

CANADIAN SECURITIES ADMINISTRATORS NOTICE NO. 8

PROPOSED FOREIGN ISSUER PROSPECTUS AND CONTINUOUS DISCLOSURE SYSTEM (DRAFT NATIONAL POLICY NO. 53)

Background

In August 1993, the Canadian Securities Administrators ("CSA") published a Request for Comments outlining proposed draft National Policy Statement No. 53, which was entitled the "Foreign Issuer Prospectus and Continuous Disclosure System" ("FIPS") and was designed to facilitate world-class foreign issuers offering securities in Canada as part of an international offering. Since that time, various factors have led to significant changes in the underlying approach, which is described below.

The CSA will be publishing for comment the revised FIPS, which will be a draft rule in Ontario and is expected to take the form of a policy statement in other participating Canadian provinces and territories. It is contemplated that FIPS would, among other things, permit offerings of securities of major foreign issuers to be made in Canada on a basis that would be exempt from most Canadian disclosure requirements, including Canadian GAAP reconciliation requirements. FIPS would be available for offerings which are also being made on a registered basis pursuant to United States federal securities laws and which meet certain eligibility requirements. FIPS would also provide for exemptions from certain Canadian continuous disclosure requirements.

In response to certain inquiries, staff of the various provincial and territorial securities regulatory authorities wish to advise that they are willing to consider recommending relief on a case-by-case basis to permit offerings along the lines of FIPS prior to the formal implementation of FIPS.

FIPS

General

The purpose of FIPS is to facilitate certain offerings of securities of foreign issuers in Canada while seeking to ensure that Canadian investors remain adequately protected. This is expected to enable Canadian dealers and retail investors to participate directly in global securities offerings, including foreign privatizations.

FIPS will be limited to major issuers whose securities can be expected to be liquid and to have a significant market following. Offerings made pursuant to FIPS in Canada will be completed by way of a prospectus on the basis of documents prepared in accordance with U.S. federal securities legislation (with certain additional Canadian disclosure), thus preserving traditional civil liability remedies for Canadian investors.

FIPS is designed to permit eligible transactions to occur in Canada with minimal review on the basis of disclosure documents prepared in accordance with United States federal securities laws and regulations, and builds on the mechanisms set forth in existing Canada-U.S. Multijurisdictional Disclosure System contained in National Policy Statement No. 45 ("NP 45"). However, unlike MJDS, FIPS will not be

reciprocal, i.e. Canadian issuers will not receive similar treatment in any jurisdiction outside of Canada. Although in most cases there will be minimal review, the substance of the disclosure documents will be reviewed in the unusual case where, through monitoring of the materials or otherwise, the Canadian securities regulatory authorities have reason to believe that there may be a problem with a transaction or the related disclosure or other special circumstances exist. In addition, eligible foreign issuers will not be required to provide Canadian GAAP information (provided that U.S. GAAP information is included, directly or by reconciliation).

The requirements and exemptions available under FIPS for offerings of securities of eligible foreign issuers that are not being concurrently made on a registered basis in the U.S. will be determined on a case-by-case basis.

While FIPS will not be available for business combinations, consideration is being given to extending FIPS to certain take-over bids and issuer bids, including securities exchange offerings made in respect of foreign issuers.

Eligibility Requirements

FIPS will be available for offerings of equity, debt and other securities (subject to certain exclusions, such as derivative securities) of or by foreign issuers (i) having a market value and public float (being the market value held by non-affiliates and non-associates), on a post-offering basis, of Cdn. \$3 billion and Cdn. \$1 billion, respectively, (ii) which are being offered in the U.S. and registered contemporaneously with the U.S. Securities and Exchange Commission, and (iii) where the securities proposed to be distributed in Canada represent 10% or less of the securities to be distributed worldwide (including Canada).

The foreign issuer must not be a commodity pool issuer, collective investment program, mutual fund or investment company within the meaning of the U.S. Investment Company Act of 1940.

In addition, certain debt or preferred shares of majority-owned subsidiaries of eligible foreign issuers which are guaranteed by the latter may also be offered under FIPS, provided that they are non-convertible or convertible only into securities of the eligible foreign issuer and provided that the guarantor signs a prospectus certificate.

Procedures

The procedures for completing a prospectus offering under FIPS will be substantially similar to those under NP 45. Certain minimal legends will be required, but, as noted above, Canadian GAAP information will not be required if U.S. GAAP information is provided, either directly or by reconciliation. Canadian forms of certificates of issuers and underwriters will be required.

It is anticipated that shelf and post-receipt pricing procedures will be available, including unallocated shelf procedures to the extent available in the United States.

Take-over and Issuer Bids

Consideration is being given to extending FIPS to take-over bids and issuer bids, including securities exchange bids, made in respect to foreign issuers.

Continuous Disclosure, Proxy Solicitation, Etc.

Continuous disclosure and proxy solicitation requirements for eligible foreign issuers that are U.S. companies or entities will generally be those applicable in the U.S., provided that all such documents are filed promptly in Canada and, if applicable, made available to Canadian resident securityholders in the same manner and time as required under U.S. law. However, as under NP 45, Canadian early warning requirements will continue to apply. There will be no requirement to file insider reports in Canada so long as U.S. rules are complied with.

Guaranteed securities will be subject to the requirement to file and deliver to securityholders the guarantor's financial statements at the same time as in the U.S.

The continuous disclosure and insider reporting requirements applicable to non-U.S. eligible foreign issuers that are U.S. registrants will be those applicable in the U.S., again with certain filing and delivery requirements applicable in Canada. For greater certainty, such issuers will be exempt from Canadian proxy solicitation requirements. However, U.S. eligible and non-U.S. eligible foreign issuers will deliver to Canadian security holders any documents that they deliver to U.S. security holders and in the same manner.

The continuous disclosure and insider reporting requirements and exemptions applicable to non-U.S. eligible foreign issuers that are not U.S. registrants will be determined on a case-by-case basis.

Continuous disclosure relief will also be available on similar terms for eligible issuers that have not completed an offering under FIPS but are reporting issuers in Canada for other reasons.

Foreign Dealers' Participation

Dealers registered as international dealers in Ontario will be able to distribute securities offered under FIPS to designated institutions (as defined in the Regulation) in Ontario. Certain other jurisdictions are considering whether they should allow foreign dealers to offer securities under FIPS to institutions and other sophisticated investors. Consideration is also being given by certain jurisdictions to whether international dealers should be permitted to sign the Underwriter's Certificate in a FIPS prospectus.

Case-By-Case Relief

Persons wishing to seek relief necessary to accomplish a transaction that is contemplated by FIPS prior to FIPS being implemented are invited to contact Commission Staff of the applicable regulatory authorities to discuss how this can best be achieved.

April 28, 1995