



ASC NOTICE
REPEAL AND REPLACEMENT OF ALBERTA
SECURITIES COMMISSION RULE 71-801
IMPLEMENTING THE MULTIJURISDICTIONAL
DISCLOSURE SYSTEM

November 23, 2017

The Alberta Securities Commission (**ASC**) has repealed and replaced ASC Rule 71-801 *Implementing the Multijurisdictional Disclosure System* (the **New Rule**) effective December 15, 2017.

Substance and Purpose

The ASC has repealed the prior version of ASC Rule 71-801 *Implementing the Multijurisdictional Disclosure System under National Instrument 71-101* (the **Existing Rule**) and replaced it with the New Rule. No changes to the substance of the northbound multijurisdictional disclosure system (**MJDS**) are being made. The New Rule merely updates outdated references within the Existing Rule.

The New Rule also introduces certain additional accommodations to better align the requirements of Alberta securities laws with the southbound MJDS.

Background

The Existing Rule provides exemptions from the requirements of Alberta securities laws designed to work with National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**) to facilitate northbound MJDS. However, the Existing Rule had not been updated since its implementation and consequently contains a number of outdated references.

On September 28, 2017, we published for a 30 day comment period the proposed repeal and replacement of the Existing Rule. We received one comment letter. The commenter was supportive of the ASC's decision to repeal and replace the Existing Rule and provided suggestions in respect of the ASC's policies and rules relating more generally to outbound distributions and the associated reporting requirements.

The commenter noted that the proposed foreign underwriter certificate exemption, as drafted, unfortunately was not available where there was a concurrent distribution in Canada by a Canadian underwriter. We have made changes to the New Rule to reflect the commenter's suggestion so that the proposed foreign underwriter certificate exemption would be available to a foreign underwriter despite the fact that there is a concurrent offering of securities in Canada by a Canadian underwriter. This expansion, along with some minor drafting changes, are the only changes we are proposing to the New Rule, as compared with the version we published on September 28, 2017.

Summary of Changes

Other than the accommodations discussed below, the substance of the New Rule is intended to be the same as that of the Existing Rule. Rather than referring to outdated statutory provisions, the New Rule refers to the existing requirements set out in National Instrument 41-101 *General Prospectus Requirements* and National Instrument 62-104 *Take-Over Bids and Issuer Bids*. The exemptions continue to be conditional on compliance with NI 71-101 and U.S. federal securities laws. No changes have been made to NI 71-101.

While the Existing Rule was principally designed to facilitate northbound MJDS, it also contained one exemption that applied in respect of prospectus offerings relying on the southbound MJDS. The New Rule expands upon that exemption and provides two additional accommodations to better align the requirements of Alberta securities laws with those of the U.S. Securities and Exchange Commission in respect of southbound offerings under MJDS.

First, the New Rule slightly expands on the foreign underwriter certificate exemption contained in section 3 of the Existing Rule. The exemption in section 3 was limited to situations where securities were offered and sold *only* in the United States. However, it is not uncommon for some portion of a southbound MJDS offering to also be made to investors in other foreign jurisdictions. The ASC has routinely provided discretionary exemptive relief to accommodate this situation where the offering is not made to any Canadians. The New Rule codifies this relief and has been revised to accommodate situations where there is a concurrent offering in Canada by Canadian underwriters.

Second, the New Rule provides an exemption from the prospectus delivery requirement where there are no Canadian investors and the requirements of U.S. federal securities law in respect of delivering or providing access to a prospectus are complied with. We understand that Rule 172 of the *Securities Act of 1933* (United States) (**1933 Act**) permits the prospectus delivery requirement under U.S. federal securities law to be satisfied on the basis of "access equals delivery" principles together with a notice obligation under Rule 173 of the 1933 Act. The exemption is not available for equity lines of credit and at-the-market (ATM) distributions as additional conditions are typically imposed in connection with discretionary relief relating to those distributions. We propose to continue to deal with those types of offerings through discretionary exemptive relief.

Third, the New Rule provides that statements that would otherwise be required under Alberta securities law that are permitted to be excluded by SEC Form F-10 as not material to offerees or purchasers in the United States are also permitted to be excluded.

Questions

Please refer your questions to:

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