

CMRA Regulation 71-501
International Issuers and Securities Transactions
with Persons Outside the CMR Jurisdictions

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PART 1 DEFINITIONS AND INTERPRETATION

1. Definitions

In this Regulation,

“Canadian underwriter” means a person registered under the laws of a jurisdiction of Canada to act as an underwriter;

“foreign jurisdiction” means the United Kingdom of Great Britain and Northern Ireland or the United States;

“foreign underwriter” means a person registered as a dealer under the laws of a foreign jurisdiction;

“genuine market” means

- (a) the Eurobond market, as regulated by the International Securities Market Association; and
- (b) a market place that the Authority has designated for the purposes of this Regulation;

“MI 62-104” means Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*;

“NI 41-101” means National Instrument 41-101 *General Prospectus Requirements*;

“NI 45-102” means National Instrument 45-102 *Resale of Securities*;

“NI 71-101” means National Instrument 71-101 *The Multijurisdictional Disclosure System*; and

“qualified market” means any of

- (a) The Toronto Stock Exchange Inc.;
- (b) Tier 1 or Tier 2 of the TSX Venture Exchange Inc.;
- (c) Bourse de Montréal Inc.;
- (d) Aequitas NEO Exchange Inc.;
- (e) NYSE Amex Equities;
- (f) Nasdaq Global Market;
- (g) Nasdaq Capital Market;

- (h) the New York Stock Exchange;
- (i) the London Stock Exchange Limited;
- (j) any predecessor or successor to any of the entities referred to in paragraphs (a) through (i); and
- (k) an exchange recognized for the purposes of this Regulation.

2. Interpretation

In this Regulation, a term that is defined or interpreted in

- (a) Part 1 of NI 71-101 has the same meaning as in that Part;
- (b) MI 62-104 has the same meaning as in NI 62-104.

PART 2 INTERNATIONAL ISSUERS

3. Implementing the Multijurisdictional Disclosure System under NI 71-101

Application

- (1) The exemptions established under this section are in addition to those established under NI 71-101.

Preliminary MJDS prospectus and MJDS prospectus

- (2) NI 41-101 does not apply to a distribution of securities made by MJDS prospectus in compliance with NI 71-101 if
 - (a) for a distribution under a preliminary prospectus, the dealer complies with paragraph 16.1(a) of NI 41-101; and
 - (b) in connection with the lapse date of a prospectus under section 17.2 of NI 41-101, the distribution of securities under an MJDS prospectus is in relation to a rule 415 offering.

Underwriter certificates for MJDS southbound offerings

- (3) An issuer in a CMR Jurisdiction that files a prospectus in respect of a distribution of securities to be made in the United States of America pursuant to an applicable registration statement under the Multijurisdictional Disclosure System adopted by the Securities and Exchange Commission of the United States of America, as amended from time to time, is exempt from subsection 5.9(1) of NI 41-101 if that prospectus is not used to qualify a distribution of securities to a purchaser resident in Canada.

Application of the regulations to bids for securities of U.S. issuers

- (4) Subject to subsection (5), the following provisions of MI 62-104 do not apply to a bid made in compliance with Part 12 of NI 71-101:
- (a) sections 2.2, 2.3, 2.7, 2.9, 2.13, 2.23, 2.24, 2.25, 2.27 to 2.32, 2.34 and 3.2;
 - (b) subsections 2.10(3), 2.10(4), 2.11(4), 2.12(2), 2.12(3), 2.12(4), 2.12(5), 2.26(1), 2.26(2), 2.26(3) and 3.3(1);
 - (c) sections 2.4, 2.5 and subsection 2.26(4), unless 20 per cent or more of each class of securities that is subject to the bid is held by persons whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2), (3) and (4) of NI 71-101;
 - (d) section 2.8, but only to the extent that the offeror need not deliver the bid to holders of securities that, before the expiry of the bid, are convertible into securities of the class that is subject to the bid and whose last address as shown on the books of the offeree issuer is in a CMR Jurisdiction;
 - (e) the requirement in subsection 2.10(1) that a bid circular be in Form 62-104F1 *Take-Over Bid Circular* for a take-over bid or in Form 62-104F2 *Issuer Bid Circular* for an issuer bid.
- (5) Despite subsection (4), an offeror under a bid must file a copy of any bid circular, notice of change, and notice of variation on the day the bid circular, notice of change or notice of variation, as applicable, is sent, or as soon as practicable after that.

Application of the Act and MI 62-104 in respect of MJDS directors' circulars and MJDS individual director's or officer's circulars

- (6) Subject to subsection (7), the following provisions of the Act and MI 62-104 do not apply to directors or individual directors or officers that elect to comply with U.S. federal securities law under Part 12 of NI 71-101 in preparing a directors' circular or individual director's or officer's circular in relation to a take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101:
- (a) section 50 of the Act;
 - (b) section 2.19 of MI 62-104;
 - (c) subsections 2.17(2), 2.17(3), 2.17(4), 2.18(2), 2.20(2), 2.20(3), 2.20(4), 2.20(5), 2.20(6) and 2.20(7) of MI 62-104.
- (7) Despite subsection (6), a director, and an individual director or officer must file a copy of any directors' circular, individual director's or officer's circular, notice of change, and notice of variation on the day the circular, notice of change or notice of variation, as applicable, is sent, or as soon as practicable after that.

