operated for the purpose of investing in commodity futures contracts, commodity futures, related products, or a combination of them;

"connected issuer" has the meaning ascribed to the term "connected issuer" or "connected party" in securities legislation;

"control", with respect to an issuer, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the issuer, whether through the ownership of voting securities, by contract or otherwise, and "under common control with" has a corresponding meaning;

"convertible", for debt or preferred shares, means that the rights and attributes attaching to the securities include a right or option to purchase, convert into, exchange for or otherwise acquire a security of the issuer or of another issuer that is

- (a) an equity share,
- (b) a debt or a preferred share not having an investment grade rating in the case of a debt or a preferred share having an investment grade rating, or
- (c) another security that itself has a right or option to purchase, convert into, exchange for or otherwise acquire a security of the issuer or another issuer that is an equity share, or a debt or a preferred share not having an investment grade rating in the case of a debt or a preferred share having an investment grade rating;

"convert" has a corresponding meaning to the term "convertible";

"dealer registration requirement" means the requirement in securities legislation that prohibits a person or company from trading in a security unless the person or company is registered in the appropriate category of registration under securities legislation;

"equity shares" means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but excludes preferred shares;

"expertised statement" means part of a disclosure document required to be filed for a distribution or bid made under this Instrument, a document that is incorporated by reference in the disclosure document, or a report used in or in connection with the disclosure document or any document incorporated by reference in the disclosure document, that in each case is purported to be made on the authority of an expert;

"foreign issuer" means an issuer that is not incorporated or organized under the laws of Canada or a jurisdiction, unless

- (a) voting securities carrying more than 50 percent of the votes for the election of directors are held by persons or companies whose last address as shown on the books of the issuer is in Canada, and
- (b) any one or more of
 - (i) the majority of the senior officers or directors of the issuer are citizens or residents of Canada,
 - (ii) more than 50 percent of the assets of the issuer are located in Canada, or
 - (iii) the business of the issuer is administered principally in Canada;

"independent underwriter" means a person or company that underwrites securities distributed by MJDS prospectus that is not the issuer and in respect of which

- (a) if the person or company is a registrant, the issuer is not a connected issuer or related issuer, or
- (b) if the person or company is not a registrant, would not be a connected issuer or related issuer if the person or company was a registrant;

"insider bid" has the meaning ascribed to that term in securities legislation;

"insider reporting requirement" means the requirement in securities legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the issuer;

"intermediary", for purposes of section 18.1, means a registered dealer or adviser, a bank or trust company, a participant in a clearing agency, a trustee or administrator of a self-administered retirement savings plan, retirement income fund, education savings plan, or other similar self-administered savings or investment plan registered under the ITA, or a nominee of any of those persons, that holds a security on behalf of another person or company that is not the registered holder of the security, unless excluded from the definition of "intermediary" by National Policy Statement No. 41 or any successor instrument to that national policy statement;

"investment grade rating" means a provisional rating by a rating organization in one of its generic rating categories that signifies investment grade;

"issuer tender offer statement" means an issuer tender offer statement on Schedule 13E-4 under Section 13(e)(1) of the 1934 Act;

"issuer bid" has the meaning ascribed to that term in securities legislation;

"majority-owned subsidiary" means a person or company of which voting securities carrying more than 50 percent of the votes for the election of directors are held by any one or more of

- (a) another person or company, and
- (b) the other majority-owned subsidiaries of that other person or company;

"method 1" means the first of the two alternative methods of providing prospectus certificates for rule 415 offerings made under this Instrument set forth in Appendix A;

"method 2" means the second of the two alternative methods of providing prospectus certificates for rule 415 offerings made under this Instrument set forth in Appendix B;

"MJDS" means the multijurisdictional disclosure system established by this Instrument;

"MJDS directors' circular" means, for a take-over bid for a class of securities of a U.S. issuer made under this Instrument, a tender offer solicitation/recommendation statement, amendments to that statement and all other information and materials required or permitted to be disseminated to holders of the securities by the offeree issuer or its board of directors for a tender offer made for the securities under U.S. federal securities law, that in each case complies with the form and content requirements of subsection 12.4(2);

"MJDS director's or officer's circular" means, for a take-over bid for a class of securities of a U.S. issuer made under this Instrument, a tender offer solicitation/recommendation statement, amendments to that statement and all other information and materials required or permitted to be disseminated to holders of the securities by an individual director or officer for a tender offer made for the securities under U.S. federal securities law, that in each case complies with the form and content requirements of subsection 12.4(2);

"MJDS issuer bid circular" means, for an issuer bid for a class of securities of a U.S. issuer made under this Instrument, an issuer tender offer statement, amendments to that statement and all other information and materials required to be disseminated to holders of the securities by the issuer for an issuer tender offer made for the securities under U.S. federal securities law, that in each case complies with the form and content requirements of subsection 12.4(1);

"MJDS prospectus" means, for a distribution of securities under this Instrument other than under section 12.3, a U.S. prospectus that contains the additional information, legends and certificates required by, and otherwise complies with the disclosure requirements of, this Instrument;

"MJDS take-over bid circular" means, for a take-over bid for a class of securities of a U.S. issuer made under this Instrument, a tender offer statement, amendments to that statement and all other information and materials required to be disseminated to holders of the securities by the offeror for a tender offer made for the securities under U.S. federal securities law, that in each case complies with the form and content requirements of subsection 12.4(1);

"MTN program" means a continuous rule 415 offering of debt in which the specific variable terms of the individual securities and the offering of the securities are determined at the time of sale;

"Nasdaq" means the Nasdaq Stock Market;

"NNM" means the Nasdaq National Market;

"non-convertible" means securities that are not convertible;

"offeree issuer" has the meaning ascribed to that term in securities legislation;

"offeror" has the meaning ascribed to that term in securities legislation;

"parent", for a majority-owned subsidiary, means a person or company that, alone or together with any one or more of the person or company's other majority-owned subsidiaries, holds voting securities of the majority-owned subsidiary carrying more than 50 percent of the votes for the election of directors;

"preliminary MJDS prospectus" means, for a distribution of securities under this Instrument other than under section 12.3, a preliminary form of MJDS prospectus;

"principal jurisdiction" means the jurisdiction specified in accordance with section 5.1;

"principal market", for a class of securities, means the single securities market with the largest aggregate trading volume for the class of securities in the preceding 12 calendar month period;

"prospectus requirement" means the prohibition in securities legislation from a person or company distributing a security unless a preliminary prospectus and prospectus for the distribution have been filed and receipts obtained for them;

"public float", for a class of securities, means

- (a) the aggregate market value of the securities held by persons or companies that are not affiliated parties of the issuer of the securities, calculated by using the price at which the securities were last sold in the principal market for the securities on the date specified in the applicable provision of this Instrument, or the average of the bid and asked prices of the securities in the principal market on that date if there were no sales on that date,
- (b) if there is no market for the class of securities, the book value of the securities held by persons or companies that are not affiliated parties of the issuer of the securities computed on that date, and
- (c) if the issuer of the class of securities is in bankruptcy or receivership or has an accumulated capital deficit, one-third of the principal amount, par value or stated value of the securities held by persons or companies that are not affiliated parties of the issuer of the securities computed on that date;

"rating organization" means each of CBRS Inc., Dominion Bond Rating Service Limited, Moody's Investors Service, Inc., Standard & Poor's Corporation and any entity recognized by the SEC as a nationally recognized statistical rating organization as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the 1934 Act;

"related issuer" has the meaning ascribed to the term "related issuer" or "related party" in securities legislation;

"rule 415 offering" means a distribution under Rule 415 under the 1933 Act that is made under this Instrument;

"rule 415 prospectus supplement" means a form of prospectus supplement prepared for a rule 415 offering;

"rule 430A offering" means a distribution under Rule 430A under the 1933 Act that is made under this Instrument;

"rule 430A pricing prospectus" means a MJDS prospectus prepared for a rule 430A offering that contains the information omitted from the U.S. prospectus included as part of the registration statement at the time of effectiveness of the registration statement, as permitted by Rule 430A under the 1933 Act;

"securities exchange bid" means a bid in which the consideration for the securities of the offeree issuer consists, in whole or in part, of securities of an offeror or other issuer;

"specified predecessor" means, for a successor issuer continuing after a business combination, a predecessor to the successor issuer whose assets and gross revenues in aggregate would contribute less than 20 percent of the total assets and gross revenues from continuing operations of the successor issuer, based on a pro forma combination of each predecessor's financial position and results of operations for its most recently completed financial year ended before the business combination for which financial statements have been filed;

"successor issuer" means an issuer subsisting as an issuer after a business combination;

"take-over bid" has the meaning ascribed to that term in securities legislation;

"tender offer solicitation/recommendation statement" means a statement made under rule 14d-9 or 14e-2 under the 1934 Act;

"tender offer statement" means a tender offer statement on Schedule 14D-1 under section 14(d) of the 1934 Act;

"U.S. federal securities law" means the federal statutes of the United States of America concerning the regulation of securities markets and trading in securities and the regulations, rules, forms and schedules under those statutes;

"U.S. issuer" means a foreign issuer that is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia;

"U.S. prospectus" means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act, or if the offering is not being made contemporaneously in the U.S., as if the offering is being made on a registered basis in the United States of America;

"voting securities" means securities the holders of which have a present entitlement to vote for the election of directors;

"1934 Act filings" means all filings required to be made with the SEC under sections 13, 14 and 15(d) of the 1934 Act; and

"1940 Act" means the Investment Company Act of 1940 of the United States of America.

PART 2 GENERAL

Timing of Filing

2.1 Unless otherwise provided in this Instrument, documents that must be filed under this Instrument that are also filed with the SEC shall be filed as nearly as practicable contemporaneously with the filing with the SEC.

