

Ontario Securities Commission

Companion Policy 71-101CP

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**ONTARIO SECURITIES COMMISSION COMPANION POLICY 71-101CP
*THE MULTI JURISDICTIONAL DISCLOSURE SYSTEM***

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PART 1 INTRODUCTION AND PURPOSE

Introduction and Purpose

1.1 The multijurisdictional disclosure system is a joint initiative by the CSA and the SEC to reduce duplicative regulation in cross-border offerings, issuer bids, take-over bids, business combinations and continuous disclosure and other filings.

The multijurisdictional disclosure system (the "MJDS") was originally implemented in Canada in 1991 by the members of the CSA through National Policy Statement No. 45 ("NP 45"). NP 45 was replaced by National Instrument 71-101 ("NI 71-101") which implements in each Canadian jurisdiction those portions of NP 45 which are of a legislative nature. Companion Policy 71-101CP to NI 71-101 ("this Policy") provides other information including statements relating to the exercise of discretion by the Canadian securities regulatory authorities under NI 71-101 and the manner in which its provisions are intended to be interpreted or applied by them.

NI 71-101 sets out the substantive requirements of the MJDS which apply in all jurisdictions. Each jurisdiction has implemented NI 71-101 by one or more instruments forming part of the law of that jurisdiction ("the implementing law of a jurisdiction"). The implementing law of a jurisdiction can take the form of a regulation, rule, ruling or order. Form 71-101F1 sets out the forms of submission to jurisdiction and appointment of agent for service of process.

Ontario, Alberta, British Columbia, Manitoba and Nova Scotia have adopted NI 71-101 by rule. Saskatchewan has adopted it by regulation. All other jurisdictions have adopted NI 71-101 by Policy Statement. To the extent that any provision of this Policy is inconsistent or conflicts with the applicable provisions of NI 71-101 in those jurisdictions that have adopted NI 71-101 by Policy Statement, the provisions of NI 71-101 prevail over the provisions of this Policy.

PART 2 OVERVIEW OF THE MJDS

Purpose

2.1 The MJDS is intended to remove unnecessary obstacles to certain offerings of securities of U.S. issuers in Canada, to facilitate take-over and issuer bids and business combinations involving securities of certain U.S. issuers and to facilitate compliance by U.S. issuers with proxy and continuous disclosure requirements, while ensuring that Canadian investors remain adequately protected.

Application

2.2 (1) Offerings

The MJDS permits public offerings of securities of U.S. issuers that meet the eligibility criteria specified in NI 71-101 to be made in Canada on the basis of disclosure documents prepared in accordance with U.S. federal securities law, with certain additional Canadian disclosure. A

public offering of securities of a U.S. issuer may be made under the MJDS either in Canada and the United States or in Canada only.

(2) Rights Offerings, Bids and Business Combinations

The MJDS also reduces disincentives to the extension to Canadian securityholders of rights offerings by U.S. issuers by permitting such rights offerings to be made in Canada on the basis of U.S. disclosure documents. Similarly, it facilitates the extension to Canadian securityholders of U.S. issuers of take-over bids, issuer bids and business combinations in the circumstances contemplated by Parts 12 and 13 of NI 71-101. The MJDS permits such transactions to be made in Canada generally in the same manner as in the United States and on the basis of U.S. disclosure documents.

Regulatory Review

2.3 Regulatory review of disclosure documents used under the MJDS for offerings made by a U.S. issuer both in Canada and the United States will be that customary in the United States, with the SEC being responsible for carrying out the review. Whether the offering is made both in Canada and the United States or solely in Canada, Canadian securities regulatory authorities will monitor materials filed under the MJDS to check compliance with the specific disclosure and filing requirements of NI 71-101. In addition, the substance of the disclosure documents will be reviewed in the unusual case if, through monitoring of the materials or otherwise, the Canadian securities regulatory authorities have reason to believe that there may be a problem with a transaction or the related disclosure or other special circumstances exist.

Liability Unaffected

2.4 The MJDS does not change the liability provisions of Canadian securities legislation or the discretionary authority of Canadian securities regulatory authorities to halt a distribution, remove an exemption, cease trade the related securities, or refuse to issue a receipt for a preliminary MJDS Prospectus or a MJDS Prospectus. The securities regulatory authority or, in the case of Ontario, the regulator, may also grant exemptions from the requirements of NI 71-101 in specific cases and also exercise its public interest jurisdiction if it determines that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

Compliance with U.S. Law

2.5 Use of the MJDS is based on compliance with U.S. federal securities law. Thus, any person or company carrying out a transaction or filing a document in Canada under the MJDS must comply in full with all applicable U.S. requirements. However, a violation of a U.S. requirement will not automatically disqualify a person or company from using the MJDS with respect to a transaction or document. A person or company that violates a U.S. requirement, depending upon the circumstances, may be considered to have violated an equivalent requirement of a jurisdiction in Canada with respect to a transaction or document.

