

6.1.3 Multilateral Instrument 72-101 - Distributions Outside of the Local Jurisdiction

NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 72-101, COMPANION POLICY 72-101CP AND FORM 72-101F1

Substance and Purpose of Proposed Multilateral Instrument, Form and Companion Policy

General

The substance and purpose of proposed Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction (the "Multilateral Instrument") is to harmonize the exemptions from the prospectus requirement and the registration requirement under securities legislation in Canada for a distribution of securities to purchasers not in the local jurisdiction. The substance and purpose of proposed Companion Policy 72-101CP (the "Companion Policy") is to provide guidance to issuers and selling securityholders regarding the application of securities legislation to a distribution of securities to purchasers not in the local jurisdiction. Form 72-101F1 (the "Form") is a report of a distribution of securities to purchasers outside of the local jurisdiction.

The Multilateral Instrument, Form and Companion Policy are proposed to be implemented in all jurisdictions except Quebec. The proposed Multilateral Instrument and Form are expected to be adopted as a rule in each of British Columbia, Alberta, Ontario, Manitoba, Newfoundland and Nova Scotia, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. It is expected that the Companion Policy will be implemented as a policy in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut (the "implementing jurisdictions").

Background

1. Jurisdiction

The jurisdictional scope of securities legislation in respect of a distribution of securities is not expressly addressed in the *Securities Act* (Ontario) or the regulations. The limited jurisprudence in Canada on the issue of the jurisdiction of securities legislation does make clear that it extends to activities outside Ontario on the basis of their effects within Ontario. Justice LaForest stated as follows in *Libman v the Queen*, [1985] 2 S.C.R. 178, 207, a securities fraud action brought under the Criminal Code (Canada)

The jurisdictional scope of the Act, having as its principal purpose the protection of the public interest, similarly should be viewed as covering activities taking place outside Ontario on the basis of their consequence within Ontario.

In *Quebec (Sa Majesté du Chef) v Ontario Securities Commission*, [1992] 10 O.R. (3d) 577 (C.A.) McKinlay J.A. wrote at p. 595

...I am of the view that territorial jurisdiction of the OSC under s.124 does not depend solely upon the province or country in which relevant transactions may have taken place, but rather upon whether or not persons availing themselves of the benefits of trading in the Ontario capital markets act in a manner consistent with the provisions of the Act.

Consequently, whether or not a distribution of securities outside of Ontario also constitutes a distribution in Ontario depends on the effects or consequence in Ontario of the distribution.

2. Interpretation Note

The Ontario Securities Commission stated its views on the application of the *Securities Act* (Ontario) to distributions of securities outside of Ontario in Interpretation Note (formerly Ontario Securities Commission Policy 1.5). It commented that a distribution outside Ontario by an Ontario or non-Ontario issuer, might also, depending on the connecting factors with Ontario, be a distribution in the province requiring a prospectus to be filed or an exemption to be relied upon. However, if reasonable steps are taken by the issuer, underwriter and other participants effecting such distribution to ensure that such securities come to rest outside Ontario, the Commission takes the view that a prospectus is not required under the Act, nor is an exemption from the prospectus requirement necessary.

The Interpretation Note stated the principle that, in determining whether a distribution outside of Ontario also constitutes a distribution in Ontario, an issuer or selling shareholder must consider the factors that connect the distribution with Ontario. The Interpretation Note listed factors such as class and nature of the securities being distributed, the attractiveness to Ontario investors of such securities, the likelihood that, absent restrictions, the securities would come to rest in Ontario, whether a market for the class of securities being distributed or any other securities of the issuer already exists in Ontario, the likelihood of the development in the future of a market in Ontario for the securities being distributed, the way in which the distribution is proposed to be effected, the relationship between the capital markets of Ontario and the jurisdiction in which the securities are being distributed and the ease of access of one to the other, whether or not the underwriters and other participants in the distribution are, or are affiliated with, investment dealers that conduct substantial activities in Ontario, and the presence of the issuer in Ontario (whether through the conduct of business in Ontario, a number of shareholders resident in Ontario, the issuer being closed followed by Ontario investors or otherwise).

Even if the connecting factors are sufficient such that the distribution might constitute a distribution in Ontario, a prospectus would not be required nor would an exemption from the prospectus requirement be necessary if reasonable steps are taken to ensure that the securities come to rest outside of Ontario. The restrictions or precautions varied with

the connecting factors with Ontario and the nature of the distribution and included restrictions in documents governing the distribution against market participants distributing the securities to Ontario residents and a covenant by the transfer agent not to register securities in the name of any Ontario resident for a period of time (e.g. ninety days) from the date of closing.

The Interpretation Note did not seek to establish bright line tests to determine when a distribution outside of Ontario also constitutes a distribution in Ontario but rather sought to provide guidance to assist issuers and selling securityholders in structuring transactions. The Interpretation Note is not securities legislation, does not grant exemptions from the registration requirement and prospectus requirement but, in effect, outlines safe harbours in which a distribution is not subject to Ontario securities laws. The principal drawback of the Interpretation Note is that both market participants and Commission staff have found it difficult to administer because of its uncertainty.

3. Developments in Other Jurisdictions

(a) BC NIN 97/48 and ASC Policy 45-601

British Columbia Securities Commission NIN 97/48 provides guidance regarding the application of local securities legislation when an issuer distributes securities to a person outside of the province. The underlying premise is that "a distribution of securities by an issuer with connections to British Columbia may, depending on the facts and circumstances surrounding the transaction, be subject to the *Securities Act* even if the initial purchaser is not located in British Columbia". In essence an issuer must be aware that a trade may occur in more than one jurisdiction and satisfy itself that it is in compliance with the applicable laws of each relevant jurisdiction.

The NIN identifies three factors which would generally indicate that the distribution is made from British Columbia. Issuers are cautioned that these factors are merely indicative of the factors that should be considered by an issuer when determining whether it is making a distribution from British Columbia. The NIN also outlines precautions to be taken by issuers "not located in British Columbia" but having a significant connection to the province or its capital markets to address flow-back concerns arising from indirect distributions back into the province. The Alberta Securities Commission has also issued similar interpretation guidelines in ASC Policy 45-601.

