

**ALBERTA SECURITIES COMMISSION RULE 71-801**  
**IMPLEMENTING THE MULTIJURISDICTIONAL DISCLOSURE SYSTEM**

**Definitions**

**1.** In this Rule

“Act” means the *Securities Act* (Alberta);

“bid” has the meaning ascribed to it in National Instrument 71-101 *The Multijurisdictional Disclosure System*;

“bid circular” has the meaning ascribed to it in National Instrument 62-104 *Take-Over Bids and Issuer Bids*;

“directors’ circular” means the circular required by section 2.17 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*;

“individual director’s or officer’s circular” means the circular contemplated by section 2.20 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*;

“MJDS” has the meaning ascribed to it in National Instrument 71-101 *The Multijurisdictional Disclosure System*;

“MJDS prospectus” has the meaning ascribed to it in National Instrument 71-101 *The Multijurisdictional Disclosure System*;

“notice of change” means the notice contemplated in Form 62-104F5 *Notice of Change or Notice of Variation*;

“notice of variation” means the notice contemplated in Form 62-104F5 *Notice of Change or Notice of Variation*;

“prospectus delivery requirement” means the requirement under section 129 of the Act for a dealer, not acting as an agent of the purchaser to send to a purchaser a prospectus within prescribed time limits and the requirement of section 6.7 of National Instrument 44-102 *Shelf Distributions*;

“right of action disclosure requirement” means the requirement under each of the following, as applicable:

- (a) item 30 of Form 41-101F1 *Information Required in a Prospectus*;
- (b) item 20 of Form 44-101F1 *Short Form Prospectus*;
- (c) items 2 and 3 of section 5.5 of National Instrument 44-102 *Shelf Distributions*;

“take-over bid” has the meaning ascribed to it in National Instrument 62-104 *Take-Over Bids*;

“underwriter certificate requirement” means the requirement to include a certificate of an underwriter in a prospectus, as set out in each of the following, as applicable:

- (a) subsection 5.9(1) of National Instrument 41-101 *General Prospectus Requirements*;
- (b) item 21.1 of Form 44-101 F1 *Short Form Prospectus*;
- (c) item 8 of section 5.5 of National Instrument 44-102 *Shelf Distributions*;
- (d) item 7 of subsection 3.2(1) of National Instrument 44-103 *Post Receipt Pricing*.

### **MJDS prospectus**

- 2. A distribution of securities made by an MJDS prospectus that complies with National Instrument 71-101 *The Multijurisdictional Disclosure System* is exempt from National Instrument 41-101 *General Prospectus Requirements* other than
  - (a) paragraph 16.1(a), and
  - (b) in respect of a rule 415 offering, section 17.2.

### **Exemption from certain requirements for southbound offerings**

- 3. (1) If the conditions in subsection (2) are met, an issuer that files a prospectus in respect of a distribution of securities to be made pursuant to an applicable registration statement under the multijurisdictional disclosure system adopted by the SEC, as amended from time to time, is exempt from each of the following:
  - (a) the underwriter certificate requirement;
  - (b) the prospectus delivery requirement;
  - (c) the right of action disclosure requirement.
- (2) The exemptions referred to in subsection (1) only apply to that portion of the securities distributed by the issuer that meet the following conditions:
  - (a) the securities are distributed to purchasers resident outside of Canada;
  - (b) either
    - (i) each purchaser of the securities represents in writing to the issuer or underwriter that the purchaser is not resident in Canada, or

- (ii) each underwriter, dealer or agent engaged by the issuer in respect of the distribution of the securities has agreed with the issuer in writing that it will not, to the best of the underwriter's, dealer's or agent's, as applicable, knowledge, after reasonable inquiry, distribute securities under such prospectus to a purchaser resident in Canada;
- (c) either
  - (i) if there is no concurrent offering of the securities pursuant to a prospectus in Canada, no advertisement or solicitation in furtherance of the distribution is undertaken in Canada by either the issuer or any underwriter, dealer or agent engaged by the issuer in respect of the distribution, or
  - (ii) if there is a concurrent offering of the securities pursuant to a prospectus in Canada, no advertisement or solicitation in furtherance of the distribution is undertaken in Canada by any underwriter, dealer or agent specified in subparagraph 3(2)(b)(ii);
- (d) the securities are distributed in compliance with U.S. federal securities law, including those requirements relating to an underwriter's certificate, the delivery of a prospectus to a purchaser, and disclosure to investors of their rights of action;
- (e) the securities distributed under such prospectus are lawfully distributed in the jurisdiction of residence of the purchaser.

#### **Bids for securities of U.S. issuers**

**4. (1)** Subject to subsection (2), the following provisions of National Instrument 62-104 *Take-Over Bids and Issuer Bids* do not apply to a bid that complies with Part 12 of National Instrument 71-101 *The Multijurisdictional Disclosure System*:

- (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) section 2.4, 2.5 and subsection 2.26(4), unless 20 percent 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 National Instrument 71-101 *The Multijurisdictional Disclosure System*;
- (d) section 2.8, in respect only of the requirement to 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 Alberta;

- (e) the requirement in subsection 2.10(1) that a bid circular be in the required form.
- (2) Despite subsection (1), 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 Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* in respect of MJDS directors' circulars and MJDS individual director's or officer's circulars**

- 5. (1) The following provisions of the Act and National Instrument 62-104 *Take-Over Bids and Issuer Bids* do not apply to a director or an individual director or officer that elects to comply with U.S. federal securities law under Part 12 of National Instrument 71-101 *The Multijurisdictional Disclosure System* 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 National Instrument 71-101 *The Multijurisdictional Disclosure System*:
  - (a) section 160 of the Act;
  - (b) section 2.19 and 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 National Instrument 62-104 *Take-Over Bids and Issuer Bids*.
- (2) Despite subsection (1), the person or company that sends a directors' circular, individual director's or officer's circular, notice of change or notice of variation must file the circular, notice of change or notice of variation, as applicable, on the day it is sent, or as soon as practicable after that.

**Repeal and effective date**

- 4. (1) Alberta Securities Commission Rule 71-801 *Implementing The Multijurisdictional Disclosure System Under National Instrument 71-101*, which came into force on November 1, 1998, is repealed.
- (2) This Rule comes into force on December 15, 2017.