Submission to jurisdiction and appointment of agent for service of process

- (8) A submission to jurisdiction and appointment of agent for service of process required under section 6.9, paragraph 12.10(1)(e), or subparagraph 19.1(b)(iii) of NI 71-101 must be prepared in accordance with Form 71-101F1.

PART 3 DISTRIBUTIONS OUTSIDE THE CMR JURISDICTIONS

4. Distribution of securities to purchasers outside the CMR Jurisdictions

Registration and prospectus exemptions for distributions to purchasers outside of the CMR Jurisdictions

- (1) The registration requirement and the prospectus requirement do not apply to a distribution of securities by an issuer provided that
- (a) the distribution is not made to a purchaser resident in a CMR Jurisdiction;
 - (b) the purchaser certifies in the subscription agreement or similar document that the purchaser is not, or if no such document is being used, the purchaser is given notice that, by purchasing the securities, the purchaser will be deemed to have made representations that the purchaser is not
 - (i) resident in a CMR Jurisdiction,
 - (ii) purchasing the security for the benefit of any person resident in a CMR Jurisdiction, other than as the manager of a fully discretionary account being managed outside all of the CMR Jurisdictions if the decision to invest in the security is not being made in any of the CMR Jurisdictions and no acts in furtherance of the trade in the security take place in any of the CMR Jurisdictions, or
 - (iii) purchasing the security with a view to continuing the distribution by reselling the security to a person in a CMR Jurisdiction,and the issuer does not believe, and has no reasonable grounds to believe, that the certification is false;
 - (c) the purchaser acknowledges in the subscription agreement or similar document that, or if no such document is being used, the purchaser is given notice that by purchasing the securities, the purchaser will be deemed to have acknowledged that
 - (i) no securities commission or similar regulatory authority has reviewed or passed on the merits of the securities,
 - (ii) there is no government or other insurance covering the securities,
 - (iii) there are risks associated with the purchase of the securities,

- (iv) there are restrictions on the purchaser's ability to resell the securities in Canada and it is the responsibility of the purchaser to find out what those restrictions are and to comply with them before selling the securities, and
 - (v) the issuer has advised the purchaser that the issuer is relying on an exemption from the prospectus requirement and the dealer registration requirement and, as a consequence, certain protections, rights and remedies provided by the Act, including statutory rights of rescission or damages, will not be available to the purchaser;
 - (d) the issuer has equity securities listed or quoted on a qualified market; and
 - (e) the issuer files a report of the distribution in Form 45-106F6 on or before the 10th day after the distribution.
- (2) A trade in a security acquired by the seller under subsection (1) above or under any predecessor instrument is subject to section 2.5 of NI 45-102.

Prospectus certificate exemption for foreign underwriters

- (3) Subsection 5.9(1) of NI 41-101 does not apply in respect of a foreign underwriter in either of the following circumstances:
- (a) the offering is a public offering of securities made concurrently in Canada and a foreign jurisdiction, and all of the following apply:
 - (i) there is a Canadian underwriter of the offering,
 - (ii) all sales to Canadian residents under the offering are made through Canadian underwriters,
 - (iii) the prospectus contains certificates of each Canadian underwriter of the offering in compliance with section 5.9(1) of NI 41-101;
 - (b) the securities qualified by the prospectus are offered and sold exclusively to purchasers resident in one or more foreign jurisdictions.

Exemption for Eurobond offerings

- (4) The registration requirement and the prospectus requirement do not apply to the distribution of a non-convertible debt security provided that
- (a) the distribution is not made to a person in Canada;
 - (b) the debt has been accepted for listing on a genuine market outside Canada;
 - (c) the issuer files a report of the distribution in Form 45-106F6 on or before the 10th day after the distribution;
 - (d) the offering circular contains a legend stating that the securities are not qualified for sale in a CMR Jurisdiction and may not be offered or sold directly or indirectly

in a CMR Jurisdiction, except pursuant to an exemption from the prospectus requirement of Canadian securities laws;

- (e) the underwriters contractually agree that they will observe this restriction regarding the prohibition of offering in a CMR Jurisdiction;
 - (f) the securities to be distributed are initially issued in temporary form exchangeable for definitive securities 40 days after completion of the distribution on certification by the holder that the definitive securities are not beneficially owned by residents of a CMR Jurisdiction; and
 - (g) the Chief Regulator has not advised the issuer in writing that its securities are not eligible to use the exemption set out in this subsection.
- (5) A trade in a non-convertible debt security issued under subsection (4) is a distribution unless
- (a) the issuer is a reporting issuer in a jurisdiction listed in Appendix B to NI 45-102 and is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval*;
 - (b) a 40 day period has elapsed from the date of issue of the non-convertible debt security;
 - (c) the trade is not a control distribution;
 - (d) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
 - (e) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
 - (f) if the selling securityholder is an insider or officer of the issuer, the selling securityholder has no reasonable grounds to believe that the issuer is in default of the Act or related Regulations.