(b) SEC Regulation S

The U.S. Securities and Exchange Commission ("SEC") adopted Regulation S in 1990 to clarify the extraterritorial application of the registration requirements of the *Securities Act of 1933*. The regulation contains a general statement providing that the registration requirement does not apply to offers or sales of securities that occur outside the U.S. as well as two non-exclusive safe harbours. One safe harbour applies to offers and sales by issuers, distribution participants and affiliates and the other applies to resales by persons other than issuers, distribution participants and affiliates.

An offer or sale of securities that satisfies all the conditions of the applicable safe harbour is deemed outside the U.S. and is therefore not subject to the registration requirement. However, neither the safe harbour nor the general statement is available for a transaction that, although in technical compliance with the regulation, is part of a plan or scheme to evade the registration requirements of the *Securities Act of 1933*.

The safe harbours provide specific guidance to issuers and other market participants regarding the circumstances under which securities may be sold offshore without registration. The issuer safe harbour distinguishes between three categories of securities offerings on the basis of factors such as nationality and whether the issuer files periodic reports with the SEC under the *Securities Exchange Act of 1934*.

Generally, the restrictiveness of the conditions imposed on an issuer in each category depends on (i) the degree to which the U.S. markets are the issuer's primary trading market; (ii) the amount of information available in the U.S. regarding the issuer; and (iii) the likelihood that securities sold offshore by an issuer will flow back into the U.S.

Securities of an issuer with little or no connection to the U.S. markets are clearly less likely to flow back into the U.S. following an offshore offering and are therefore subject to the least restrictive requirements.

In 1998, the SEC adopted amendments to Regulation S designed to stop abusive practices relating to sales of equity securities by U.S. issuers that file periodic reports with the SEC under the *Securities Exchange Act of 1934*. The amendments classified the equity securities of U.S. issuers as restricted securities within the meaning of SEC Rule 144 and lengthened the applicable restricted period or distribution compliance period from 40 days to one year.

The purpose of the distribution compliance period is to ensure that the persons relying on the safe harbour are not engaged in an unregistered, non-exempt distribution into the U.S. capital markets and that the securities will come to rest offshore. All equity securities sold by U.S. issuers under Regulation S must carry a legend stating that the transfer of securities is prohibited other than in accordance with the *Securities Act* and that hedging transactions involving the securities may not be conducted except in compliance with the *Securities Act of 1933*.¹

4. Achieving Harmonization and Clarity

The Multilateral Instrument harmonizes the approach of Canadian securities regulatory authorities to distributions outside of the local jurisdiction. It represents a new approach for Ontario in that it grants registration and prospectus exemptions for distributions outside of the province rather than setting out safe harbours in which a transaction would not be subject to those requirements. The Multilateral Instrument has been structured as a grant of exemptions rather than a safe harbour in order to provide greater certainty to issuers and selling securityholders in structuring transactions. It sets out

¹ See Muglia, R. and Tierney, A. SEC tightens Regulation S rules for U.S. issuers May 1998 *International Financial Law Review* 27

the circumstances in which a distribution of securities to purchasers outside of the local jurisdiction is exempt from the prospectus requirement of securities legislation in the local jurisdiction. However, it does not establish bright line tests for determining when a distribution outside of the local jurisdiction also constitutes a distribution in the local jurisdiction to which a prospectus requirement applies. Rather, the Companion Policy states that the Canadian securities regulatory authorities are of the view that the issue, or a sale that is a control distribution, of securities may be subject to the securities legislation of the local jurisdiction if one or more connecting factors to the local jurisdiction exist. Consequently, whether or not a distribution to purchasers outside of the local jurisdiction also constitutes a distribution in the local jurisdiction depends upon the facts and circumstances of the distribution.

Once an issuer or selling securityholder has determined that a trade outside of the jurisdiction constitutes a distribution under the securities legislation of one or more jurisdictions, the issuer or securityholder would evaluate whether the transaction can be structured in accordance with the registration and prospectus exemptions provided by the Multilateral Instrument.

The Multilateral Instrument sets out the terms of the exemptions from the registration requirement and the prospectus requirement, whether a restricted period applies, and the length of the restricted period (40 days, four months or 12 months). The four and 12 month restricted periods are harmonized with the hold periods applicable to privately placed securities under proposed Multilateral Instrument 45-102 Resale of Securities ("MI 45-102").

Summary of the Proposed Multilateral Instrument, Form and Companion Policy

Characterization as Distribution

Part 2 of the Companion Policy provides guidance to assist issuers and control block sellers in determining whether a trade outside of the local jurisdiction would be a distribution under local securities legislation. Subsection 2.1(3) states that a distribution of securities of an issuer with a connection to a local jurisdiction may be subject to the prospectus requirement of securities legislation of the local jurisdiction even if none of the purchasers are in the local jurisdiction. If the distribution is subject to local securities legislation, either a prospectus will have to be filed in the local jurisdiction or a prospectus exemption relied upon.

Section 2.2 of the Companion Policy sets out the connecting factors to be considered when determining if a trade would be subject to the local securities legislation. The connecting factors include: (i) where the mind and management of the issuer are primarily located; (ii) whether a significant percentage of the outstanding securities of the class of securities being distributed are directly or indirectly held of record by residents of the local jurisdiction; (iii) the location of the principal register of the equity securities of the issuer; and (iv) where the operations of the issuer are principally conducted. Not all of the connecting factors are of equal weight. The Canadian securities regulatory authorities recognize that if the jurisdictional connection of the distribution to the local jurisdiction is merely incidental, the distribution

would not be subject to local securities legislation. The Manitoba Securities Commission does not agree that the percentage of the outstanding securities of the class being distributed that are held of record by residents of the local jurisdiction is a relevant connecting factor.

Exemptions from the Registration Requirement and Prospectus Requirement

If the connecting factors are sufficient for a trade to constitute a distribution in the local jurisdiction, an issuer or selling securityholder would then evaluate whether the exemptions provided by the Multilateral Instrument would be available. The Multilateral Instrument provides an exemption from the registration requirement and prospectus requirement for a distribution outside of the local jurisdiction in two situations: (i) a distribution made under a public offering document; and (ii) a distribution made other than under a public offering document. The restrictions that must be taken to ensure the securities to come to rest outside of the jurisdiction differ depending upon whether the distribution outside the local jurisdiction is a public offering or a private placement. The objective of the restrictions is to ensure that the out of jurisdiction transaction is bona fide and is not a backdoor underwriting (a transaction that is really intended for investors in the local jurisdictions but has been structured to avoid the requirements of the local jurisdiction). If the offering is made under a public offering document and subject to substantive requirements in another jurisdiction then a backdoor underwriting is less likely. For this reason there are fewer restrictions and no restricted period applicable to a public offering. Further, secondary market purchasers in the local jurisdiction will have access to the public offering document.