Successor Issuers

2.2 A successor issuer satisfies the eligibility criteria set forth in subparagraphs 3.1(a)(iii), 3.1(b)(ii) and (iii) and paragraphs 12.3(1)(c) and 13.1(1)(c) if

- (a) since the business combination the successor issuer has made all 1934 Act filings and, if applicable, has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NNM;
- (b) the successor issuer is in compliance with the obligations arising from the listing or quotation referred to in paragraph (a), if applicable; and
- (c) the filing, listing or quotation requirement to be satisfied for a period of 12 or 36 months is satisfied for each predecessor, other than a specified predecessor.

Successor Issuer Interpretation

2.3 In determining if the filing, listing or quotation requirement in paragraph 2.2(c) is satisfied for a period of 12 or 36 months for each predecessor, the period during which the successor issuer satisfied the requirement shall be added to the immediately preceding period during which the predecessor satisfied the requirement.

PART 3 MJDS PROSPECTUS DISTRIBUTIONS OF SECURITIES OF U.S. ISSUERS

General Eligibility Criteria

- 3.1** Subject to section 3.3, this Instrument may be used to distribute
- (a) debt that has an investment grade rating or preferred shares that have an investment grade rating, in each case at the time the preliminary MJDS prospectus is filed in the principal jurisdiction, or rights that, upon issuance, are immediately exercisable for any of these securities, if
 - (i) the issuer is a U.S. issuer,
 - (ii) the issuer
 - (A) has a class of securities registered under section 12(b) or 12(g) of the 1934 Act, or
 - (B) is required to file reports under section 15(d) of the 1934 Act,
 - (iii) the issuer has filed with the SEC all 1934 Act filings for a period of 12 calendar months immediately before the filing of the preliminary MJDS prospectus in the principal jurisdiction,
 - (iv) the issuer is not registered or required to be registered as an investment company under the 1940 Act,
 - (v) the issuer is not a commodity pool issuer, and
 - (vi) the securities being offered or issuable upon the exercise of the rights either,
 - (A) are non-convertible, or
 - (B) if convertible, may not be converted for at least one year after issuance, and the equity shares of the issuer of the securities into which the offered securities are convertible have a public float of not less than U.S. \$75,000,000, determined as of a date within 60 days before the filing of the preliminary MJDS prospectus in the principal jurisdiction;
 - (b) rights to purchase additional securities of its own issue issued by a U.S. issuer to its existing securityholders and the securities issued upon the exercise of the rights, if
 - (i) the issuer meets the eligibility criteria specified in subparagraphs (a)(ii), (iv) and (v),

- (ii) the issuer has filed with the SEC all 1934 Act filings for a period of 36 calendar months immediately before the filing of the preliminary MJDS prospectus in the principal jurisdiction,
- (iii) the issuer has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on the NNM for a period of at least 12 calendar months immediately before the filing of the preliminary MJDS prospectus in the principal jurisdiction and is in compliance with the obligations arising from the listing or quotation,
- (iv) the rights are exercisable immediately upon issuance,
- (v) subject to subparagraph (vi), the rights issued to residents of Canada have the same terms and conditions as the rights issued to residents of the United States of America, and
- (vi) beneficial ownership of rights issued to a resident of Canada are not transferable to a resident of Canada, other than residents to whom rights of the same issue were granted, provided that,
 - (A) the securities issuable upon exercise of the rights may be so transferable, and
 - (B) this limitation does not restrict the transfer of rights on a securities exchange or inter-dealer quotation system outside of Canada; or
- (c) any securities of a U.S. issuer if
 - (i) the issuer meets the eligibility criteria specified in subparagraphs (a)(ii) to (v), and
 - (ii) the equity shares of the issuer have a public float of not less than U.S. \$75,000,000, determined as of a date within 60 days before the filing of the preliminary MJDS prospectus in the principal jurisdiction.

Alternative Eligibility Criteria for Certain Guaranteed Issues

3.2 Subject to section 3.3, this Instrument may also be used to distribute securities of an issuer, if

- (a) the securities distributed are
 - (i) non-convertible debt having an investment grade rating, or non-convertible preferred shares having an investment grade rating, of a majority-owned subsidiary whose parent meets the eligibility criteria set forth in subparagraphs 3.1(a)(i) through (v),
 - (ii) convertible debt having an investment grade rating, or convertible preferred shares having an investment grade rating, of a majority-owned subsidiary that may not be converted for at least one year after issuance and are convertible only into securities of a parent that meets the eligibility requirements set forth in subparagraphs 3.1(a)(i) through (v) and sub-subparagraph 3.1(a)(vi)(B),

- (iii) non-convertible debt, or non-convertible preferred shares, of a majority-owned subsidiary whose parent meets the eligibility requirements set forth in paragraph 3.1(c), or
- (iv) convertible debt, or convertible preferred shares, of a majority-owned subsidiary that are convertible only into securities of a parent that meets the eligibility requirements set forth in paragraph 3.1(c);
- (b) the issuer meets the eligibility criteria set forth in subparagraphs 3.1(a)(i), (iv) and (v); and
- (c) the parent fully and unconditionally guarantees payment in respect of the securities being distributed, as to principal and interest if the securities are debt, and as to liquidation preference, redemption and dividends if the securities are preferred shares.

Limitation on Distribution of Derivative Securities

3.3 (1) No person or company shall file a prospectus for the distribution of derivative securities under this Instrument.

(2) Despite subsection (1), warrants, options, rights or convertible securities may be distributed under this Instrument if the issuer of the underlying securities to which the warrants, options, rights or convertible securities relate is eligible under this Instrument to distribute the underlying securities.

Preliminary MJDS Prospectus and MJDS Prospectus

3.4 (1) A U.S. issuer shall file a preliminary MJDS prospectus and a MJDS prospectus for a distribution of securities under this Instrument other than under section 12.3.

(2) A preliminary MJDS prospectus, an amendment to a preliminary MJDS prospectus, a MJDS prospectus and an amendment to a MJDS prospectus is a preliminary prospectus, an amendment to a preliminary prospectus, a prospectus and an amendment to a prospectus, respectively, for the purposes of securities legislation.

PART 4 FORM AND CONTENT OF MJDS PROSPECTUS

Distributions in Canada and the U.S.

4.1 Subject to section 4.2, an issuer of securities distributed under this Instrument shall file the registration statement and amendments to the registration statement filed for the offering with the SEC, together with the related preliminary MJDS prospectus and MJDS prospectus and amendments and supplements to the preliminary MJDS prospectus and MJDS prospectus.

Distributions only in Canada

4.2 If a distribution is being made only in Canada, the issuer does not need to file a registration statement and amendments to the registration statement, or other information required in a registration statement but not required in the U.S. prospectus.

Additional Legends and Disclosure

4.3 (1) The following statements shall be printed

- (a) in red ink on the outside front cover page, or on a sticker on that page, of each preliminary MJDS prospectus used for a distribution under this Instrument
"This preliminary MJDS prospectus relating to the securities described in it has been filed in [each of/certain of] the [provinces/provinces and territories] of Canada but has not yet become final for the purpose of a distribution. Information contained in this preliminary MJDS prospectus may not be complete and may have to be amended. The securities may not be distributed until a receipt is obtained for the MJDS prospectus.";
- (b) on the outside or inside front cover page, or on a sticker on that page, of each preliminary MJDS prospectus and MJDS prospectus
 - (i) *"This offering is being made by a U.S. issuer using disclosure documents prepared in accordance with U.S. securities laws. Purchasers should be aware that these requirements may differ from those of [insert the names of the provinces and territories where qualified]. The financial statements included or incorporated by reference in this prospectus have not been prepared in accordance with Canadian generally accepted accounting principles and may not be comparable to financial statements of Canadian issuers."*
 - (ii) *"[All of] [Certain of] the directors and officers of the issuer and [all of] [certain of] the experts named in this prospectus reside outside of Canada. [[Substantially] [A]]l of the assets of these persons and of the issuer may be located outside Canada.] The issuer has appointed [name and address of agent for service] as its agent for service of process in Canada, but it may not be possible for investors to effect service of process within Canada upon the directors, officers and experts referred to above. It may also not be possible to enforce against the issuer, its directors and officers and [certain of] the experts named in this prospectus judgments obtained in Canadian courts predicated upon the civil liability provisions of applicable securities laws in Canada."*
 - (iii) *"This prospectus constitutes a public offering of these securities only in those jurisdictions where they may be lawfully offered for sale and in those jurisdictions only by persons permitted to sell such securities. No securities commission or similar authority in Canada or the United States of America has in anyway passed upon the merits of the securities offered by this prospectus and any representation to the contrary is an offence.";* and
- (c) in each preliminary MJDS prospectus and MJDS prospectus

"Securities legislation in [certain of the provinces [and territories] of Canada] [the Province of... [insert name of local jurisdiction, if applicable]] provides purchasers with the right to withdraw from an agreement to purchase securities within two business days after receipt or deemed receipt of a prospectus and any amendment. [In several of the provinces [and territories], the] securities legislation further provides a purchaser with remedies for rescission [or [, in some jurisdictions,] damages] if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that such remedies for rescission [or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province [or territory]. The purchaser should refer to the applicable provisions of the securities legislation of the purchaser's province [or territory] for particulars of these rights or consult with a legal adviser. Rights and remedies also may be available to purchasers under U.S. law; purchasers may wish to consult with a U.S. legal adviser for particulars of these rights."

