

**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.