A "public offering document" is defined as a prospectus filed and receipted in any jurisdiction in Canada, a U.K. prospectus or a U.S. prospectus. U.S. and U.K. public offering documents were included because of historical acceptance of these documents by Canadian securities regulatory authorities and the level of regulatory oversight in those foreign jurisdictions.

Part 1 contains the definitions of other terms and phrases used in the Multilateral Instrument that are not defined in or interpreted under a national definition instrument in force in an adopting jurisdiction. National Instrument 14-101 Definitions sets out definitions for commonly used terms and should be read together with the Multilateral Instrument.

The prospectus exemption in section 2.1 of the Multilateral Instrument is subject to the following conditions: (i) the distribution is made under a public offering document; (ii) all purchasers of the securities are outside of the local jurisdiction; (iii) any underwriting agreement prohibits the distributors from distributing the securities to any person or company in the local jurisdiction; and (iv) neither the issuer, the selling securityholder nor a distributor takes any actions to prepare the market or create a demand in the local jurisdiction for the securities being distributed. Part 4 of the Companion Policy provides guidance as to which activities would be considered preparing the market.

The prospectus exemption for distributions made under a public offering document is not available if another securities regulator is relying upon the prospectus review conducted by the securities regulator in the local jurisdiction. Section 2.2 of

the Multilateral Instrument states that the exemption from the prospectus requirement provided by section 2.1 is unavailable if the issuer of the securities uses the mutual reliance review system implemented by National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs ("NP 43-201") and the principal regulator of the issuer under NP 43-201 is in the local jurisdiction. Section 2.3 states that the exemption from the prospectus requirement provided by section 2.1 is unavailable for a U.S. only distribution under the multijurisdictional disclosure system implemented by the SEC if the review jurisdiction of the issuer under section 4.2 of Companion Policy 72-101CP The Multijurisdictional Disclosure System is in the local jurisdiction.

Section 2.4 of the Multilateral Instrument provides a prospectus exemption for distributions outside of the local jurisdiction made other than under a public offering document if the following conditions are met: (i) all purchasers are outside of the local jurisdiction; (ii) any underwriting agreement prohibits the distributors from the distributing the securities to any person or company in the local jurisdiction; (iii) the underwriting agreement prohibits hedging transactions if equity securities are being distributed; (iv) neither the issuer, the selling securityholder nor a distributor takes any actions to prepare the market or create a demand in the local jurisdiction for the securities being distributed; (v) the securities are legended; and (vi) any offering document contains a statement describing the resale restrictions to which the securities are subject.

Paragraph 2.4(e) of the Multilateral Instrument imposes a condition that the certificate representing the securities carry a legend stating that, subject to securities legislation, the holder shall not trade the securities before the expiry of the restricted period.

Section 2.7 provides that an issuer, or the seller in the case of a control distribution, that relies on the exemption in Section 2.4 must file a report of a trade in Form 72-101F1 which is analogous to a Form 45-501F1.

Resale of Securities Distributed Other than Under a Public Offering Document

Section 2.6 of the Multilateral Instrument provides that any trade of securities distributed under section 2.4 is a distribution unless: (i) the issuer of the securities is a reporting issuer or a reporting issuer equivalent; (ii) the restricted period has expired; (iii) the trade is not a control distribution; (iv) no unusual effort is made to prepare the market or create a demand for the securities that are the subject of the trade; and (v) if the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.

Section 2.7 provides that section 2.6 does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory. These jurisdictions do not impose resale restrictions on securities distributed under a prospectus exemption.

Restricted Period

No restrictions are imposed on resale of securities distributed under section 2.1 of the Multilateral Instrument. The rationale for not imposing a restricted period is that given that the securities were distributed under a public offering document, there should be appropriate disclosure in the marketplace concerning the securities. Further, resale restrictions would not be workable as securities distributed under a public offering document are sold on the basis that resale is not restricted.

Resale of securities distributed under section 2.4 of the Multilateral Instrument would be restricted for: (i) 40 days if the securities are sold in the Eurobond Market; (ii) four months if the issuer is a qualifying issuer; and (iii) 12 months if the issuer is not a qualifying issuer. A qualifying issuer is any issuer that is a reporting issuer (or equivalent) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia, is an electronic filer under SEDAR, has filed a current AIF, and either has a class of equity securities listed or quoted on certain specified exchanges or markets or has outstanding securities that have received an approval rating.

Exemption from the Registration Requirement

Section 3.1 of the Multilateral Instrument provides that the registration requirement does not apply to a distribution that is exempt from the prospectus requirement under section 2.1 or 2.4 of the Multilateral Instrument.

Interplay of Prospectus Exemptions

Subsection 3.1(2) of the Companion Policy outlines that an issuer or a selling securityholder may concurrently rely in the local jurisdiction on section 2.4 of the Multilateral Instrument and in the jurisdiction or foreign jurisdiction in which there are purchasers of the securities being distributed, on a prospectus or registration exemption under securities legislation of that jurisdiction or foreign jurisdiction.

Subsection 3.1(3) of the Companion Policy clarifies that an issuer or selling securityholder may make a concurrent private placement in the local jurisdiction and a distribution outside of the local jurisdiction under section 2.4 of the Multilateral Instrument.

Subsection 3.1(7) clarifies that nothing in the Multilateral Instrument is intended to restrict the ability of a purchaser to resell securities during the restricted period in reliance upon a prospectus or an exemption from the prospectus requirement.

Subsection 3.1(8) cites an example of the application of resale restrictions and clarifies that the Multilateral Instrument does not impose any restrictions on resales in the United States or to another foreign jurisdiction.

Subsection 3.1(10) explains that "tacking" of a hold period under MI 45-102 and a restricted period under MI 72-101 is permitted.

Discretionary Authority

Part 5 of the Companion Policy states that the Multilateral Instrument does not alter the discretionary authority of a security regulatory authority to halt a distribution, remove an exemption or cease trade securities if it determines that it is necessary to do so to preserve the integrity of the capital market of the local jurisdiction.

Summary of Form 72-101F1

Form 72-101F1 Report of a trade under section 2.4 of Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction provides notice to the market of a distribution outside of the local jurisdiction under section 2.4 of the Multilateral Instrument.