(2) A preliminary MJDS prospectus, MJDS prospectus or amendment or supplement to a preliminary MJDS prospectus or MJDS prospectus need not contain any disclosure relevant solely to U.S. offerees or purchasers, including

- (a) any "red herring" legend required by U.S. federal securities law;
- (b) except as provided in paragraph (1)(b)(iii), any legend regarding approval or disapproval by the SEC;
- (c) any discussion of U.S. tax considerations other than those material to Canadian purchasers; and
- (d) the names of U.S. underwriters not acting as underwriters in Canada or a description of the U.S. plan of distribution, except to the extent necessary to describe facts material to the Canadian distribution.

Incorporation by Reference

4.4 Except as otherwise provided in this Instrument, documents incorporated or deemed to be incorporated by reference into a U.S. prospectus under U.S. federal securities law shall be, and are deemed to be, incorporated by reference into a preliminary MJDS prospectus or MJDS prospectus.

Statements Modified or Superseded

4.5 (1) A statement in a document incorporated or deemed to be incorporated by reference into a MJDS prospectus shall be deemed to be modified or superseded, for the purposes of the MJDS prospectus, to the extent that a statement in the MJDS prospectus or in any other subsequently filed document that also is or is deemed to be incorporated by reference into the MJDS prospectus modifies or supersedes the statement.

(2) The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information in the document that it modifies or supersedes.

(3) The making of a modifying or superseding statement shall not be deemed an admission for any purpose that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of material fact or an omission to state a material fact

that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

(4) A statement so modified or superseded shall not be deemed in its unmodified or superseded form to constitute part of the MJDS prospectus.

(5) If documents are incorporated by reference into a preliminary MJDS prospectus or MJDS prospectus, the section in the preliminary MJDS prospectus or MJDS prospectus that provides information about incorporation by reference shall include a statement that information has been incorporated by reference from documents filed with the Canadian securities regulatory authority in each jurisdiction in which the distribution is being made and shall state the name, address and telephone number of an officer of the issuer from whom copies of the documents may be obtained on request without charge.

Reconciliation of Financial Statements

4.6 (1) A preliminary MJDS prospectus and a MJDS prospectus used to distribute securities eligible under paragraph 3.1(c) shall include a reconciliation of the financial statements required to be included or incorporated by reference in the preliminary MJDS prospectus and MJDS prospectus to Canadian GAAP in the notes to the financial statements or as a supplement included or incorporated by reference in the preliminary MJDS prospectus and MJDS prospectus.

(2) A reconciliation required to be included in the financial statements under subsection (1) shall explain and quantify as a separate reconciling item any significant differences between the principles applied in the financial statements, including note disclosure, and Canadian GAAP and, in the case of the reconciliation of the annual financial statements, shall be covered by an auditor's report.

General Certification Requirements

4.7 Except as provided in sections 4.8 to 4.10, each preliminary MJDS prospectus and MJDS prospectus used for a distribution under this Part shall contain

- (a) a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors of the issuer, any two directors of the issuer, other than the chief executive officer and the chief financial officer, any person or company who is a promoter of the issuer and each person or company who is a guarantor of the securities distributed under the MJDS prospectus

"The foregoing [insert, if applicable, ---", together with the documents incorporated in this prospectus by reference,]" constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec ---" and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed]"; and

- (b) if there is an underwriter, a certificate in the following form, signed by each underwriter who is in a contractual relationship with the issuer or selling securityholder for the securities distributed under the MJDS prospectus

"To the best of our knowledge, information and belief, the foregoing [insert, if applicable, ---", together with the documents incorporated in this prospectus by

reference,"] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed.""]".

Certificate Requirement for Rule 415 Offerings

4.8 A preliminary MJDS prospectus, an amendment to a preliminary MJDS prospectus, a MJDS prospectus and an amendment to a MJDS prospectus filed for a rule 415 offering under this Part shall contain certificates prepared in accordance with method 1 or method 2.

Certificate Requirement for Rule 430A Offerings

4.9 For a rule 430A offering,

- (a) a preliminary MJDS prospectus, amendment to a preliminary MJDS prospectus and a MJDS prospectus,
- (b) an amended MJDS prospectus filed to commence a new period for filing a rule 430A pricing prospectus, and
- (c) an amendment to a MJDS prospectus filed for a rule 430A offering before the information omitted from the MJDS prospectus has been filed in either a rule 430A pricing prospectus or an amendment shall contain

- (i) a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors of the issuer, any two directors of the issuer, other than the chief executive officer and chief financial officer, any person or company who is a promoter of the issuer and each person or company who is a guarantor of the securities to be distributed under the MJDS prospectus

"The foregoing, together with the documents incorporated in this prospectus by reference as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed.""]"; and

- (ii) if there is an underwriter, a certificate in the following form, signed by each underwriter who is in a contractual relationship with the issuer or selling securityholder for the securities distributed under the MJDS prospectus

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated in this prospectus by reference, as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable

references] [insert if offering made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed".]".

Certificates for Rule 430A Pricing Prospectus

4.10 A rule 430A pricing prospectus shall contain in place of the certificates referred to in section 4.9

- (a) a certificate in the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors of the issuer, any two directors of the issuer, other than the chief executive officer and chief financial officer, any person or company who is a promoter of the issuer and each person or company who is a guarantor of the securities distributed under the MJDS prospectus

"The foregoing [insert, if applicable---", together with the documents incorporated in this prospectus by reference,]" constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]; and

- (b) if there is an underwriter, a certificate in the following form, signed by each underwriter who is in a contractual relationship with the issuer or selling securityholder for securities distributed under the MJDS prospectus

"To the best of our knowledge, information and belief, the foregoing [insert, if applicable---", together with the documents incorporated in this prospectus by reference,]" constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering also made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]."

Signing of Certificates by Agent

4.11 Certificates contained in a preliminary MJDS prospectus, MJDS prospectus, amendment to a preliminary MJDS prospectus or MJDS prospectus, rule 415 prospectus supplement or rule 430A pricing prospectus shall be signed in accordance with securities legislation provided that any or all of the persons or companies required to sign a certificate may sign the certificate for a distribution made under this Instrument by an agent duly authorized in writing.

PART 5 FILING PROCEDURES

Specification of Principal Jurisdiction

5.1 At the time of filing a preliminary MJDS prospectus, the issuer shall send written notice to the securities regulatory authority and, unless the distribution is being made in Canada only, to the SEC, stating that the distribution is being made under the MJDS and specifying the principal jurisdiction.

Alternate Principal Jurisdiction

5.2 If the securities regulatory authority in the jurisdiction specified in the notice sent under section 5.1 advises the issuer that it is not prepared to act as principal jurisdiction, the issuer shall specify another jurisdiction that is prepared to act as principal jurisdiction and notify the security regulatory authority in each jurisdiction in which the preliminary MJDS prospectus was filed and the SEC.

SEC Review

5.3 If the SEC notifies an issuer that a filing made under the MJDS has been selected for review, the issuer shall notify the securities regulatory authority in the principal jurisdiction.

PART 6 FILING DOCUMENTS

Principal Jurisdiction

- 6.1** The issuer shall file in the principal jurisdiction
- (a) the preliminary MJDS prospectus, the MJDS prospectus, each amendment and supplement to the preliminary MJDS prospectus and MJDS prospectus, the rule 430A pricing prospectus and each rule 415 prospectus supplement used in Canada,
 - (b) all documents incorporated or deemed to be incorporated by reference in the MJDS prospectus, and
 - (c) all other documents required by this Instrument.

Canada-U.S. Offering

6.2 If the distribution is being made in Canada and the United States of America, the issuer shall also file in the principal jurisdiction one unsigned copy of the registration statement and all amendments and exhibits to the registration statement in addition to the documents specified in section 6.1.

Non-Principal Jurisdictions

- 6.3** In the jurisdictions other than the principal jurisdiction, the issuer shall file
- (a) the preliminary MJDS prospectus, the MJDS prospectus, each amendment and supplement to the preliminary MJDS prospectus and MJDS prospectus, the rule 430A pricing prospectus and, subject to section 7.6, each rule 415 prospectus supplement used in Canada,
 - (b) all documents incorporated or deemed to be incorporated by reference in the MJDS prospectus, and
 - (c) all other documents required by this Instrument.

Certificate Regarding Eligibility Criteria

6.4 At the time of filing a preliminary MJDS prospectus, an issuer shall file a certificate, signed on its behalf by a senior officer of the issuer, confirming that the issuer satisfies the applicable eligibility criteria.

Consents

6.5 (1) The issuer shall file the written consent of an attorney, auditor, accountant, engineer, appraiser or any other person or company named as having prepared or certified any expertised statement as follows:

- (a) if the expertised statement is in the preliminary MJDS prospectus, an amendment to the preliminary MJDS prospectus, the MJDS prospectus or a document incorporated by reference into the MJDS prospectus that was filed before the filing of the MJDS prospectus, the consent shall be filed at the time of filing the MJDS prospectus; and
- (b) if the expertised statement is in an amendment to the MJDS prospectus, a rule 415 prospectus supplement, a rule 430A pricing prospectus, or a document incorporated by reference into a MJDS prospectus that was filed after the filing of the MJDS prospectus, the consent shall be filed at the time of filing the amendment, the rule 415 prospectus supplement, the rule 430A pricing prospectus or the document.

(2) Despite subsection (1), the filing requirements in paragraphs (1)(a) and (b) do not apply to the consent of a rating organization that issues a rating or provisional rating that is used in or in connection with a preliminary MJDS prospectus, an amendment to a preliminary MJDS prospectus, a MJDS prospectus, an amendment to a MJDS prospectus, a rule 415 prospectus supplement or a rule 430A pricing prospectus.