The U.S. Multijurisdictional Disclosure System

2.6 (1) Concurrently with the adoption of NP 45, the SEC adopted rules, forms and schedules for the implementation of a similar multijurisdictional disclosure system in the United States. The

U.S. system removes unnecessary impediments to certain offerings of securities of Canadian issuers in the United States and facilitates the extension to U.S. securityholders of Canadian issuers of take-over bids, issuer bids and business combinations in the circumstances contemplated by the U.S. system.

(2) The procedures to be followed in Canada when the U.S. system is used for certain offerings of securities of a Canadian issuer in the U.S. are set out in Part 4 of this Policy.

PART 3 NI 71-101

Application of NI 71-101 in each Jurisdiction

3.1 The MJDS provided for in NI 71-101 has been implemented in each jurisdiction. Except to the extent specifically provided in NI 71-101 or the implementing law of a jurisdiction, the securities legislation continues to apply. The securities legislation may prescribe additional requirements or procedures in relation to the transactions and filings contemplated in NI 71-101.

MJDS Prospectus Distributions of Securities of U.S. Issuers

3.2 (1) Election to Use the MJDS

The use of the MJDS to distribute securities of a U.S. issuer is elective. Persons or companies permitted to distribute securities of a U.S. issuer under NI 71-101 may alternatively make those distributions in accordance with other provisions of the securities legislation, including, if the relevant eligibility criteria are satisfied, case by case exemptive relief under CSA Notice #95-4 Proposed Foreign Issuer Prospectus and Continuous Disclosure System.

(2) General

NI 71-101 permits the following securities of a U.S. issuer to be distributed by prospectus in Canada, either by the issuer or by a selling securityholder, on the basis of documentation prepared in accordance with U.S. federal securities law, with certain additional Canadian disclosure:

- (a) non-convertible debt and non-convertible preferred shares that have an investment grade rating;
- (b) convertible debt and preferred shares that have an investment grade rating and may not be converted for at least one year after issuance, if the issuer meets a public float requirement;
- (c) certain rights to acquire securities of the issuer; and
- (d) other securities, if the issuer meets a public float requirement.

The MJDS may also be used for securities exchange bids and business combinations, in each case as described below.

The purpose of the public float requirement is to single out issuers whose size is such that (i) information about them is publicly disseminated and (ii) they have a significant market following. As a result, the marketplace can be expected to set efficiently a price for the securities of these issuers based on publicly available information.

Non-convertible debt and preferred shares that have an investment grade rating are particularly appropriate for the MJDS because these securities trade primarily on the basis of their yield and an assessment of creditworthiness by an independent rating organization. Typically, the four highest rating categories, within which there may be subcategories or gradations indicating relative standing, signify an investment grade rating by an independent rating organization. The investment grade ratings for certain rating organizations currently are:

Rating Preferred

Organization Debt Shares

CBRS Inc. A++, A+, A or B++ P-1+, P-1, P-2 or P-3

Dominion Bond Rating AAA, AA, A or BBB Pfd-1, Pfd-2 or

Service Limited Pfd-3

Moody's Investors Aaa, Aa, A or Baa "aaa", "aa", "a"

Service, Inc. or "baa"

Standard & Poor's AAA, AA, A or BBB AAA, AA, A

Corporation or BBB

The lack of a public float requirement for offerings of these securities allows the MJDS to be used by issuers of securities having an investment grade rating, such as finance subsidiaries, that access the market frequently, but do not meet the public float requirements. Debt and preferred shares that have an investment grade rating and are not convertible into other securities for at least one year after issuance can be expected to trade primarily on the basis of their yield and independent rating, but are also priced to some extent on the basis of the anticipated value of the security into which they are convertible. Thus, the MJDS is available for these securities on the basis of their investment grade rating, coupled with a public float requirement.

In the case of offerings of common shares or other securities other than non-convertible debt and preferred shares that have an investment grade rating, the MJDS is available upon satisfaction of a public float requirement. The MJDS generally may not be used for the offering of derivative securities, except in the circumstances set out in subsection 3.3(2) of NI 71-101. Therefore, offerings of derivative securities such as stock index warrants, currency warrants and debt the interest on which is based upon the performance of a stock index may not be made under the MJDS.