Authority for the Multilateral Instrument - Ontario

In those jurisdictions in which the Multilateral Instrument and Form are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Multilateral Instrument and Form.

In Ontario, the following provisions of the Securities Act (Ontario) (the "Act") provide the Ontario Securities Commission (the "Ontario Commission") with authority to adopt the Multilateral Instrument.

Paragraph 143(1)8 authorizes the Ontario Commission to make rules providing for exemptions from the registration requirements under the Act and for the removal of exemptions from those requirements.

Paragraph 143(1)18 authorizes the Ontario Commission to make rules designating activities, including the use of documents or advertising in which registrants or issuers are permitted to engage or prohibited from engaging in connection with distributions.

Paragraph 143(1)20 authorizes the Ontario Commission to make rules providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements.

Paragraph 143(1)22 authorizes the Ontario Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of an annual information form.

Paragraph 143(1)48 authorizes the Ontario Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Alternatives Considered

The implementing jurisdictions considered maintaining the current system regulating distributions outside of the local jurisdiction. However, in light of the problems encountered by stakeholders in dealing with uncertainty as to the application

of securities legislation and with the differing requirements across Canada, they have determined it was advisable to develop a more certain and harmonized approach to distributions outside of the local jurisdiction.

Related Instruments

The Multilateral Instrument, Form, and Companion Policy are related to each other.

The Canadian Securities Administrators (the "CSA"), other than the Commission des valeurs mobilières du Québec, will be publishing MI 45-102 at the same time as the Multilateral Instrument, Form and Companion Policy. MI 45-102 imposes resale restrictions on securities initially distributed under an exemption from the prospectus requirement. In addition, the CSA intends to publish shortly for further comment proposed National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer ("NI 54-101"). To the extent that NI 54-101 bears on the determination of the number of securities and of holders that are directly or indirectly held of record in a local jurisdiction, it is related to the Companion Policy.

Unpublished Materials

In proposing the Multilateral Instrument, Form and Companion Policy, the implementing jurisdictions have not relied on any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The principal benefit of the Multilateral Instrument and Form will be to more effectively harmonize the approach of securities regulatory authorities in the implementing jurisdictions and provide for more regulatory certainty. In addition, because the restricted period commences once an issuer becomes a reporting issuer in one of the specified jurisdictions, most security holders will be subject to the same restrictions on resale, regardless of the reporting issuer status in the local jurisdiction.

The costs associated with the Multilateral Instrument and Form are the costs associated with filing AIFs and continuous disclosure materials in a jurisdiction. Issuers may also incur greater costs in the preparation of current AIFs.

In the view of the implementing jurisdictions, the benefits outweigh the costs.

Specific Requests for Comment

In addition to welcoming submissions on any provision in the Multilateral Instrument, Form and Companion Policy, the implementing jurisdictions seek comment on the specific matters referred to below.

1. Connecting Factors

Subsection 2.2(1) of the Companion Policy provides that a distribution of securities to purchasers outside of the local jurisdiction may constitute a distribution in the local jurisdiction if one or more connecting factors to the local jurisdiction exist. Comment is sought as to whether the connecting factors

enumerated in subsection 2.2(1) are the most relevant factors for determining whether a distribution in the local jurisdiction exists. Should "a substantial market for the securities being distributed exists in the local jurisdiction" be added as a connecting factor?

2. Public Offering Document

The CSA requests comments on the definition of public offering document in the Multilateral Instrument including whether prospectuses filed in any other foreign jurisdictions should be included in the definition.

3. Requirement that the Certificate Representing the Securities Distributed Under Section 2.4 be Legended

Part 2 of the Multilateral Instrument provides that if the securities are distributed in reliance on the exemption for distributions other than under a public offering document, the certificate representing the securities must carry a legend stating that, subject to securities legislation, the holder of the securities shall not trade the securities before the expiry of the appropriate restricted period. In many jurisdictions, there is currently no requirement to legend certificates for private placements either in or outside the jurisdiction. Under the System for Shorter Hold Periods for Issuers Filing an AIF (the "SHAIF System") implemented in British Columbia and Alberta in 1998, certificates must bear a legend stating that the securities may not be traded during the hold period and legended certificates are proposed to be required under MI 45-102.

The implementing jurisdictions believe that, while the legending requirement may represent a change in current commercial practice in some jurisdictions, it will ensure better regulation of the exempt market.

Comment is sought as to whether the legending requirement is workable. Should the Multilateral Instrument specify that issuers of securities in uncertificated form could satisfy the legending requirements by any means reasonably designed to notify holders and subsequent purchasers of the applicable resale restrictions, such as notices of the restriction to investors on confirmations, use of global securities held in a depository and restrictions on trading through the use of restricted CUSIP numbers?

4. Provision for 40 Day and Four-Month Restricted Periods

The Multilateral Instrument provides for a 40 day restricted period for securities distributed in the Eurobond Market. The 40 day period has been structured to correspond to the 40 day distribution compliance period for Category 2 issuers under Regulation S. The Multilateral Instrument also provides a four-month restricted period for investment grade securities (i.e., debt, asset-backed securities, preferred shares) distributed under an exemption from the prospectus requirement. This is broader than the application of the four month hold period under the SHAIF System and moves away from the "legal for life" criteria for private placement hold periods in some jurisdictions.

Comments

Interested parties are invited to make written submissions with respect to the Multilateral Instrument, Form and Companion Policy. Submissions received by December 8, 2000 will be considered.

Submissions should be sent to the securities regulatory authorities listed below in care of the Saskatchewan Securities Commission, in duplicate, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
c/o Dean Murrison, Committee Chair
Saskatchewan Securities Commission
800, 1920 Broad Street
Regina, Saskatchewan S4P 3V7
Telephone: (306) 787-5879
E-mail: dmurrison@ssc.gov.sk.ca

A diskette containing the submission (in DOS or Windows format, preferably WordPerfect) should also be submitted to the Chair of the Committee.

Comment letters submitted in response to requests for comments are placed in the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated among the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation in certain jurisdictions may require the securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the Chair and/or any of the following members of the Committee.