Further Consents

6.6 If a change to the MJDS prospectus is material to the consent filed under subsection 6.5(1), the issuer shall file a further consent contemporaneously with the filing of the change to the MJDS prospectus.

Form of Consent

6.7 The consent referred to in sections 6.5 and 6.6 shall be prepared in accordance with securities legislation.

Reports on Property

6.8 An issuer satisfies the requirement of securities legislation to file a report on the property of a natural resource company if it files a report prepared in accordance with U.S. federal securities law if a report is required to be filed with the SEC.

Appointment of Agent for Service

6.9 At the time of filing of the MJDS prospectus, the issuer shall file a duly executed submission to jurisdiction and appointment of agent for service of process in the required form.

Powers of Attorney

6.10 If a person or company signs a certificate by an agent under section 4.11, the issuer shall file a duly executed copy of the document authorizing the agent to sign the certificate not later than the time of filing the document in which the certificate is included.

Notification of Effectiveness

6.11 If the securities distributed under this Instrument are also offered or sold in the United States of America, the issuer whose securities are being distributed under this Instrument shall notify in writing the principal jurisdiction once the related registration statement filed with the SEC has become effective.

Exhibits to Registration Statement

6.12 An issuer shall file any exhibits to a registration statement requested by the securities regulatory authority in a non-principal jurisdiction.

Rule 415 Offerings

6.13 A commercial copy of each MJDS prospectus and rule 415 prospectus supplement need not be refiled if it is used, without change, in distributions of additional tranches of securities.

French Language Documentation Not Required

6.14 A preliminary MJDS prospectus and a MJDS prospectus in the French language need not be filed in Quebec for an offering of rights eligible to be made under paragraph 3.1(b), unless

- (a) the issuer is a reporting issuer in Quebec other than solely as a result of one or more rights offerings made under paragraph 3.1(b); or
- (b) 20 percent or more of the class of securities in respect of which the rights are issued is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

PART 7 AMENDMENT AND SUPPLEMENT PROCEDURES

Form of Amendment or Supplement

7.1 (1) An issuer shall amend or supplement disclosure documents filed under this Instrument in accordance with U.S. federal securities law.

(2) The amending or supplementing document shall contain the legends and certificates required by this Instrument.

Modification or Amendment

7.2 (1) If a registration statement is amended in a manner that modifies the related U.S. prospectus, an issuer shall file the documents containing the modification.

(2) If the receipt for the MJDS prospectus has not been issued and the filing has been made as a result of the occurrence of an adverse material change since the filing of the preliminary MJDS prospectus or an amendment to the preliminary MJDS prospectus, an issuer shall file the documents as an amendment to the preliminary MJDS prospectus.

Post-Effective Amendment

7.3 If a modification is made to a U.S. prospectus by filing with the SEC a post-effective amendment to the registration statement, an issuer shall file an amendment to the MJDS prospectus.

Amendment to Additional Disclosure

7.4 An issuer shall file an amendment in the event of an adverse material change in the additional disclosure contained only in the preliminary MJDS prospectus or a material change in the additional disclosure contained only in the MJDS prospectus.

Filing of Rule 415 Prospectus Supplement

7.5 (1) An issuer shall file a rule 415 prospectus supplement.

(2) A rule 415 prospectus supplement filed under subsection (1) shall be deemed to be incorporated into the MJDS prospectus as of the date of filing with the SEC, but only for the purpose of the distribution of the securities covered by the supplement.

Rule 415 Prospectus Supplement Not Filed

7.6 Despite sections 6.3 and 7.5, an issuer is not required to file a rule 415 prospectus supplement in the local jurisdiction unless it is the principal jurisdiction, if

- (a) the rule 415 prospectus supplement is used to describe the terms of a tranche of securities distributed under the MJDS prospectus, or is a preliminary form of the rule 415 prospectus supplement for use in marketing, and the securities covered by the supplement will not be distributed in the local jurisdiction; or
- (b) the rule 415 prospectus supplement is used to establish an MTN program or other continuous offering program or to update disclosure for the program, and securities will not be distributed under the program in the local jurisdiction.

Filing of Rule 430A Pricing Prospectus

7.7 An issuer shall file a rule 430A pricing prospectus.

Incorporation by Reference of Pricing Information

7.8 The information contained in a rule 430A pricing prospectus that was omitted from the U.S. prospectus in accordance with Rule 430A under the 1933 Act and any other additional information that the issuer has elected to include in the rule 430A pricing prospectus in accordance with U.S. federal securities law shall be deemed to be incorporated by reference into the MJDS prospectus as of the date of the rule 430A pricing prospectus.

Filing of Revised U.S. Prospectus or Prospectus Supplement

7.9 (1) If an issuer files with the SEC a revised U.S. prospectus, other than as an amendment to the related registration statement under rule 424(b) or another rule under the 1933 Act, or a prospectus supplement, to modify a U.S. prospectus, other than a U.S. prospectus for a rule 415 offering or a rule 430A offering, the issuer shall file the revised U.S. prospectus or prospectus supplement.

(2) The revised U.S. prospectus or prospectus supplement shall be deemed to be incorporated into the MJDS prospectus as of the date of the revised U.S. prospectus or prospectus supplement.

PART 8 DISSEMINATION REQUIREMENTS

General

8.1 Subject to section 8.3, a preliminary MJDS prospectus, a MJDS prospectus and amendments and supplements to either shall be sent to offerees and purchasers in accordance with prospectus delivery requirements of securities legislation.

Prospectus Supplements

8.2 All prospectus supplements applicable to the securities being distributed shall be attached to, or included with, the MJDS prospectus that is sent to offerees and purchasers of the securities.

Rule 430A Pricing Prospectus

8.3 Instead of the related MJDS prospectus, a rule 430A pricing prospectus shall be sent to offerees and purchasers in accordance with prospectus delivery requirements of securities legislation.

Documents Incorporated by Reference

8.4 Documents that are incorporated or deemed to be incorporated by reference into a preliminary MJDS prospectus or a MJDS prospectus, other than rule 415 prospectus supplements and rule 430A pricing prospectuses, shall be sent to offerees or purchasers if the documents are required to be sent to offerees or purchasers under U.S. federal securities law.

Provision of Documents Incorporated by Reference

8.5 Documents incorporated by reference or deemed to be incorporated by reference shall be provided by the issuer to any person or company upon request without charge.

PART 9 REGISTRATION REQUIREMENTS

Rights offerings

9.1 The dealer registration requirement does not apply to a trade made by a U.S. issuer in accordance with this Instrument of a right to purchase additional securities of its own issue issued by a U.S. issuer to its existing securityholders and of the securities issued upon the exercise of the right.

PART 10 CONFLICTS OF INTEREST

Distributions of a Registrant, Connected Issuer or a Related Issuer

10.1 The provisions of securities legislation that regulate conflicts of interest in connection with a distribution of securities of a registrant, a connected issuer of a registrant or a related issuer of a registrant that require specified disclosure in a preliminary prospectus or prospectus do not apply to a distribution under this Instrument.

PART 11 GENERAL

Representations as to Listing

11.1 The prohibitions in securities legislation regarding representations as to the listing, posting for trading or quotation of securities or to an application having been made or to be made for the listing, posting for trading or quotation of securities do not apply to distributions made under this Instrument.

Solicitations of Expressions of Interest

11.2 The prospectus requirement does not apply to solicitations of expressions of interest for the purchase of securities before the filing of a preliminary MJDS prospectus if

- (a) the issuer or selling securityholder has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities;
- (b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary MJDS prospectus for the securities and obtain a receipt for the preliminary MJDS prospectus from
 - (i) the regulator in at least one jurisdiction dated not more than two business days after the date that the agreement is entered into, and
 - (ii) the Canadian securities regulatory authorities in any other jurisdictions in which the distribution is to be made dated not more than three business days after the date that the agreement is entered into;
- (c) immediately upon entering into the agreement the issuer issues and files a news release announcing the agreement;
- (d) upon issuance of the receipt for the preliminary MJDS prospectus, a preliminary MJDS prospectus is sent to the person or company who has expressed an interest in acquiring the securities; and
- (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the MJDS prospectus has been filed and a receipt obtained.

Other Prospectus Requirements

11.3 National Instrument 41-101 *Prospectus Disclosure Requirements*, National Instrument 43-101 *Standards of Disclosure for Mineral Exploration and Development and Mining Properties*, National Instrument 43-102 *Guide for Engineers and Geologists Submitting Oil and Gas Reports* and National Instrument 45-101 *Rights Offerings* do not apply to a distribution of securities under this Instrument.

PART 12
BIDS FOR SECURITIES OF U.S. ISSUERS

General Eligibility Criteria

12.1 (1) A bid may be made under this Instrument if

- (a) the offeree issuer is a U.S. issuer;
- (b) the offeree issuer is not registered or required to be registered as an investment company under the 1940 Act;
- (c) the offeree issuer is not a commodity pool issuer;
- (d) the bid is subject to section 14(d) of the 1934 Act in the case of a take-over bid, or section 13(e) of the 1934 Act in the case of an issuer bid, and is not exempt from the 1934 Act;
- (e) the bid is made to all holders of the class of securities in Canada and the United States of America;
- (f) the bid is made to residents of Canada on the same terms and conditions as it is made to residents of the United States of America; and
- (g) less than 40 percent of each class of securities that is the subject of the bid is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

(2) Subject to subsection (3), the calculation under paragraph (1)(g) shall be made as of the end of the offeree issuer's last quarter before the date of filing the tender offer statement or issuer tender offer statement with the SEC or, if the quarter terminated within 60 days of the filing date, as of the end of the offeree issuer's preceding quarter.

(3) If another bid for securities of the same class of the offeree issuer is in progress at the date of the filing, the calculation for the subsequent bid shall be made as of the same date as for the first bid already in progress.