Subject to certain limitations, the MJDS permits U.S. issuers to make rights offerings by prospectus to existing securityholders in Canada on the basis of documentation prepared in accordance with U.S. federal securities law, with certain additional Canadian disclosure. There is no public float requirement for rights offerings since existing securityholders can reasonably be expected to be familiar with the issuer and follow publicly available information concerning it.

The MJDS is available for rights offerings primarily to encourage fair treatment of Canadian investors. Previously, a U.S. issuer might not have extended rights offerings to its securityholders in Canada due to the perceived costs and burdens of meeting Canadian regulatory requirements. The MJDS is intended to alter a U.S. issuer's cost-benefit analysis in favour of extending a rights offering to Canadian investors.

Offerings of debt and preferred shares that are not eligible to be made under paragraph 3.1(a) of NI 71-101, rights offerings that are not eligible to be made under paragraph 3.1(b) of NI 71-101, securities exchange bids that are not eligible to be made under section 12.3 of NI 71-101, and business combinations that are not eligible to be made under section 13.1 may be made

under paragraph 3.1(c) of NI 71-101, if subparagraphs 3.1(c)(i) and (ii) of NI 71-101 are satisfied.

(3) Public Interest Jurisdiction

All MJDS prospectus distributions remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The Canadian securities regulatory authorities will continue to exercise their public interest jurisdiction in specific cases if they determine that it is necessary to do so to preserve the integrity of the Canadian capital markets or to protect investors.

(4) Form and Content of MJDS Prospectus

A preliminary MJDS prospectus, MJDS prospectus or amendment or supplement to a preliminary MJDS prospectus or MJDS prospectus need not comply with the prospectus form and content requirements of securities legislation applicable to distributions of securities made other than under NI 71-101 except as specifically provided in NI 71-101 and the implementing law of a jurisdiction.

Each preliminary MJDS prospectus and MJDS prospectus is subject to requirements of securities legislation to provide full, true and plain disclosure of all material facts relating to the securities proposed to be distributed and not to contain an untrue statement of a material fact or omit 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.

(5) Format of MJDS Prospectus

A preliminary MJDS prospectus and a MJDS prospectus may be either a separate Canadian prospectus or a wrap-around prospectus that includes the U.S. prospectus filed with the SEC.

An issuer is required to file a preliminary MJDS prospectus for use in Canada even if the issuer does not prepare a preliminary prospectus for use in the United States.

(6) Reconciliation of Financial Statements

Reconciliation of financial statements to Canadian GAAP is not required for distributions made under NI 71-101 other than those made under paragraph 3.1(c) of NI 71-101.

An issuer eligible under paragraph 3.1(c) of NI 71-101 to file a MJDS prospectus may apply to each applicable Canadian securities regulatory authority for an exemption permitting the issuer to reconcile financial statements in the MJDS prospectus to International Accounting Standards in lieu of Canadian GAAP.

U.S. federal securities law requires that annual financial statements be accompanied by an auditor's report prepared in accordance with U.S. generally accepted auditing standards. Therefore, a MJDS prospectus which by definition, includes a U.S. prospectus, would include audited financial statements with a report prepared in accordance with U.S. generally accepted auditing standards. Unlike section 4.6 of NI 71-101 which imposes a requirement to reconcile financial statements to Canadian GAAP, no additional auditing standard requirement is imposed by NI 71-101.

(7) Underwriters' Certificate in Rights Offerings

A preliminary MJDS prospectus and a MJDS prospectus used for a distribution of rights under NI 71-101 need not contain an underwriters' certificate if (i) there is no soliciting activity in the local jurisdiction other than the dissemination by the issuer of the rights and the preliminary MJDS prospectus and MJDS prospectus and the solicitation of the exercise of those rights by existing securityholders, and (ii) securities acquired under a standby underwriting commitment

by a dealer to purchase securities unsubscribed for by other securityholders are not resold in the local jurisdiction.

(8) Distributions made in Quebec

For distributions made in Quebec, both English and French language versions of the preliminary MJDS Prospectus, MJDS Prospectus and each amendment and supplement thereto are required to be filed. Legislation in Quebec requires that French language versions of the documents or portions of documents incorporated by reference into any of those documents be filed in Quebec not later than the time the incorporating document is filed. Thus, French language versions of continuous disclosure documents need not be filed until incorporated by reference. In addition, information contained in a Form 10-K, Form 10-Q or Form 8-K prescribed under the 1934 Act that is not required to be disclosed under Quebec requirements applicable to distributions not made under the MJDS need not be included in the French language versions of those documents.