Margaret Sheehy or Brenda Leong
British Columbia Securities Commission
865 Hornby Street, 2nd Floor
Vancouver, British Columbia V6Z 2H4
Telephone: (604) 899-6650/(604) 899-6642 or (800)
373-6393 (in B.C.)
E-mail: msheehy@bcsc.bc.ca or bleong@bcsc.bc.ca

Marsha Manolescu
Alberta Securities Commission
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Chris Besko
The Manitoba Securities Commission
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Telephone: (204) 945-2561
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593-8131
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ivranic@osc.gov.on.ca or jbureaud@osc.gov.on.ca

Shirley Lee
Nova Scotia Securities Commission
1690 Hollis Street
P.O. Box 458
Halifax, Nova Scotia B3J 3J9
Telephone: (902) 424-5441
E-mail: lees@gov.ns.ca

Multilateral Instrument, Form and Companion Policy

The text of the Multilateral Instrument, Form and Companion Policy follow, together with footnotes that are not part of the Multilateral Instrument, Form or Policy, but have been included to provide background and explanation.

Dated: September 8, 2000

**MULTILATERAL INSTRUMENT 72-101
DISTRIBUTIONS OUTSIDE OF THE LOCAL
JURISDICTION**

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**MULTILATERAL INSTRUMENT 72-101
DISTRIBUTIONS OUTSIDE OF THE LOCAL
JURISDICTION**

PART 1 DEFINITIONS ¹

1.1 Definitions

"AIF" means

- (a) an annual information form of an issuer prepared in accordance with Form 44-101F1, whether or not the issuer is permitted under NI 44-101 to file a short form prospectus, or
- (b) an alternative form of annual information form permitted under section 3.2 of MI 45-102;

"approved rating"² means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that replaces a category listed below:

| Approved Rating Organization | Long Term Debt | Short Term Debt | Preferred Shares |
|--------------------------------------|----------------|-----------------|------------------|
| CBRS Inc. | B++ | A-2 | P-3 |
| Dominion Bond Rating Service Limited | BBB | R-2 | Pfd-3 |
| Duff & Phelps Credit Rating Co. | BBB- | D-3 | BBB- |
| Fitch IBCA, Inc. | BBB | F3 | BBB |
| Moody's Investors Service, Inc. | Baa | Prime-3 | baa |
| Standard & Poor's Corporation | BBB | A-3 | BBB |
| Thomson BankWatch, Inc. | BBB | TBW-3 | BBB; |

¹ A national instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of terms used in more than one national instrument or multilateral instrument. National Instrument 14-101 also provides that a term used in a national instrument or multilateral instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning given to it in the statute relating to securities of that jurisdiction. National Instrument 14-101 also provides that a provision in a national instrument or multilateral instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

² National Instrument 14-101 Definitions may be amended to add the term "approved rating". If so amended, the "approved rating" definition would be deleted from this instrument.

"approved rating organization"³ means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson BankWatch, Inc., and any of their successors;

"commencement date" means the later of

- (a) the date the issuer
 - (i) first became a reporting issuer or a reporting issuer equivalent in a jurisdiction⁴ listed in Appendix A, if the issuer is an electronic filer under NI 13-101, or
 - (ii) became a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101, and
- (b) the distribution date;

"Companion Policy 71-101CP The Multijurisdictional Disclosure System" means Companion Policy 71-101CP to National Instrument 71-101 The Multijurisdictional Disclosure System;

"control distribution" has the meaning ascribed to that term in MI 45-102 Resale of Securities;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;⁵

"CPC" means a capital pool company as defined in a CPC instrument and, in Manitoba, a keystone company;

"CPC information circular" means an information circular filed by an issuer and accepted under the

³ National Instrument 14-101 Definitions may be amended to add the term "approved rating organization". If so amended, the "approved rating organization" definition would be deleted from this instrument.

⁴ The term "jurisdiction" is defined in National Instrument 14-101 Definitions as meaning a province or territory of Canada except when used in the term foreign jurisdiction.

⁵ National Instrument 14-101 Definitions may be amended to add the terms "convertible security", "exchangeable security", "multiple convertible security" and "underlying security". If so amended, these definitions would be deleted from this instrument.

CPC instrument in connection with a qualifying transaction;

"CPC instrument" means a rule or regulation of a jurisdiction, or a rule, regulation or policy of an exchange in Canada, that applies only to CPCs;

"current AIF" means

- (a) an AIF that is a current AIF filed under NI 44-101, or
- (b) an AIF filed under section 3.1 of NI 45-102, if the AIF has been filed within the time periods prescribed by NI 44-101 for a current AIF;

"distribution date" means the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution;

"distributor", for a distribution, means the underwriter of the distribution, its affiliates and any other person or company that participates in the distribution under a contractual arrangement;

"Eurobond Market" means the market for trading of securities regulated by the International Securities Market Association;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;

"FSA" means the Financial Services Act, 1986 of the United Kingdom of Great Britain and Northern Ireland;

"MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;

"MRRS" means the mutual reliance review system implemented by NP 43-201;

"multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"NI 13-101" means National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"NI 43-101" means National Instrument 43-101 Standards of Disclosure for Mineral Products;

"NI 44-101" means National Instrument 44-101 Short Form Prospectus Distributions;

"NP 43-201" means National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs;

"NPS 2-B" means the National Policy Statement entitled Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators;

"public offering document" means

- (a) a prospectus filed and receipted in any jurisdiction,
- (b) a U.K. prospectus, or
- (c) a U.S. prospectus;

"qualifying issuer" means an issuer

- (a) that is a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix A,
- (b) that is an electronic filer under NI 13-101,
- (c) that has a current AIF,
- (d) that either
 - (i) has a class of equity securities⁶ listed or quoted on a qualifying market, meets the requirements to maintain that listing or quotation and is not designated inactive, suspended or the equivalent, or
 - (ii) has a class of securities outstanding that has received an approved rating,
- (e) if it is not qualified to file a short form prospectus under NI 44-101, and has oil and gas operations or exploration, development or production activities on a mineral property, has filed with its current AIF, as if the AIF were a prospectus, technical reports in accordance with, as applicable, NI 43-101 or the successor instrument to NPS 2-B, once in force, and until that time, a technical report or certificate on each material property prepared in accordance with NPS 2-B,
- (f) that, if it has received a notice in writing from any regulator that its AIF, including any technical reports, does

⁶ The term "equity security" is defined in National Instrument 14-101 Definitions as having the meaning ascribed to that term in securities legislation.

not comply with the instrument prescribing the content of the AIF, has satisfied the regulator that its AIF is acceptable, and