(4) If a take-over bid is made without the prior knowledge of the directors of the offeree issuer who are not insiders of the offeror or acting jointly or in concert with the offeror, or upon informing the directors of the proposed bid the offeror has a reasonable basis for concluding that the bid is being regarded as a hostile bid by a majority of the directors, and in either case the offeror lacks access to the relevant list of securityholders of the offeree issuer, it will be conclusively presumed that paragraph (1)(g) is satisfied and paragraph (a) in the definition of "foreign issuer" is not satisfied, unless

- (a) the aggregate published trading volume of the class on The Toronto Stock Exchange, The Montreal Exchange, the Vancouver Stock Exchange, the Alberta Stock Exchange and the Canadian Dealing Network Inc. exceeded the aggregate published trading volume of the class on national securities exchanges in the United States of America and Nasdaq for the 12 calendar month period before commencement of the bid or, if another bid for securities of the same class is in progress, the 12 calendar month period before commencement of the first bid already in progress;
- (b) disclosure that paragraph (1)(g) was not satisfied or paragraph (a) of the definition of "foreign issuer" was satisfied had been made by the issuer in its Form10-K most recently filed with the SEC under the 1934 Act; or

- (c) the offeror has actual knowledge that paragraph (1)(g) is not satisfied or paragraph (a) of the definition of foreign issuer is satisfied.

MJDS Take-Over Bid Circular and MJDS Issuer Bid Circular

12.2 (1) An offeror that makes a take-over bid or issuer bid under this Part shall file a MJDS take-over bid circular or MJDS issuer bid circular, respectively.

(2) A MJDS take-over bid circular, MJDS issuer bid circular, MJDS directors' circular, MJDS director's or officer's circular, a change to any of these documents or a variation to a MJDS take-over bid circular or a MJDS issuer bid circular, is a take-over bid circular, issuer bid circular, directors' circular, individual director's or officer's circular, a notice of change and a notice of variation, respectively, for purposes of securities legislation.

Securities Exchange Bids

12.3 (1) A securities exchange bid may be made under this Instrument if

- (a) the eligibility criteria set out in section 12.1 are satisfied;
- (b) the offeror or, if the securities being offered are of another issuer, the other issuer, meets the eligibility criteria set out in subparagraphs 3.1(a)(i), (ii), (iv) and(v) and has filed with the SEC all 1934 Act filings for a period of 36 calendar months immediately before the filing of the registration statement with the SEC;
- (c) the offeror or, if the securities being offered are of another issuer, the other issuer, has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on the NNM for a period of at least 12 calendar months immediately before the filing of the registration statement with the SEC and is in compliance with the obligations arising from the listing or quotation; and
- (d) one of the following is satisfied:
 - (i) the equity shares of the offeror or, if the securities being offered are of another issuer, the other issuer, have a public float of not less than U.S. \$75,000,000, determined as of a date within 60 days before the filing of the registration statement with the SEC;
 - (ii) the securities being offered are non-convertible debt having an investment grade rating or non-convertible preferred shares having an investment grade rating; or
 - (iii) the bid is an issuer bid made under this Instrument with securities of the issuer being offered as consideration.

(2) The dealer registration requirement does not apply to the trade of securities of an offeror or another issuer in a securities exchange issuer bid if the eligibility criteria in subsection (1) are met.

(3) The prospectus requirement does not apply to the distribution of securities of an offeror or another issuer in a securities exchange issuer bid if the eligibility criteria in subsection (1) are met and the offeror complies with the requirements of U.S. federal securities law applicable as a

result of the consideration for the securities of the offeree issuer being at least in part securities of the offeror or other issuer.

Compliance with U.S. tender offer requirements

12.4 (1) If an offeror makes a bid under this Part, the offeror shall comply with the requirements of

- (a) sections 14(d) and 14(e) of the 1934 Act and Regulations 14D and 14E under the 1934 Act for a take-over bid made under this Instrument; and
- (b) sections 13(e) and 14(e) of the 1934 Act and Regulations 13E and 14E under the 1934 Act for an issuer bid made under this Instrument.

(2) If the directors or an individual director or officer of an offeree issuer elects to comply with this Part instead of securities legislation otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a take-over bid made under this Part, each person so electing shall comply with sections 14(d) and 14(e) of the 1934 Act and Regulations 14D and 14E under the 1934 Act.

Form and Content of Bid Documents

12.5 (1) A MJDS take-over bid circular or a MJDS issuer bid circular shall contain the additional information, legends and certificates required by this section.

(2) The U.S. prospectus forming part of the registration statement filed with the SEC for a securities exchange bid shall be included in, or incorporated by reference into, the MJDS take-over bid circular or MJDS issuer bid circular.

(3) If an offeror makes a take-over bid under this Part and the directors or an individual director or officer elects to comply with this Part, instead of the securities legislation otherwise applicable, the directors shall prepare a MJDS directors' circular and an individual director or officer may prepare a MJDS director's or officer's circular, in each case, that contains the additional information, legends and certificates required by this section.

(4) The following statements shall be printed on the outside front cover page, or on a sticker on that page, of a MJDS take-over bid circular or MJDS issuer bid circular

- (a) *"This bid is made in Canada [for applicable securities exchange bids--- "by a U.S. issuer"] for securities of a U.S. issuer in accordance with U.S. federal securities laws. Securityholders should be aware that the U.S. requirements applicable to the bid may differ from those of [insert the names of the provinces and territories where bid is made]. [For securities exchange bids, also insert the following---"The financial statements included or incorporated by reference in this bid circular have not been prepared in accordance with Canadian generally accepted accounting principles and thus may not be comparable to financial statements of Canadian issuers."]*
- (b) *"[All of] [Certain of] the directors and officers of the offeror and [all of] [certain of] the experts named in this bid circular reside outside of Canada.[[Substantially] all of the assets of these persons and of the offeror may be located outside of Canada.] The offeror has appointed [name and address of agent for service] as its agent for service of process in Canada, but it may not be possible for securityholders to effect service of process within*

Canada upon the directors, officers and experts referred to above. It may also not be possible to enforce against the offeror, its directors and officers and [certain of] the experts named in this bid circular judgments obtained in Canadian courts predicated upon the civil liability provisions of applicable securities laws in Canada."

(5) The legend contained in paragraph 4(b) is not required if the offeror is incorporated or organized under the laws of Canada or a jurisdiction.

(6) An offeror shall include the following statement in a MJDS take-over bid circular or MJDS issuer bid circular

"Securities legislation in certain of the provinces [and territories] of Canada provides securityholders of the offeree issuer with, in addition to any other rights they may have at law, remedies for rescission [or [, in some jurisdictions,] damages if a circular or notice that is required to be delivered to such securityholders contains a misrepresentation or is not delivered to the securityholder, provided that such remedies for rescission [or damages] are exercised by the securityholder within the time limit prescribed by the securities legislation of the securityholder's province or territory. The securityholder should refer to the applicable provisions of the securities legislation of the securityholder's province [or territory] for particulars of these rights or consult with a legal adviser. Rights and remedies also may be available to securityholders under U.S. law; securityholders may wish to consult with a U.S. legal adviser for particulars of these rights."

(7) A MJDS take-over bid circular, MJDS issuer bid circular, MJDS directors' circular or MJDS director's or officer's circular need not contain disclosure relevant only to U.S. securityholders.

Incorporation by Reference

12.6 Except as otherwise provided in this Instrument, documents incorporated or deemed to be incorporated by reference into a tender offer statement, issuer tender offer statement or tender offer solicitation/recommendation statement under U.S. federal securities law shall be, and are deemed to be, incorporated by reference into a MJDS take-over bid circular, MJDS issuer bid circular, MJDS directors' circular or MJDS director's or officer's circular.

Statements Modified or Superseded

12.7 (1) A statement in a document incorporated or deemed to be incorporated by reference into a MJDS take-over bid circular, a MJDS issuer bid circular, a MJDS director's circular or a MJDS director's or officer's circular shall be deemed to be modified or superseded, for the purposes of the applicable circular, to the extent that a statement in the MJDS take-over bid circular, the MJDS issuer bid circular, the MJDS director's circular or the MJDS director's or officer's circular, or in any other subsequently filed document that also is or is deemed to be incorporated by reference into the applicable circular modifies or supersedes the statement.

(2) The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information in the document that it modifies or supersedes.

(3) The making of a modifying or superseding statement shall not be deemed an admission for any purpose that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material

fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

(4) A statement so modified or superseded shall not be deemed in its unmodified or superseded form to constitute part of the MJDS take-over bid, the MJDS issuer bid circular, the MJDS directors' circular or the MJDS director's or officer's circular.

(5) If documents are incorporated by reference into a MJDS take-over bid circular, a MJDS issuer bid circular, a MJDS directors' circular or a MJDS director's or officer's circular, the section that provides information about incorporation by reference shall include a statement that information has been incorporated by reference from documents filed with securities regulatory authorities in each jurisdiction in Canada in which the documents have been filed and shall state the name, address and telephone number of a person in Canada or the United States of America from whom copies of the documents may be obtained on request without charge.

Reconciliation of Financial Statements

12.8 A MJDS take-over bid circular or a MJDS issuer bid circular for a securities exchange bid that satisfies the eligibility criteria of subsection 12.3(1) is not subject to the requirement of securities legislation to reconcile to Canadian GAAP the financial statements included in, or incorporated by reference into, the bid circular.

Certificates

12.9 (1) A MJDS take-over bid circular shall contain a certificate in the following form signed by the chief executive officer and the chief financial officer of the offeror and, on behalf of the board of directors, by any two directors of the offeror other than the chief executive officer and chief financial officer, and each person or company that is a promoter of the offeror or a guarantor of the securities being offered in a securities exchange bid:

"The foregoing [, together with documents incorporated by reference,] contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made."