Despite the foregoing, section 6.15 of NI 71-101 provides that French language versions of the disclosure documents are not required to be filed for rights offerings made under paragraph 3.1(b) of NI 71-101, unless (i) the issuer is a reporting issuer in Quebec other than solely as a result of rights offerings made under paragraph 3.1(b) of NI 71-101, or (ii) 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.

(9) Modification or Amendment

Part 7 of NI 71-101 outlines the amendment and supplement procedures for MJDS prospectus distributions.

An amendment to a registration statement that modifies the related U.S. prospectus, other than an amendment that 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, need not be filed as an amendment to the preliminary MJDS prospectus.

(10) Advertising

The provisions of securities legislation relating to the advertising of securities or the making of representations or undertakings in respect of distributions of securities, other than representations as to listing or quotation of securities, including the distribution of material to potential investors and the provision of information to the media before the issuance of a receipt for the MJDS prospectus, apply to distributions made under the MJDS.

(11) Review Procedures

Disclosure documents filed for a distribution under NI 71-101 will be subject to SEC review procedures if the offering is being made both in Canada and the United States. Whether the offering is made both in Canada and the United States or solely in Canada, the Canadian securities regulatory authorities will monitor materials filed under NI 71-101 to check compliance with the specific disclosure and filing requirements of NI 71-101. In addition, the substance of the disclosure documents will be reviewed in the unusual case if, through monitoring of the materials or otherwise, the Canadian securities regulatory authorities have reason to believe that there may be a problem with a transaction or the related disclosure or other special circumstances exist.

An issuer making an offering in Canada and the U.S. using the MJDS must select a principal jurisdiction in Canada. As of the date of this Policy, the Canadian securities regulatory authorities of New Brunswick, Prince Edward Island, Newfoundland, Yukon Territory and the

Northwest Territories have indicated that they will not agree to act as principal jurisdiction under section 5.1 of NI 71-101.

(12) Receipt Procedures

The receipt for a preliminary MJDS Prospectus filed under NI 71-101 will be issued by each regulator when the preliminary MJDS Prospectus and all other required documentation have been filed with it in the manner required by NI 71-101.

If a distribution under NI 71-101 is being made concurrently in the United States, the receipt for a MJDS prospectus filed under NI 71-101 will be issued by each regulator when the following conditions have been satisfied, unless the regulator has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist,

- (a) if the regulator is in the principal jurisdiction, the related registration statement has become effective under the SEC rules, as notified in writing by the issuer under section 6.11 of NI 71-101;
- (b) in the case of the other jurisdictions, the regulator in the principal jurisdiction has notified each other applicable regulator that the regulator in the principal jurisdiction has issued a receipt for the MJDS Prospectus; and
- (c) the MJDS prospectus, all documents incorporated or deemed to be incorporated therein by reference and all other documentation required to be filed under NI 71-101 have been filed with the regulator in the manner required by NI 71-101.

If the offering is being made solely in Canada, the receipt for a MJDS prospectus filed under NI 71-101 will be issued by each applicable regulator when the conditions set out in paragraphs (b) and (c) above have been satisfied, unless it has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist.

Issuers filing a MJDS Prospectus under NI 71-101 may elect to use the receipt system in the national policy on mutual reliance for prospectuses. Reference should be made to that policy for the procedures, requirements and benefits of the system provided by that policy.

(13) Rule 415 Offerings and Rule 430A Offerings

- (a) The procedures permitted by Rule 415 and Rule 430A under the 1933 Act may be used for offerings of securities under NI 71-101. National Policy Statement No. 44 Rules for Shelf Prospectus Offerings and for Pricing Offerings after the Final Prospectus is Received and any successor instrument to that National Policy Statement does not apply to those offerings. A prospectus supplement filed in accordance with the procedures permitted by Rule 415 or Rule 430A will not be subject to the review procedures set out in subsection 3.2(11) or the receipt procedures set out in subsection 3.2(12) of this Policy.
- (b) None of a revised U.S. prospectus, a prospectus supplement, a rule 415 prospectus supplement and a rule 430A pricing prospectus is an amendment to a MJDS prospectus.

(14) Certification for Rule 415 Offerings

Method 1 can be substituted for method 2 and vice versa until the filing of the MJDS prospectus. The method chosen for the provision of the issuer's and underwriters' certificates need not be the same.

Method 1 allows the use of prospectus supplements and in the case of MTN programs, pricing supplements (i.e., supplements setting the price and certain variable terms of the securities rather than establishing the program) that do not contain certificates, if a "forward-looking" certificate has been included in the prospectus or in the supplement establishing the program.

