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**IMPLEMENTING INSTRUMENT 71-802 ADOPTING**

**NATIONAL INSTRUMENT 71-101**

***THE MULTIJURISDICTIONAL DISCLOSURE SYSTEM***

**PART 1 -- DEFINITIONS**

1.1 In this Rule:

(a) MI 62-104 means "Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*";

(b) Form 62-104F1 means "62-104F1 *Take-Over Bid Circular*";

(c) Form 62-104F2 means "62-104F2 *Issuer Bid Circular*";

(c.1) NI 41-101 means National Instrument 41-101 *General Prospectus Requirements*; and

(d) NI 71-101 means "National Instrument 71-101 *The Multijurisdictional Disclosure System*".

1.2 Each term used in this Rule that is defined or interpreted in Part 1 of NI 71-101 has the meaning ascribed to it in that Part.

1.3 *Repealed 1 February 2008*

**PART 2 -- MJDS PROSPECTUS DISTRIBUTIONS**

**2.1 PRELIMINARY MJDS PROSPECTUS AND MJDS PROSPECTUS**

- 2.1.1 The following do not apply to a distribution of securities made by MJDS prospectus in compliance with NI 71-101 and otherwise in accordance with the *Securities Act* and the *Regulations*:
- (a) sections 71, 72 and 74 of the *Act*, insofar as those sections concern the form and content of a preliminary prospectus or prospectus;
  - (b) subsections 76(1) and 77(1) of the *Act*, insofar as those subsections concern the form, content and circumstances of filing of an amendment to a preliminary prospectus or prospectus;
  - (c) subsection 77(2) of the *Act* insofar as that section concerns the time period that must elapse before the distribution of additional securities may be proceeded with;
  - (d) *Repealed 17 March 2008*
  - (e) section 78 of the *Act*, insofar as that section limits the duration of the distribution of securities under a MJDS prospectus in relation to a rule 415 offering.
  - (f) NI 41-101 does not apply to a distribution of securities under NI 71-101.

### **PART 3 -- BIDS FOR SECURITIES OF U.S. ISSUERS**

#### **3.1 APPLICATION OF THE *ACT* AND RULES TO OFFERORS IN TAKE-OVER BIDS AND ISSUER BIDS**

- 3.1.1 The following do not apply to a bid made in compliance with Part 12 of NI 71-101 and otherwise in accordance with the *Act* and the *Regulations*:
- (a) sections 2.2, 2.3, 2.4, 2.5, 2.6 and 2.7 of MI 62-104, except that subsection 2.4(1) of MI 62-104 applies to a bid if securityholders of the offeree issuer whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) through 12.1(4) of NI 71-101, hold 20 percent or more of a class of securities that is the subject of the bid;
  - (b) section 2.8 of MI 62-104;
  - (c) sections 2.23 and 2.27 of MI 62-104;
  - (d) sections 2.10, 2.11 and 2.12 of MI 62-104, other than:

- (i) the requirement in subsection 2.10(1), to send a take-over bid circular or an issuer bid circular to all holders in New Brunswick of securities that is subject to the bid;
  - (ii) paragraph 2.10(1)(a) unless:
    - A. if the take-over bid does not satisfy the eligibility requirements of section 12.3 of NI 71-101, any requirement in Form 62-104F1 that is applicable because the bid provides that the consideration for the securities of the offeree issuer is to be, in whole or in part, securities of the offeror or other issuer; and
    - B. any requirement in Form 62-104F1 that is applicable because the offeror anticipates that a going private transaction will follow the take-over bid;
  - (iii) paragraph 2.10(1)(b) unless if the issuer bid does not satisfy the eligibility requirements of section 12.3 of NI 71-101, any requirement in Form 62-104F2 that is applicable because the bid provides that the consideration for the securities of the offeree issuer is to be, in whole or in part, different securities of the issuer;
  - (iv) the requirement in subsection 2.11(1), subject to subsection 2.11(2) to send a notice of change to every person to whom the bid was required to be sent and whose securities were not taken up before the date of the change; and
  - (v) the requirement in subsection 2.12(1) to send a notice of variation to every person to whom the bid was required to be sent and whose securities were not taken up before the date of the variation; and
- (e) section 2.13 of MI 62-104, other than the requirement in section 2.13 to file any notice of change or variation.
- 3.1.2 Subsection 118(1) of the *Act* applies if securityholders of the offeree issuer whose last address as shown on the books of the issuer is in Canada, as determined in accordance with subsections 12.1(2) through 12.1(4) of NI 71-101, hold 20 percent or more of a class of securities that is the subject of the bid.
- 3.1.3 Paragraph 120(a) of the *Act* applies except the requirement that the offeror deliver the bid to all holders of securities that before the expiry of the bid are convertible into securities of the class that is subject to the bid in Ontario.
- 3.1.4 Subsections 123(1), 123(3), 123(7) and 125(1) of the *Act* apply.
- 3.1.5 The requirement in subsection 123(2) of the *Act* subject to subsection 122(3) of the *Act* to deliver a notice of change to every person to whom the circular was

required to be delivered and whose securities were not taken up at the date of the occurrence of the change applies.

- 3.1.6 The requirement in subsection 123(4) of the *Act* to deliver a notice of variation to every person to whom the take-over bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation applies.

### **3.2 APPLICATION OF THE *ACT* AND THE RULES TO MJDS DIRECTORS' CIRCULARS AND MJDS INDIVIDUAL DIRECTOR'S OR OFFICER'S CIRCULARS**

- 3.2.1 The following do not apply to the directors or the individual directors or officers of an offeree issuer who elect to comply with Part 12 of NI 71-101 instead of provisions of the *Act* and the rules otherwise applicable in preparation of a directors' circular or individual director's or officer's circular for a take-over bid made for securities of the offeree issuer under Part 12 of NI 71-101;

(a) sections 2.17, 2.18, 2.19 and 2.20 of MI 62-104, other than:

- (i) subsection 2.17(1), except the requirement that a directors' circular be sent to holders of securities that, before the expiration of the bid, are convertible into securities of the class that is subject to the bid;
- (ii) the requirement in subsection 2.18(1) to send a notice of change to every person to whom the takeover bid was required to be sent, in respect of holders of securities that were not taken up at the date of the occurrence of the change;
- (iii) the requirement in sections 2.19 and 2.20 of MI 62-104 to file every directors' circular and individual director's or officer's circular and any notice of change; and
- (iv) subsection 2.20(5) of MI 62-104, except the requirement to deliver a copy of the circular and a notice of change to holders of securities that, before the expiration of the bid, are convertible into securities of the class that is the subject of the bid; and

(b) subsection 2.10(3) of MI 62-104.

- 3.2.2 Subsection 124(1) of the *Act* applies except for the requirement that the board of directors of the offeree issuer deliver the directors' circular to all holders of securities that before the expiry of the bid are convertible into securities of the class that is subject of the bid who are in New Brunswick.

- 3.2.3 The requirement in subsection 124(6) of the *Act* to deliver a notice of change to every person to whom the directors' circular was required to be delivered, in

respect of holders of securities that were not taken up at the date of the occurrence of the change.

- 3.2.4 Subsection 124(7) of the *Act* applies except the requirement that the board of directors of the offeree issuer deliver the individual director's or officer's circular or notice of change thereto to all holders of securities that before the expiry of the bid convertible into securities of the class that is subject of the bid who are in New Brunswick.

**PART 4** *Repealed 25 September 2007*

**PART 5 -- EFFECTIVE DATE**

- 5.1 This Rule comes into force on 19 September 2006.