(2) A MJDS issuer bid circular shall contain a certificate in the form set out in subsection (1) signed by the chief executive officer and the chief financial officer of the issuer and, on behalf of the board of directors, by any two directors of the issuer other than the chief executive officer and chief financial officer, and each person or company that is a promoter of the issuer or a guarantor of the securities being offered in a securities exchange bid.

(3) A MJDS directors' circular shall contain a certificate in the form set out in subsection (1) signed on behalf of the board of directors by any two directors of the issuer.

(4) A MJDS director's or officer's circular shall contain a certificate in the form set out in subsection (1) signed by each director or officer sending the circular.

(5) The certificate for notices of variation and notices of change shall be in the form set out in subsection (1), amended to refer to the initial MJDS take-over bid circular or MJDS issuer bid circular and all notices of variation or change to the MJDS take-over bid circular or MJDS issuer bid circular.

(6) Any or all of the persons required to sign a certificate under subsections (1), (2), (3), (4) or (5) may sign by an agent duly authorized in writing.

Bid Circular Filing Procedures

12.10 (1) If an offeror makes a bid under this Instrument, the offeror shall file

- (a) the tender offer statement or issuer tender offer statement and all exhibits and amendments to the tender offer statement or issuer tender offer statement,
- (b) the MJDS take-over bid circular or MJDS issuer bid circular,
- (c) a certificate of the offeror, signed on its behalf by a senior officer, confirming that the eligibility criteria set forth in subsection 12.1(1) and, if applicable, section 12.3 are satisfied and that the circular has been prepared in accordance with U.S. federal securities law,
- (d) the written consent of an attorney, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified any expertised statement in any document filed under this section or section 12.14,
- (e) a submission to jurisdiction and appointment of agent for service of process duly executed by the offeror in section 2 of the required form, and
- (f) if a person or company signs a certificate by an agent under subsection 12.9(6), a duly executed copy of the document authorizing the agent to sign the certificate.

(2) Despite subsection (1), the filing requirement in paragraph (1)(d) does not apply to the consent of a rating organization that issues a rating or provisional rating that is used in or in connection with a MJDS take-over bid circular or MJDS issuer bid circular.

Notification to Offeree Issuer

12.11 An offeror filing a MJDS take-over bid circular shall so notify the offeree issuer at its principal office not later than the business day following the day the MJDS take-over bid circular is filed.

French Language Documentation Not Required

12.12 A MJDS take-over bid circular or MJDS issuer bid circular in the French language is not required to be filed in Quebec unless

- (a) the offeree issuer is a reporting issuer in Quebec; or
- (b) 20 percent or more of the class of securities that is the subject of the bid is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

MJDS Directors' Circulars and MJDS Director's or Officer's Circulars

12.13 If an offeror makes a take-over bid under this Part, and the directors or an individual director or officer of the offeree issuer elects to comply with this Instrument in preparation of a directors' circular or individual director's or officer's circular instead of securities legislation otherwise applicable, the directors or an individual director or officer who so elects shall file

- (a) the tender offer solicitation/recommendation statement and all exhibits or amendments to that statement,
- (b) the MJDS directors' circular or MJDS director's or officer's circular,
- (c) a statement by the directors or an individual director or officer that the circular has been prepared in accordance with U.S. federal securities law,
- (d) the written consent of an attorney, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified an expertised statement contained in the MJDS directors' circular or MJDS director's or officer's circular, and
- (e) if a person signs a certificate by an agent under subsection 12.9(3), a duly executed copy of the document authorizing the agent to sign the certificate.

Securities Exchange Bids

12.14 In the case of a securities exchange bid made under section 12.3 for which a registration statement is filed with the SEC, the offeror shall file contemporaneously with the filing of the bid circular the registration statement and all exhibits and amendments to the registration statement, together with all documents incorporated by reference into the registration statement.

Notices of Variation and Notices of Change

12.15 (1) Documents filed under this Part shall be changed or varied in accordance with U.S. federal securities law as additional tender offer materials, but the additional tender offer materials shall contain the legends and certificates required by this Part.

(2) An offeror shall file additional tender offer materials that vary the terms of the bid as a notice of variation and identify the materials as such.

(3) An offeror shall file additional tender offer materials that change the information in the tender offer materials or previous additional tender offer materials, other than information about a variation in the terms of the bid, as a notice of change and identify the materials as such.

(4) Additional tender offer materials required to be filed as a notice of variation and a notice of change shall be filed as both a notice of variation and a notice of change and identified as such.

(5) The directors or an individual director or officer of an offeror issuer shall file additional materials prepared by the directors or an individual director or officer as a notice of change.

(6) If a person or company signs a certificate by an agent under subsection 12.9(6), an offeror shall file a duly executed copy of a document authorizing an agent to sign a certificate.

(7) If a change to a MJDS take-over bid circular or MJDS issuer bid circular is material to the consent filed under paragraph 12.10(1)(d), an offeror shall file a further consent contemporaneously with the filing of the change to the MJDS take-over bid circular or MJDS issuer bid circular.

(8) If a change to a MJDS directors' circular or MJDS director's or officer's circular is material to the consent filed under paragraph 12.13(d), the directors in the case of a MJDS directors' circular or the director or officer sending the circular in the case of a MJDS director's

or officer's circular shall file a further consent contemporaneously with the filing of the change to a MJDS directors' circular or MJDS director's or officer's circular.

Dissemination Requirements

12.16 (1) An offeror shall send a MJDS take-over bid circular, MJDS issuer bid circular, a notice of change and a notice of variation to each securityholder whose last address as shown on the books of the offeree issuer is in the local jurisdiction.

(2) Despite subsection (1), a notice of change or a notice of variation shall be sent only to those securityholders whose securities were not taken up at the date of the occurrence of the change or variation.

(3) An offeree issuer shall send a MJDS directors' circular, MJDS director's or officer's circular and a notice of change to the MJDS directors' circular or MJDS director's or officer's circular to every person or company to whom a MJDS take-over bid circular is required to be sent under subsections (1) and (2).

(4) Documents referred to in subsections (1) and (3) that are sent or given to securityholders resident in the United States of America shall be sent by the offeror or offeree issuer as appropriate to each securityholder whose last address as shown on the books of the offeree issuer is in the local jurisdiction as soon as practicable following the time they are sent or given to securityholders resident in the United States of America.

(5) Documents referred to in subsections (1) and (3) that are published by long form or summary publication in the United States of America shall be sent by the offeror or offeree issuer as appropriate to each securityholder whose last address as shown on the books of the offeree issuer is in the local jurisdiction as soon as practicable following publication.

(6) Documents that are incorporated or deemed to be incorporated by reference into documents filed under this Part shall be sent to each securityholder whose last address as shown on the books of the offeree issuer is in the local jurisdiction if those documents are required to be sent to securityholders under U.S. federal securities law.

(7) Documents incorporated or deemed to be incorporated by reference shall be provided to any person or company upon request without charge by the person or company that filed the documents into which the documents are incorporated or deemed to be incorporated by reference.

PART 13 BUSINESS COMBINATIONS

Eligibility Criteria

13.1 (1) This Part may be used for the distribution of securities of a successor issuer in connection with a business combination if

- (a) each person or company participating in the business combination meets the eligibility criteria specified in subparagraphs 3.1(a)(i), (iv) and (v) and, other than participating persons or companies that are specified predecessors, subparagraphs 3.1(a)(ii) and 3.1(b)(ii);

- (b) the equity shares of each person or company participating in the business combination, other than a specified predecessor, have a public float of not less than U.S. \$75,000,000, determined as of a date within 60 days before the filing of the preliminary MJDS prospectus with the principal jurisdiction;
- (c) each person or company participating in the business combination, other than a specified predecessor, has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on the NNM for a period of at least 12 calendar months immediately preceding the filing of the preliminary MJDS prospectus in the principal jurisdiction and is in compliance with the obligations arising from the listing or quotation;
- (d) the issue or exchange of securities in the business combination is made to residents of Canada on the same basis, terms and conditions as it is made to residents of the United States of America; and
- (e) less than 40 percent of the class of securities to be distributed in the business combination by the successor issuer will be distributed to persons or companies whose last address as shown on the books of the participating person or company is in Canada.

(2) The requirement in paragraph (1)(b) may be satisfied for a participating person or company whose securities were the subject of a bid made under or eligible to have been made under this Instrument that terminated within the preceding 12 months if the requirement would have been satisfied immediately before commencement of the bid.

(3) The calculation in paragraph 1(e) shall be made

- (a) for each participating person or company as of the end of the participating person's or company's last quarter before the date of filing of the preliminary MJDS prospectus in the principal jurisdiction or, if that quarter terminated within 60 days of the filing date, as of the end of the participating person's or company's preceding quarter; and
- (b) on the basis that all persons or companies that have an option in respect of the consideration to be received under the business combination elect the option that would result in the issuance of the greatest number of securities.

Form and Content of Disclosure Documents and Procedures

13.2 (1) If the eligibility criteria set forth in section 13.1 are satisfied, securities may be distributed under this Part in connection with a business combination by complying with the requirements set out in Part 4, other than section 4.6, Parts 5 through 9 and Part 11.

(2) If securities are being distributed under this Part in connection with a business combination, the disclosure documents prepared for the business combination shall be filed as a MJDS prospectus and, if proxies will be solicited from holders of voting securities of the issuer and the issuer is a reporting issuer in the local jurisdiction, as an information circular.