Method 2 requires the inclusion of certificates in each prospectus supplement and pricing supplement filed under the MJDS, provided that no certificate is required to be included in a prospectus supplement or pricing supplement filed in the principal jurisdiction if the securities covered by the prospectus supplement or pricing supplement are not offered in Canada.

The text of the certificates for rule 415 offerings is set forth in the appendix to NI 71-101.

(15) Disclosure of Interest of Underwriter

An underwriter of the Canadian distribution named in the preliminary MJDS Prospectus or MJDS Prospectus remains subject to any obligation under Canadian securities legislation to disclose the names of persons or companies having an interest in its capital.

(16) Conflicts of Interest

The provisions of Canadian securities legislation that regulate conflicts of interest in connection with the distribution of securities of a registered dealer, a connected issuer of a registered dealer or a related issuer of a registered dealer, other than disclosure, apply to distributions under NI 71-101. In some jurisdictions, participation of an independent underwriter in these distributions may be required.

(17) Trust Indenture Requirements

Section 19.1 of NI 71-101 provides that any requirement of a jurisdiction applicable to trust indentures for any debt outstanding or guaranteed thereunder, 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 jurisdiction, does not apply to offerings made under NI 71-101, if the conditions of Section 19.1 are met.

(18) Fees

Canadian securities legislation regarding fees applies to a filing made under NI 71-101.

Registration Requirements for Rights Offerings

3.3 The dealer registration requirement applies to

- (a) a dealer that solicits exercise of rights; and
- (b) a dealer that resells securities acquired under a standby underwriting commitment by the dealer to purchase securities unsubscribed for by other securityholders

in a rights offering made under NI 71-101.

Bids for Securities of U.S. Issuers

3.4 (1) General

Subject to the provisions of Part 12 of NI 71-101, the MJDS permits eligible take-over bids and issuer bids for securities of a U.S. issuer to be made in accordance with U.S. federal securities law to Canadian residents if Canadian residents hold less than 40 percent of the securities. The MJDS enables offerors generally to comply with applicable U.S. disclosure requirements and

requirements governing the conduct of the bid instead of complying with Canadian requirements.

The MJDS is extended to take-over bids and issuer bids primarily to encourage fair treatment of Canadian investors. Securityholders in a particular jurisdiction who are excluded from an offer may be relegated to choosing, without the disclosure and procedural safeguards available under either the Canadian or the U.S. regulatory scheme, either to sell into the secondary market at less than the full bid price and incur additional transactional costs or to remain minority securityholders subject to the possibility of being forced out of their equity position in a subsequent merger. The application of the MJDS to bids is intended to facilitate bids by reducing duplicative regulation and avoiding conflict between the two regulatory schemes. Because the substantive protections and disclosure obligations applicable to bids in the United States are, as a whole, comparable to those prescribed by Canadian securities legislation, Canadian resident holders of securities of U.S. issuers should remain adequately protected by the application of U.S. rather than Canadian rules in the circumstances contemplated by NI71-101.

Particularly when relatively few securities are held by Canadian residents, there may be a disincentive to extend a bid to them if doing so would require compliance with additional Canadian regulatory requirements. The availability of the MJDS for bids for securities of U.S. issuers is intended to alter the offeror's cost-benefit analysis in favour of extending those bids to Canadian residents.

There are no offeror eligibility requirements except in the case of securities exchange bids. For securities exchange bids made under the MJDS, compliance with U.S. disclosure requirements satisfies Canadian disclosure requirements with respect to the offeror and the offered securities only if the offeror meets certain reporting history, listing and other eligibility requirements and, in the case of securities exchange take-over bids, a public float or investment grade rating requirement. In take-over bids, unlike issuer bids and rights offerings, the investor has not already made an investment decision with respect to the issuer of the securities that are being offered in the exchange.

Bids made under the MJDS must be extended to all holders of the class of securities subject to the bid in Canada and the United States. Further, bids must be made on the same terms and conditions to all securityholders.

The provisions of securities legislation governing the form and content of disclosure documents and the conduct of bids are varied in respect of bids made under the MJDS to the extent provided in NI 71-101 and the implementing law of a jurisdiction. Bids made under the MJDS remain subject to any requirements to file with the Canadian securities regulatory authorities and send a bid circular, a directors' circular or an individual director's or officer's circular and any notice of change or notice of variation to holders of the securities subject to the bid.

The requirement to send bid materials to holders of the securities subject to the bid applies whether those materials are published, sent or given to securityholders resident in the United States of America by the use of stockholder lists and security position listings, or by long form or summary publication.