- (g) that if it is a CPC, has filed a CPC information circular that has been accepted under a CPC instrument;

"qualifying market" means any of

- (a) The Toronto Stock Exchange,
- (b) Tier 1 or Tier 2 of the Canadian Venture Exchange,
- (c) The Montreal Exchange,
- (d) the American Stock Exchange,
- (e) the Nasdaq National Market System,
- (f) the Nasdaq Small Cap Market,
- (g) the New York Stock Exchange,
- (h) the London Stock Exchange Limited, and
- (i) any successor to any of the exchanges or markets referred to in paragraphs (a) through (h);

"reporting issuer equivalent" means an issuer that is subject to the continuous disclosure requirements of a jurisdiction listed in Appendix A under the heading "Reporting Issuer Equivalent";

"restricted period" means the period that begins on the commencement date and ends

- (a) 40 days after the commencement date if the securities are distributed in the Eurobond Market,
- (b) four months after the commencement date if the issuer of the securities is a qualifying issuer, and
- (c) 12 months after the commencement date if the issuer of the securities is not a qualifying issuer;

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

"U.K. prospectus" means

- (a) a prospectus prepared and filed in accordance with the FSA, or

- (b) listing particulars within the meaning of section 144(2A) of the FSA; and

"U.S. prospectus" means a prospectus included in a registration statement prepared in accordance with the requirements of the 1933 Act that has been filed with the SEC and become effective.

PART 2 PROSPECTUS EXEMPTION FOR DISTRIBUTIONS TO PURCHASERS OUTSIDE OF THE LOCAL JURISDICTION

2.1 Distribution Under Public Offering Document - The prospectus requirement does not apply to a distribution if

- (a) a public offering document is filed in a jurisdiction, the United States of America or the United Kingdom in connection with the distribution;
- (b) the purchasers of the securities being distributed are outside of the local jurisdiction;
- (c) for securities being distributed by an underwriter, the agreement between the issuer, selling securityholder, if any, and the underwriter prohibits the distributors from distributing the securities to any person or company in the local jurisdiction; and
- (d) neither the issuer, the selling securityholder, if any, nor a distributor, takes any actions, for the purpose of, or that could reasonably be expected to have the effect of, preparing the market in the local jurisdiction, or creating a demand in the local jurisdiction, for the securities being distributed.

2.2 Distribution Using MRRS - Despite section 2.1, the exemption from the prospectus requirement provided by section 2.1 is unavailable in a local jurisdiction for a distribution of securities outside of the local jurisdiction if the issuer of the securities uses MRRS and the principal regulator of the issuer under NP 43-201 is in the local jurisdiction.

2.3 Distribution Under U.S. MJDS - Despite section 2.1, the exemption from the prospectus requirement provided by section 2.1 is unavailable in a local jurisdiction for a distribution of securities in the United States of America under the multijurisdictional disclosure system implemented by the SEC if the review jurisdiction of the issuer of the securities under section 4.2 of Companion Policy 71-101CP The Multijurisdictional Disclosure System is in the local jurisdiction.

2.4 Distribution Other than Under Public Offering Document - The prospectus requirement does not apply to a distribution if

- (a) the purchasers of the securities being distributed are outside of the local jurisdiction;
- (b) for securities being distributed by an underwriter, the agreement between the issuer, the selling securityholder, if any, and the underwriter prohibits a distributor from distributing the securities to any person or company in the local jurisdiction;
- (c) for equity securities that are being distributed by an underwriter, the agreement between the issuer, the selling securityholder, if any, and the underwriter prohibits a distributor from engaging in hedging transactions for equity securities of the issuer until any resale restrictions to which the securities being distributed are subject no longer apply;
- (d) neither the issuer, the selling securityholder, if any, nor a distributor, takes any actions for the purpose of, or that could reasonably be expected to have the effect of, preparing the market in the local jurisdiction, or creating a demand in the local jurisdiction, for the securities being distributed;
- (e) the certificate representing the securities carries a legend stating that, subject to securities legislation, the holder of the securities shall not trade the securities before the expiration of the restricted period; and
- (f) any document concerning the distribution provided to the purchaser contains a clear and prominent statement as to the resale restrictions to which the securities are subject.

2.5 Filing Report of Trade - An issuer, or the seller in the case of a control distribution, that relies on the exemption in section 2.4 shall, on or before the tenth day after the distribution date, file a report of trade prepared and executed in accordance with Form 72-101F1.

2.6 Resale of Securities Distributed Other than Under Public Offering Document - Any trade of securities distributed under section 2.4 is a distribution unless

- (a) the issuer of the securities is
 - (i) a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix A, if the issuer

is an electronic filer under NI 13-101, or

- (ii) a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101;

- (b) the restricted period has expired;
- (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 seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.

2.7 Application - Section 2.6 does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

2.8 Determining Time Periods

- (1) In determining the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent for the purposes of section 2.6, in the case of securities distributed under the exemptions from the prospectus requirement listed in Appendix F to MI 45-102, add the period of time that one of the amalgamating, merged or continuing corporations was a reporting issuer or a reporting issuer equivalent to the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent.
- (2) In determining the period during which the seller has held a security for the purposes of section 2.6,
 - (a) if the security was acquired by the seller from an affiliate of the seller, the period of time that the security had been held by the affiliate before the transfer to the seller shall be included; and
 - (b) if the security is an underlying security, the period of time shall run from the date that the convertible security, exchangeable security or multiple convertible security was first acquired.

PART 3 EXEMPTION FROM THE REGISTRATION REQUIREMENT

3.1 Exemption from the Registration Requirement -
The registration requirement does not apply to a distribution that is exempt from the prospectus requirement under section 2.1 or 2.4.

PART 4 EXEMPTION

4.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Multilateral 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.

PART 5 EFFECTIVE DATE

5.1 Effective Date - This Multilateral Instrument comes into force on _____, 2000.

**APPENDIX A
TO
MULTILATERAL INSTRUMENT 72-101
DISTRIBUTIONS OUTSIDE OF THE LOCAL
JURISDICTION**

| <u>REPORTING ISSUER</u> | <u>REPORTING ISSUER EQUIVALENT</u> |
|-------------------------|------------------------------------|
| Alberta | Manitoba |
| British Columbia | |
| Nova Scotia | |
| Ontario | |
| Quebec | |
| Saskatchewan | |

FORM 72-101F1

Report of a trade under section 2.4 of Multilateral Instrument 72-101
Distributions Outside of the Local Jurisdiction

Note: This report is not required where a bank listed in Schedule I or II to the *Bank Act (Canada)* or a loan corporation or trust corporation registered under the *Loan and Trust Corporation Act* acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness.