PART 14
MATERIAL CHANGE REPORTING

News Release

14.1 A U.S. issuer that has a class of securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on Nasdaq satisfies the requirement of securities legislation to issue and file a news release upon the occurrence of a material change in its affairs by

- (a) complying with the requirements of the exchange on which its securities are listed or Nasdaq, as applicable, for making public disclosure of material information on a timely basis; and
- (b) immediately issuing in Canada and filing each news release disclosed by it for the purpose of complying with the requirements referred to in paragraph (a).

Material Change Reports

14.2 A U.S. issuer that has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act satisfies the requirement of securities legislation to file a material change report upon the occurrence of a material change in its affairs by

- (a) complying with the requirements of U.S. federal securities law relating to current reports; and
- (b) filing the current report filed with the SEC.

PART 15
FINANCIAL STATEMENTS, ANNUAL INFORMATION FORMS AND MANAGEMENT'S
DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF
OPERATIONS

Financial Statements

15.1 A U.S. issuer that has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act satisfies the requirements of securities legislation relating to the preparation, certification, filing and sending of interim financial statements, and annual financial statements and auditor's reports thereon by

- (a) complying with the requirements of U.S. federal securities law relating to quarterly reports and annual reports;
- (b) filing the quarterly reports and annual reports filed with the SEC; and
- (c) either
 - (i) sending each financial statement included in the report required to be filed under paragraph (b) to each securityholder whose last address as shown on the books of the reporting issuer is in the local

jurisdiction in the manner and at the time required by U.S. federal securities law if

- (A) the issuer is a reporting issuer solely as a result of a distribution or securities exchange bid made under this Instrument;
 - (B) the issuer meets the eligibility requirements in paragraph 3.1(c); or
 - (C) the issuer meets the eligibility requirements in subparagraphs 3.1(a)(i) to (v) and the issuer is a reporting issuer solely as the result of the distribution of securities that had an investment grade rating and met the eligibility requirements of subparagraph 3.1(a)(vi) at the time of distribution; or
- (ii) sending each financial statement included in the report required to be filed under paragraph (b) to each securityholder whose last address as shown on the books of the issuer is in the local jurisdiction in the manner and at the time required by securities legislation other than this Instrument.

Annual Reports, Annual Information Forms and Management's Discussion and Analysis

15.2 A U.S. issuer that has a class of securities registered under section 12 of the 1934 Act or that is required to file reports under section 15(d) of the 1934 Act satisfies the requirements of securities legislation to file annual reports, annual information forms and management's discussion and analysis of financial condition and results of operations by

- (a) complying with the requirements of U.S. federal securities law relating to annual reports, quarterly reports and management's discussion and analysis;
- (b) filing the annual report and quarterly report filed with the SEC; and
- (c) sending the annual report to each securityholder whose last address as shown on the books of the reporting issuer is in the local jurisdiction in the manner and at the time required by U.S. federal securities law.

PART 16 PROXIES AND PROXY SOLICITATION

Proxy Solicitation by a U.S. Issuer

16.1 A U.S. issuer that has a class of securities registered under section 12 of the 1934 Act satisfies the requirements of securities legislation relating to information circulars, proxies and proxy solicitation by

- (a) complying with the requirements of U.S. federal securities law relating to proxy statements, proxies and proxy solicitation;
- (b) filing all material relating to the meeting that is filed with the SEC; and
- (c) sending each document filed under paragraph (b) to each securityholder whose last address as shown on the books of the reporting issuer is in the

local jurisdiction in the manner and at the time required by U.S. federal securities law.

Proxy Solicitation by Another Person or Company

16.2 A person or company other than the issuer satisfies the requirements of securities legislation relating to proxies and proxy solicitation with respect to a U.S. issuer that has a class of securities registered under section 12 of the 1934 Act by fulfilling the requirements of paragraphs 16.1(a), (b) and (c).

Determination of Eligibility

16.3 If a proxy solicitation is made under section 16.2 and the person or company soliciting proxies lacks access to the relevant list of securityholders of the issuer, it will be conclusively presumed that paragraph (a) of the definition of foreign issuer is not satisfied, unless

- (a) the aggregate published trading volume of the class on The Toronto Stock Exchange, The Montreal Exchange, the Vancouver Stock Exchange, the Alberta Stock Exchange and the Canadian Dealing Network Inc. exceeded the aggregate published trading volume of the class on national securities exchanges in the United States of America and Nasdaq for the 12 calendar month period before commencement of the proxy solicitation or, if another proxy solicitation for securities of the same class is in progress, the 12 calendar month period before commencement of the first proxy solicitation already in progress;
- (b) disclosure that paragraph (a) of the definition of foreign issuer was satisfied had been made by the issuer in its Form 10-K most recently filed with the SEC under the 1934 Act; or
- (c) the person or company soliciting proxies has actual knowledge that paragraph (a) of the definition of foreign issuer is satisfied.

PART 17 INSIDER REPORTING

Insider Reporting

17.1 The insider report filing requirement does not apply to an insider of a U.S. issuer that has a class of securities registered under section 12 of the 1934 Act if the insider

- (a) complies with the requirements of U.S. federal securities law regarding insider reporting; and
- (b) files with the SEC any insider report required to be filed with the SEC under section 16(a) of the 1934 Act and the rules and regulations under the 1934 Act.

PART 18
COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING
ISSUER

Communication with Beneficial Owners of Securities of a Reporting Issuer

18.1 A U.S. issuer satisfies the requirements of securities legislation relating to communications with, delivery of materials to and conferring voting rights upon non-registered holders of its securities who hold their interests in the securities through one or more intermediaries by

- (a) complying with the requirements of Rule 14a-13 under the 1934 Act for any Canadian clearing agency and any intermediary whose last address as shown on the books of the issuer is in the local jurisdiction; and
- (b) complying with the requirements of National Policy Statement No. 41 or any successor instrument to that national policy statement with respect to fees payable to intermediaries, for any Canadian clearing agency and any intermediary whose last address as shown on the books of the issuer is in the local jurisdiction.

PART 19
TRUST INDENTURE REQUIREMENTS

Trust Indenture Requirements

19.1 The requirements of the legislation of the local jurisdiction applicable to trust indentures, for debt outstanding or guaranteed under the indenture, including a requirement that a person or company appointed as a trustee under a trust indenture be resident or authorized to do business in the local jurisdiction, do not apply to distributions made under this Instrument, if

- (a) the trust indenture under which the obligations are issued or guaranteed is subject to and complies with the *Trust Indenture Act of 1939* of the United States of America; and
- (b) at least one person or company appointed as trustee under the trust indenture
 - (i) is resident in the local jurisdiction,
 - (ii) is authorized to do business in the local jurisdiction, or
 - (iii) has filed a duly executed submission to jurisdiction and appointment of agent for service of process in section 3 of the required form.

PART 20
FINANCIAL DISCLOSURE

Financial Disclosure

20.1 National Instruments 52-101 *Future-Oriented Financial Information*, 52-102 *Use of Currencies*, 52-103 *Change of Auditor*, 52-104 *Basis of Accounting, Auditing and Reporting* and

52-105 *Change in the Ending Date of a Financial Year* do not apply to a U.S. issuer distributing securities or making a bid or filings in accordance with this Instrument.

PART 21 EXEMPTIONS

Exemption

21.1 (1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Despite subsection (1), in Alberta, only the regulator may grant such an exemption.

(4) An application made to the securities regulatory authority or regulator for an exemption from this Instrument shall include a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption.

Evidence of Exemption

21.2 Without limiting the manner in which an exemption under section 21.1 may be evidenced, the issuance by the regulator of a receipt for a MJDS prospectus or an amendment to a MJDS prospectus is evidence of the granting of the exemption if

- (a) the person or company that sought the exemption sent to the regulator the letter or memorandum referred to in subsection 21.1(4)
 - (i) on or before the date of filing of the preliminary MJDS prospectus, or
 - (ii) after the date of filing of the preliminary MJDS prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced by the issuance of a receipt for the MJDS prospectus or an amendment to the MJDS prospectus; and
- (b) the regulator has not sent notice of refusal to grant the exemption to the person or company that sought the exemption before, or concurrent with, the issue of the receipt for the MJDS prospectus.

PART 22 EFFECTIVE DATE

Effective Date

22.1 This Instrument comes into force on November 1, 1998.

APPENDIX A
METHOD 1 FOR PROSPECTUS CERTIFICATES FOR RULE 415 OFFERINGS

METHOD 1: FORWARD LOOKING CERTIFICATES TO BE INCLUDED IN A MJDS PROSPECTUS FOR A RULE 415 OFFERING OR SUPPLEMENT ESTABLISHING AN MTN PROGRAM OR OTHER CONTINUOUS DISTRIBUTION

Part 1
MJDS Prospectus for a Rule 415 Offering

Certificate of Issuer and Promoter

1.1 If a MJDS prospectus for a rule 415 offering establishes an MTN program or other continuous distribution, or if method 2 has not been elected by an issuer, the preliminary MJDS prospectus and the MJDS prospectus for a rule 415 offering shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer;
- (b) on behalf of the board of directors of the issuer, any two directors of the issuer, other than the chief executive officer or chief financial officer, duly authorized to sign; and
- (c) any person or company who is a promoter of the issuer:

"This MJDS prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of each supplement to this prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this MJDS prospectus and the supplement as required by [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]."

Underwriters' Certificates

1.2 A preliminary MJDS prospectus and a MJDS prospectus for a rule 415 offering shall contain an underwriter's certificate in the following form signed by each underwriter who, at the time of filing, is, or it is known will be, in a contractual relationship with the issuer or selling securityholder for the securities to be distributed under the MJDS prospectus, if

- (a) the MJDS prospectus establishes an MTN program or other continuous distribution; or
- (b) method 2 has not been elected by the underwriter:

"To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference will, as of the date of each supplement to this

prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered under this prospectus and the supplement as required by [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]."