Each MJDS take-over bid circular, MJDS issuer bid circular, MJDS directors' circular and MJDS director's or officer's circular remains subject to the requirement that it not contain an untrue statement of a material fact or omit 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.

(2) Alternative Exemptions

Provision is made in the Canadian securities legislation of some jurisdictions for exemption from take-over bid and issuer bid requirements if the bid is made in compliance with the laws of a recognized jurisdiction and there are relatively few holders in the jurisdiction holding a relatively small percentage of the class of securities subject to the bid. An offeror may make a bid under the MJDS in certain jurisdictions and under such an exemption in others.

(3) Certain Continuing Requirements

(a) Early Warning

Provisions of Canadian securities legislation that require disclosure of acquisitions reaching a certain threshold or restrict acquisitions of securities once such a threshold has been reached continue to apply in respect of U.S. offeree issuers that are reporting issuers in a jurisdiction.

(b) Going Private Transactions

Bids made under the MJDS are subject to the requirements of Canadian securities legislation relating to going private transactions, other than the requirement to provide a valuation at the time of a take-over bid if it is anticipated by the offeror that a going private transaction will follow the bid.

(c) Pre-bid Integration

Canadian securities legislation regulating take-over bids includes provisions regarding integration of pre-bid transactions with the bid. These provisions apply to MJDS bids only if 20 percent or more of a class of securities that is the subject of a take-over bid made under the MJDS is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

(d) Valuation Requirements in Issuer and Insider Bids

The valuation requirements of Canadian securities legislation with respect to issuer bids and insider bids apply to issuer bids and insider bids made under the MJDS only if 20 percent or more of a 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.

(e) Public Interest Jurisdiction

All bids remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The Canadian securities regulatory authorities will continue to exercise their public interest jurisdiction in specific cases if they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets or to protect investors.

(4) Directors' and Individual Director's and Officer's Circulars

If a take-over bid is made under the MJDS, the offeree issuer and its directors and officers may elect to comply either with the requirements of Canadian securities legislation or as provided in NI 71-101 with U.S. federal securities law in respect of their response to the bid. In the case of compliance by the directors or by individual directors or officers with Canadian requirements, the requirements set out in NI 71-101 regarding directors' circulars or individual director's or officer's circulars, as the case may be, do not apply. Notwithstanding that a take-over bid was eligible to be made under the MJDS, the offeree issuer and its directors and officers may not use the MJDS in respect of the bid if the offeror did not make the bid under the MJDS.

(5) Bids Made in Quebec

A French language version of a MJDS bid circular, together with French language versions of all documents or parts thereof incorporated by reference into the MJDS bid circular that contain information required to be disclosed in a bid circular not prepared in accordance with NI 71-101, is required to be filed in Quebec.

However, a French language version of a MJDS bid circular is not required to be filed for a bid made under the MJDS, unless (i) the offeree issuer is a reporting issuer in Quebec, or (ii) 20 percent or more of a 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.

(6) Notices of Variation and Notices of Change

The provisions of Canadian securities legislation that prescribe the circumstances in which a bid circular, directors' circular, or individual officer's or director's circular is required to be changed or varied and the form and content of the applicable disclosure documents do not apply to bids made under the MJDS, unless, in respect of the directors' circular or individual officer's or director's circular, the directors or individual officer or director have elected to comply with the requirements of Canadian securities legislation otherwise applicable. Instead, disclosure documents filed under the MJDS should be changed or varied in accordance with the requirements of section 12.15 of NI 71-101.

(7) Fees

Canadian securities legislation regarding fees applies to a bid made under NI 71-101.

Business Combinations

3.5 The MJDS permits securities of a U.S. issuer to be distributed by prospectus in Canada on the basis of documentation prepared in accordance with U.S. federal securities law, with certain additional Canadian disclosure, in connection with a business combination if less than 40 percent of the securities to be distributed by the successor issuer would be held by Canadian residents. As in the case of bids, the MJDS is available for business combinations primarily to encourage fair treatment of Canadian investors. A MJDS prospectus filed for a distribution of securities in connection with a business combination need not contain a reconciliation of the financial statements in the prospectus to Canadian GAAP.

Canadian securities legislation of most of the jurisdictions provides for an exemption from prospectus requirements for certain distributions of securities issued in connection with a statutory amalgamation, merger or arrangement. As a result, an issuer may elect not to use the MJDS, but to distribute securities issued in a business combination under a prospectus exemption. A consequence of using a prospectus exemption instead of the MJDS may be resale restrictions on the distributed securities. However, under rules or blanket rulings or orders issued in certain jurisdictions, the resale of securities acquired under such an exemption is not a distribution for which a prospectus is required if the issuer meets certain eligibility and reporting requirements and the resale is executed through the facilities of a stock exchange or certain other regulated markets outside of the jurisdiction.