1. Full name, address and telephone number of the Issuer/Selling Securityholder.
2. Describe the type of security, the aggregate number or amount distributed and the aggregate purchase price.
3. State whether or not the issuer of the security distributed is a qualifying issuer as defined in Multilateral Instrument 72-101.
4. Date of distribution(s).
5. State the name and address of each purchaser, the number or amount of securities purchased and the purchase price paid by each purchaser. Attach list if necessary.
6. State the name and address of any person acting as agent in connection with the distribution(s) of the securities and the compensation paid or to be paid to the agent and the name(s) of the purchaser(s) in respect of which the compensation was paid or is to be paid.
7. After exercising reasonable diligence in its enquiries, the issuer/selling securityholder believes that the issuer/selling securityholder is eligible to use section 2.4 of Multilateral Instrument 72-101.

Certificate of Issuer/Selling Securityholder

The undersigned hereby certifies that the statements made in this report are true.

DATED: _____, 20__

(Name of Issuer/Selling Securityholder)

(Signature of Authorized Signatory)

(Name and Office of Authorized Signatory)

Instruction:

1. In answer to question 6 compensation includes commissions, discounts or other fees or payments of a similar nature directly related to the distribution of the securities. It is not necessary to include payments for services incidental to the distribution such as clerical, printing, legal or accounting services.

**COMPANION POLICY 72-101CP
TO MULTILATERAL INSTRUMENT 72-101
DISTRIBUTIONS OUTSIDE OF THE LOCAL
JURISDICTION**

PART 1 APPLICATION AND PURPOSE

- 1.1 Application** - Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction ("MI 72-101") has been implemented in all jurisdictions except Quebec.
- 1.2 Purpose** - This Policy is intended to provide guidance to issuers and selling securityholders regarding the application of
- (a) securities legislation to a distribution of securities to a person or company not in the local jurisdiction; and
 - (b) MI 72-101.

PART 2 CHARACTERIZATION AS DISTRIBUTION

2.1 General Principles

- (1) Securities legislation requires a person or company that distributes securities in the local jurisdiction to file a prospectus in the local jurisdiction and obtain a receipt for the prospectus or rely on an exemption from the prospectus requirement.
- (2) The definition of "distribution" in securities legislation in effect in most jurisdictions includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution. A secondary market trade of securities into a jurisdiction may be a distribution if the securities have not been qualified by prospectus in that jurisdiction by virtue of the definition of distribution even if the securities are freely tradeable in another jurisdiction in which they were distributed under a prospectus or a prospectus exemption.
- (3) An issue, or a sale by a person or company that is a control distribution, of securities of an issuer with a connection to the local jurisdiction may, depending on all the facts and circumstances, constitute a distribution in the local jurisdiction for which a prospectus is required to be filed or a prospectus exemption relied upon even if none of the offerees or purchasers of the securities are in the local jurisdiction. The connecting factors that may result in an issue or sale of securities being subject to the securities legislation of the local jurisdiction are discussed in section 2.2.

2.2 Connecting Factors

- (1) The Canadian securities regulatory authorities are of the view that an issue, or a sale by a person or company that is a control distribution, of securities of an issuer to purchasers outside of the local jurisdiction may be subject to the securities legislation of the local jurisdiction if one or more connecting factors to the local jurisdiction exist, such as the following:
 - 1. The issuer's mind and management is primarily located in the local jurisdiction as evidenced by the head office of the issuer and by the residence of the directors and senior officers of the issuer.
 - 2. A significant percentage of the outstanding securities of the class of securities being distributed are directly or indirectly held of record by residents of the local jurisdiction.
 - 3. The principal register of the equity securities of the issuer is located in the local jurisdiction.
 - 4. The operations of the issuer are principally conducted in the local jurisdiction.
- (2) In determining the percentage of the outstanding securities of the class of securities being distributed that are directly or indirectly held of record by residents of the local jurisdiction
 - (a) include securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in the local jurisdiction;
 - (b) count securities beneficially owned by residents of the local jurisdiction
 - (i) reported on reports of beneficial ownership, and
 - (ii) included on a non-objecting beneficial owner list maintained by an intermediary for the purposes of National Instrument 54-101 Communications with Beneficial Owners of Securities of a Reporting Issuer; and
 - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of

residence of the customer is unavailable.

2.3 Distribution Using MRRS - Section 2.2 of MI 72-101 provides that the exemption from the prospectus requirement provided by section 2.1 of MI 72-101 is unavailable in a local jurisdiction for a distribution of securities outside of the local jurisdiction if the issuer of the securities uses MRRS and the principal regulator of the issuer under NP 43-201 is in the local jurisdiction.

2.4 Distribution Under U.S. MJDS - Section 2.3 of MI 72-101 provides that the exemption from the prospectus requirement provided by section 2.1 of MI 72-101 is unavailable in a local jurisdiction for a distribution of securities in the United States of America under the multijurisdictional disclosure system implemented by the SEC if the review jurisdiction of the issuer of the securities under section 4.2 of Companion Policy 71-101CP The Multijurisdictional Disclosure System is in the local jurisdiction.

PART 3 EXEMPTIONS FROM THE SECURITIES LAW REQUIREMENTS

3.1 Exemptions from the Securities Law Requirements

(1) MI 72-101 provides an exemption from the registration requirement and the prospectus requirement to an issuer or a selling securityholder for a sale of securities that is considered to be a distribution in the local jurisdiction, if the purchasers of the securities are not in the local jurisdiction and the other conditions to the exemptions are satisfied.

(2) In connection with a distribution of securities to purchasers outside of the local jurisdiction, an issuer or a selling securityholder may concurrently rely

(a) in the local jurisdiction on an exemption from the prospectus requirement provided for in section 2.4 of MI 72-101 if the purchasers of the securities being distributed are not in the local jurisdiction and the other conditions in section 2.4 of MI 72-101 are met; and

(b) in the other jurisdiction or foreign jurisdiction in which there are purchasers of the securities being distributed, on an exemption from the requirement to file a prospectus or a registration statement provided by the securities legislation of that jurisdiction or foreign jurisdiction.