Guarantor's Certificate

1.3 A preliminary MJDS prospectus and a MJDS prospectus for a rule 415 offering shall contain a certificate in the form described in section 1.1 signed by a guarantor of the securities to be distributed under the MJDS prospectus, if

- (a) this Instrument requires a prospectus certificate of the guarantor; and
- (b) either
 - (i) the MJDS prospectus establishes an MTN program or other continuous distribution, or
 - (ii) method 2 has not been elected by the guarantor.

Amendments

1.4 (1) An amendment to a MJDS prospectus for a rule 415 offering or an amended and restated MJDS prospectus shall, subject to subsection (2), contain

- (a) the certificates required under section 1.1 to be included in a MJDS prospectus, if the MJDS prospectus contains an issuer's certificate in the form described in section 1.1;
- (b) the certificates required under section 1.2 to be included in a MJDS prospectus, if the MJDS prospectus contains an underwriter's certificate in the form described in section 1.2; and
- (c) the certificate required under section 1.3 to be included in a MJDS prospectus, if the MJDS prospectus contains a guarantor's certificate in the form described in section 1.3.

(2) In each certificate required under subsection (1), the reference to "this MJDS prospectus" shall be omitted and replaced by

- (a) in the case of an amendment to a MJDS prospectus, "the MJDS prospectus dated [insert date] as amended by this amendment"; and
- (b) in the case of an amended and restated MJDS prospectus, "this amended and restated MJDS prospectus".

Part 2 MJDS Prospectus Supplements Establishing a MTN Program

Certificate of Issuer and Promoter

2.1 If an issuer's certificate in the form described in section 1.1 was not included in the corresponding MJDS prospectus, a MJDS prospectus supplement that establishes a MTN program or other continuous distribution shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer;
- (b) on behalf of the board of directors of the issuer, any two directors of the issuer, other than the chief executive officer or chief financial officer, duly authorized to sign; and
- (c) any person or company who is a promoter of the issuer:

"The MJDS prospectus together with the documents incorporated in the prospectus, as supplemented by the foregoing, will, as of the date of each supplement to the MJDS prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered under the MJDS prospectus and by the supplement as required by [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]."

Underwriters' Certificates

2.2 A MJDS prospectus supplement that establishes an MTN program or other continuous distribution shall contain a certificate in the following form signed by each underwriter who

- (a) is in a contractual relationship with the issuer or selling securityholder for the securities being distributed under the MJDS prospectus supplement; and
- (b) did not sign and include in the corresponding MJDS prospectus a certificate in the form described in section 1.2:

"To the best of our knowledge, information and belief, the MJDS prospectus together with the documents incorporated in the prospectus, as supplemented by the foregoing, will, as of the date of each supplement to the MJDS prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered under the MJDS prospectus and by the supplement as required by [insert name of jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]."

Guarantor's Certificate

2.3 A MJDS prospectus supplement that establishes an MTN program or other continuous distribution shall contain a certificate in the form described in section 2.1 signed by a guarantor of the securities being distributed under the MJDS prospectus supplement, if

- (a) this Instrument requires a prospectus certificate of the guarantor; and
- (b) a prospectus certificate of the guarantor in the form described in section 1.3 was not included in the corresponding MJDS prospectus.

Amendments

2.4 (1) An amendment to a MJDS prospectus supplement or an amended and restated MJDS prospectus supplement that establishes an MTN program or other continuous distribution shall, subject to subsection (2), contain

- (a) the certificates required under section 2.1 to be included in a MJDS prospectus supplement, if the MJDS prospectus supplement contains an issuer's certificate in the form described in section 2.1;
- (b) the certificates required under section 2.2 to be included in a MJDS prospectus supplement, if the MJDS prospectus supplement contains an underwriter's certificate in the form described in section 2.2; and
- (c) the certificate required under section 2.3 to be included in a MJDS prospectus supplement, if the MJDS prospectus supplement contains a guarantor's certificate in the form described in section 2.3.

(2) In each certificate required under subsection (1), the reference to "this MJDS prospectus supplement" shall be omitted and replaced by

- (a) in the case of an amendment to a MJDS prospectus supplement, "the MJDS prospectus supplement dated [insert date] as amended by this amendment"; and
- (b) in the case of an amended and restated MJDS prospectus supplement, "this amended and restated MJDS prospectus supplement".

APPENDIX B

METHOD 2 FOR PROSPECTUS CERTIFICATES FOR RULE 415 OFFERINGS

METHOD 2: NON-FORWARD LOOKING PROSPECTUS CERTIFICATES TO BE INCLUDED IN BOTH A MJDS PROSPECTUS AND SUPPLEMENT

Part 1
MJDS Prospectus for a Rule 415 Offering

Certificate of Issuer and Promoter

1.1 If method 2 is elected by an issuer, a preliminary MJDS prospectus and a MJDS prospectus shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer;
- (b) on behalf of the board of directors of the issuer, any two directors of the issuer, other than the chief executive officer or chief financial officer, duly authorized to sign; and
- (c) any person or company who is a promoter of the issuer:

"This MJDS prospectus, together with the documents incorporated in this prospectus, constitutes full, true and plain disclosure of all material facts relating to the securities as required by the securities laws of [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]."

Underwriters' Certificates

1.2 A preliminary MJDS prospectus and a MJDS prospectus for a rule 415 offering shall contain an underwriter's certificate in the following form signed by each underwriter who

- (a) at the time of filing, is, or it is known will be, in a contractual relationship with the issuer or selling securityholder for the securities to be distributed under the MJDS prospectus; and
- (b) elects method 2:

"To the best of our knowledge, information and belief, the MJDS prospectus, together with the documents incorporated in the prospectus, constitutes full, true and plain disclosure of all material facts relating to the securities as required by [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]."

Guarantor's Certificate

1.3 A MJDS prospectus shall contain a certificate in the form described in section 1.1 signed by a guarantor of the securities to be distributed under the MJDS prospectus, if

- (a) this Instrument requires a prospectus certificate of the guarantor; and
- (b) method 2 is elected by the guarantor.

Amendments

1.4 (1) An amendment to a MJDS prospectus or an amended and restated MJDS prospectus shall, subject to subsection (2), contain

- (a) the certificates required under section 1.1 to be included in a MJDS prospectus, if the issuer has elected method 2;
- (b) the certificate described in section 1.2 signed by each underwriter who
 - (i) at the time of filing the amendment or the amended and restated MJDS prospectus, is, or it is known will be, in a contractual relationship with the issuer or selling securityholder for the securities to be distributed under the MJDS prospectus, and
 - (ii) has elected method 2; and
- (c) the certificate required under section 1.3 to be included in a MJDS prospectus, if the MJDS prospectus contains a guarantor's certificate in the form described in section 1.3.

(2) In each certificate required under subsection (1), the reference to "this MJDS prospectus" shall be omitted and replaced by

- (a) in the case of an amendment to a MJDS prospectus, "the MJDS prospectus dated [insert date] as amended by this amendment"; and
- (b) in the case of an amended and restated MJDS prospectus, "this amended and restated MJDS prospectus".

Part 2 MJDS Prospectus Supplement

Certificate of Issuer and Promoter

2.1 If method 2 is elected by an issuer, each MJDS prospectus supplement shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer;
- (b) on behalf of the board of directors of the issuer, any two directors of the issuer, other than the chief executive officer or chief financial officer, duly authorized to sign; and
- (c) any person or company who is a promoter of the issuer:

"The MJDS prospectus, together with the documents incorporated in the prospectus, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered under the MJDS prospectus and this supplement as required by [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]."

Underwriters' Certificates

2.2 Each MJDS prospectus supplement shall contain a certificate in the following form signed by each underwriter who

- (a) is in a contractual relationship with the issuer or selling securityholder for the securities being distributed under the supplement; and
- (b) has elected method 2:

"To the best of our knowledge, information and belief, the MJDS prospectus, together with the documents incorporated in the prospectus, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered under the MJDS prospectus and this supplement as required by [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed."]."

Guarantor's Certificate

2.3 Each MJDS prospectus supplement shall contain a certificate in the form described in section 2.1 signed by a guarantor of the securities being distributed under the MJDS prospectus supplement, if

- (a) this Instrument requires a prospectus certificate of the guarantor; and
- (b) method 2 is elected by the guarantor.

Amendments

2.4 (1) An amendment to a MJDS prospectus supplement or an amended and restated MJDS prospectus supplement shall, subject to subsection (2), contain

- (a) the certificates required under section 2.1 to be included in a MJDS prospectus supplement, if the MJDS prospectus supplement contains an issuer's certificate in the form described in section 2.1;
- (b) the certificate described in section 2.2 signed by each underwriter who
 - (i) at the time of filing the amendment or the amended and restated MJDS prospectus supplement, is in a contractual relationship with the issuer or selling securityholder for the securities being distributed under the MJDS prospectus supplement, and
 - (ii) has elected method 2; and
- (c) the certificate required under section 2.3 to be included in a MJDS prospectus supplement, if the MJDS prospectus supplement contains a guarantor's certificate in the form described in section 2.3.

(2) In each certificate required under subsection (1), the reference to "this MJDS prospectus supplement" shall be omitted and replaced by

- (a) in the case of an amendment to a MJDS prospectus supplement, "the MJDS prospectus supplement dated [insert date] as amended by this amendment"; and
- (b) in the case of an amended and restated MJDS prospectus supplement, "this amended and restated MJDS prospectus supplement".