A business combination made under the MJDS must comply with the relevant requirements of securities legislation relating to going private transactions and related party transactions. All business combinations remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The Canadian securities regulatory authorities will continue to exercise their public interest jurisdiction in specific cases if they determine that it is necessary to do so to preserve the integrity of the Canadian capital markets or to protect investors.

Continuous Disclosure, Proxies and Proxy Solicitation, Insider Reporting and Shareholder Communication

3.6 (1) General

An issuer that files a prospectus or a bid circular for a securities exchange take-over bid in certain jurisdictions becomes a reporting issuer in those jurisdictions, thereby becoming subject, among other things, to certain continuous disclosure, proxy and proxy solicitation, and shareholder communication requirements, and its insiders becoming subject to certain insider reporting requirements.

Parts 14 through 18 of NI 71-101 substitute U.S. federal securities law requirements for the requirements of Canadian securities legislation otherwise applicable to U.S. issuers and other persons or companies that satisfy the relevant eligibility criteria, if any, specified in those parts and that elect to comply with the requirements specified in those parts.

Canadian securities legislation in certain jurisdictions requires that issuers

- (a) prepare their financial statements in accordance with, or reconcile the financial statements to, Canadian GAAP;
- (b) state in the notes to the financial statements which option has been applied in the choice of generally accepted accounting principles; and
- (c) include an auditor's report on the financial statements prepared in accordance with Canadian GAAS or include an explanation of the significant differences between U.S. generally accepted auditing standards and Canadian GAAS.

U.S. issuers filing financial statements in accordance with Part 15 of NI 71-101 are exempt from these requirements under rules, blanket rulings or orders issued in those jurisdictions.

(2) Communication with Beneficial Owners of Securities of a Reporting Issuer

If a U.S. issuer elects to comply with section 18.1 of NI 71-101, any Canadian clearing agency (i.e. The Canadian Depository for Securities Limited) and any intermediary whose last address as shown on the books of the issuer is in the local jurisdiction is required to comply with the requirements of National Policy Statement No. 41 and any successor instrument to that National Policy Statement for such issuer, including, without limitation, responding to search cards and delivering proxy-related materials within the time periods specified in National Policy Statement No. 41 and under any successor instrument to that National Policy Statement.

PART 4 CERTAIN OFFERINGS BY CANADIAN ISSUERS UNDER THE U.S. MULTIJURISDICTIONAL DISCLOSURE SYSTEM

U.S. Trust Indenture Exemption

4.1 Rule 4d-9 made under the Trust Indenture Act of 1939 grants certain exemptions from the U.S. trust indenture provisions for a trust indenture filed with the SEC in connection with an offering of securities by a Canadian issuer under the U.S. multijurisdictional disclosure system if the trust indenture is subject to the Canada Business Corporations Act, the Bank Act (Canada), the Business Corporations Act (Ontario) or the Company Act (British Columbia). The trust indenture provisions of the Canada Business Corporations Act, the Bank Act (Canada) and the Company Act (British Columbia) apply to issuers incorporated under the respective statute, whether the debt is distributed in Canada or elsewhere. The trust indenture provisions of the

Business Corporations Act (Ontario) and the Company Act (British Columbia) apply in certain circumstances to issuers whether or not incorporated under the applicable statute. In order for the trust indenture provisions of the Business Corporations Act (Ontario) to apply to a trust indenture, a prospectus or securities exchange issuer or take-over bid circular must be filed in Ontario in respect of the debt to be issued or guaranteed under the trust indenture. The Company Act (British Columbia) trust indenture provisions apply if the debt is issued (i) by a company incorporated in British Columbia regardless of where the debt is distributed, or (ii) to residents in British Columbia whether the debt is issued by prospectus, private placement or other exemption, subject to certain limited exceptions set out in the Company Act (British Columbia). Therefore, in order for the exemption in Rule 4d-9 to be available, Canadian issuers, other than those incorporated under the Canada Business Corporations Act, the Bank Act (Canada) or the Company Act (British Columbia) must either file a prospectus or securities exchange issuer or take-over bid circular in Ontario in connection with the offering or offer the securities in British Columbia by prospectus, private placement or under another exemption from the prospectus filing requirement other than those specified in the Company Act (British Columbia).