(3) In connection with a concurrent distribution in the local jurisdiction and a distribution outside

of the local jurisdiction, an issuer or a selling securityholder may concurrently rely

(a) in the local jurisdiction on an exemption from the prospectus requirement for the distribution of securities to purchasers in the local jurisdiction; and

(b) in the local jurisdiction on an exemption provided for in section 2.1 or 2.4 of MI 72-101 for the distribution of securities outside of the local jurisdiction if the purchasers of the securities being distributed under MI 72-101 are not in the local jurisdiction and the other conditions in section 2.1 or 2.4 of MI 72-101 are met.

(4) Section 2.6 of MI 72-101 provides that any trade of securities distributed under section 2.4 of MI 72-101 is a distribution unless the restricted period has expired and the other conditions in section 2.6 are met.

(5) The length of the restricted period is

(a) 40 days if the securities are distributed in the Eurobond Market,

(b) four months if the issuer of the securities is a qualifying issuer, and

(c) 12 months if the issuer is not a qualifying issuer.

(6) In order to be a qualifying issuer, among other conditions, an issuer must be a reporting issuer or a reporting issuer equivalent in one of the jurisdictions listed in Appendix A to MI 72-101. The reporting issuer jurisdictions are Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan. The reporting issuer equivalent jurisdiction is Manitoba. In effect, the restricted period is indefinite if the issuer is not a reporting issuer or a reporting issuer equivalent in any jurisdiction as the restricted period commences on the later of the date the issuer became a reporting issuer or a reporting issuer equivalent and the distribution date as set out in the definition of "commencement date".

(7) Nothing in MI 72-101 is intended to restrict the ability of a purchaser to resell securities during the restricted period in reliance upon a prospectus or an exemption from the prospectus requirement.

(8) For example, if an issuer with its head office in Ontario distributes securities under section 2.4 of MI 72-101 to purchasers in the United States, section 2.6 of MI 72-101 imposes a four or 12 month restricted period on resale of the securities into each implementing

jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory. Resale into those named jurisdictions is not precluded as section 2.7 of MI 72-101 provides that section 2.6 does not apply in those jurisdictions. Securities legislation in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory does not impose resale restrictions on trades of securities distributed under an exemption from the prospectus requirement. MI 72-101 does not impose any restrictions on resales in the United States or to another foreign jurisdiction.

- (9) It is a condition to the exemption in section 2.4 of the Multilateral Instrument that the certificate representing the securities carries a legend as to resale restrictions and that any document concerning the distribution provided to a purchaser contain a clear and prominent statement as to the resale restrictions. The securities legislation of the jurisdiction of the purchaser to whom the securities are distributed that provides the exemption described in paragraph (2)(b) may impose resale restrictions on the securities distributed in addition to those imposed by section 2.6 of MI 72-101.
- (10) A purchaser of securities that were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102 and consequently are subject to a hold period under section 2.5 of MI 45-102 may resell those securities during the hold period outside the local jurisdiction under section 2.4 of MI 72-101. Section 2.6 of MI 72-101 imposes a restricted period on the resale of the securities that commences on the later of the date the issuer became a reporting issuer or a reporting issuer equivalent and the distribution date. The distribution date is the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution. The restricted period begins on the date the securities were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102. In effect, MI 45-102 and MI 72-101 permit a "tacking" of the hold period under MI 45-102 and the restricted period under MI 72-101.

PART 4 PREPARING THE MARKET OR CREATING A DEMAND FOR THE SECURITIES

4.1 Actions - The following actions are not considered to be actions of the type referred to in paragraph (d) of section 2.1 and of section 2.4 of MI 72-101:

1. Publishing information required to be published by applicable law, or under rules or regulations of a Canadian or foreign regulatory

or self-regulatory authority, if the publication contains no more information than legally required and includes a statement setting out the jurisdictions in which the securities have been qualified for distribution and stating that the securities may not be distributed in any jurisdiction absent compliance with the prospectus requirement or an exemption from the prospectus requirement.

2. Publishing information in any publication, if
 - (a) the information contains a statement setting out the jurisdictions in which the securities have been qualified for distribution and stating that the securities may not be distributed in any jurisdiction absent compliance with the prospectus requirement or an exemption from the prospectus requirement, and
 - (b) the information that appears is limited to
 - (i) the issuer's name,
 - (ii) the amount and designation of the securities being sold,
 - (iii) a brief indication of the issuer's type of business,
 - (iv) the price of the securities,
 - (v) the yield of the securities, if the securities are debt securities with a fixed, non-contingent interest provision,
 - (vi) the name and address of the person or company placing the advertisement, and whether the person or company is participating in the distribution,
 - (vii) the names of any underwriters for the distribution,
 - (viii) the dates, if any, upon which the sales commenced and concluded,
 - (ix) if the securities are distributed or were distributed by rights issued to securityholders and, if so, the class of securities that are entitled or were entitled to subscribe, the subscription ratio, the record date, the dates, if any, upon which the rights were issued and expired, and the subscription price, and

- (x) any legend required by law or any foreign or Canadian regulatory or self-regulatory authority.
3. Visits to real estate, plants or other facilities located in the local jurisdiction by, and any tours of the real estate, plants or other facilities conducted for, a prospective investor resident outside of the local jurisdiction by the issuer, an underwriter for the distribution, a distributor, any of their respective affiliates or a person or company acting on behalf of any of the issuer, underwriter or any of their respective affiliates.
 4. Distribution by a third party in the local jurisdiction of price quotations for the securities of the issuer through a system that disseminates price quotations if
 - (i) transactions for the purchase or sale of those securities cannot be executed between persons or companies in the local jurisdiction through the system, and
 - (ii) participants in the system do not initiate or accept contacts with persons or companies in the local jurisdiction.
 5. Providing any journalist in the local jurisdiction with access, to press conferences held outside of the local jurisdiction, to meetings with the issuer or selling securityholder or their representatives conducted outside the local jurisdiction, or to written press-related materials released outside the local jurisdiction, at or in which a present or proposed distribution of securities is discussed.

PART 5 DISCRETIONARY AUTHORITY

- 5.1 **Public Interest Jurisdiction** - MI 72-101 does not alter the discretionary authority of Canadian securities regulatory authorities to halt a distribution, remove an exemption or cease trade securities. A securities regulatory authority may make orders in the public interest if it determines that it is necessary to do so in order to preserve the integrity of the capital market of the local jurisdiction.