Prospectus Filing in Canada

4.2 (1) General

An issuer distributing securities in the U.S. under the U.S. multijurisdictional disclosure system may be subject to a requirement to file a prospectus with a Canadian securities regulatory authority in a jurisdiction because part of the securities offered may be offered or sold to purchasers in that jurisdiction or as a result of the likelihood that the securities sold in the U.S. will not come to rest outside that jurisdiction and thus the offering constitutes a distribution in that jurisdiction for which a prospectus is required to be filed.

(2) Distribution from British Columbia, Alberta or Quebec

- (a) An issuer located in British Columbia, Alberta or Quebec that is distributing securities in the U.S. under the U.S. multijurisdictional disclosure system is subject to a requirement to file a prospectus with the Canadian securities regulatory authority in British Columbia, Alberta or Quebec, respectively, because the U.S. distribution is being made from British Columbia, Alberta or Quebec, respectively, even if the securities qualified by the prospectus are offered and sold only in the United States of America.
- (b) Under British Columbia Rule 71-801 and Alberta Rule 71-801, an issuer filing a prospectus with the British Columbia Securities Commission or Alberta Securities Commission, respectively, in circumstances described in paragraph (a) need not include in the prospectus an underwriter's certificate.
- (c) An issuer filing a prospectus with the Commission des valeurs mobilières du Québec in circumstances described in paragraph (a) may apply to the Commission des valeurs mobilières du Québec for an exemption from those requirements that solely would be applicable if the distribution were being made to purchasers in Quebec.
- (d) An issuer that files a prospectus in British Columbia or Alberta in circumstances described in paragraph (a) should advise the SEC of the Canadian securities regulatory authority that is the review jurisdiction. The prospectus will be subject to the review procedures applicable to short form prospectuses. The British Columbia Securities Commission or the Alberta

Securities Commission will send the issuer the receipt for the prospectus after the comments, if any, on the prospectus have been resolved. If the issuer has filed a registration statement on Form F-9 or F-10 prescribed under the 1933 Act with the SEC in connection with the distribution, the issuer should advise the SEC of the issuance of the receipt for the prospectus in order that the registration statement may become effective before the end of the seven calendar day period in Rule 467(b) under the 1933 Act.

- (e) An issuer that files a prospectus in Quebec in circumstances described in paragraph (a) should advise the SEC that the Commission des valeurs mobilières du Québec is the review jurisdiction. The Commission des valeurs mobilières du Québec will complete its review of the prospectus within three business days of filing of the prospectus and will send the issuer the receipt for the prospectus after the comments, if any, on the prospectus have been resolved. If the issuer has filed a registration statement on Form F-9 or F-10 in connection with the distribution, the issuer should advise the SEC of the issuance of the receipt for the prospectus in order that the registration statement may become effective before the end of the seven calendar day period in Rule 467(b) under the 1933 Act.

Filings in Saskatchewan, Manitoba, Ontario and Nova Scotia for U.S. Only Distributions

4.3 (1) Filing Procedures

If an issuer other than an issuer located in British Columbia, Alberta or Quebec, that files a Form F-9 or F-10 in connection with a distribution solely in the United States of America under the multijurisdictional disclosure system adopted by the SEC seeks to have the registration statement become effective before the end of the seven calendar day period in Rule 467(b) under the 1933 Act, the issuer may select Saskatchewan, Manitoba, Ontario or Nova Scotia as review jurisdiction, file the registration statement filed with the SEC with the Canadian securities regulatory authority in the review jurisdiction contemporaneously with the filing of the registration statement with the SEC, obtain a notification of clearance from the regulator and advise the SEC of the issuance of the notification of clearance.

(2) Confirmation of Review Jurisdiction

If the Canadian securities regulatory authority selected under subsection (1) elects not to act as review jurisdiction, the issuer may select another Canadian securities regulatory authority as review jurisdiction and advise the SEC of the Canadian securities regulatory authority selected as review jurisdiction.

(3) Review Procedures

- (a) The Canadian securities regulatory authority in the review jurisdiction will monitor registration statements filed under subsection (1). The substance of a registration statement will be reviewed in the unusual case if, through monitoring of the materials or otherwise, the Canadian securities regulatory authority has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist.
- (b) If the review jurisdiction selects a registration statement for review, it will send its comments to the issuer within three business days of the filing of the registration statement.

(4) Notification of Clearance Procedures

A notification of clearance for the registration statement will be issued by the regulator in the review jurisdiction once any comments have been resolved, unless the Canadian securities regulatory authority in the review jurisdiction has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist.

(5) Filing of Amendments to Registration Statement

An issuer that files a registration statement under subsection (1) shall also file with the regulator in the review jurisdiction all amendments to the registration statement contemporaneously with the filing of such documents with the SEC.