TORYS LLP

RAISING CAPITAL IN THE UNITED STATES UNDER THE MULTIJURISDICTIONAL DISCLOSURE SYSTEM

Torys covers the essentials of accessing and making the most of cross-border opportunities under this unique regulatory system.

A Business Law Guide

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INTRODUCTION

Canadian issuers have a long and successful record of raising capital in the United States by offering a wide range of equity, debt and hybrid securities to U.S. investors. The depth and liquidity of the U.S. capital markets are very attractive to Canadian issuers, and public offerings in the United States are often an integral part of Canadian issuers' financing activities.

One reason why U.S. public offerings are so appealing to Canadian issuers is the Canada-U.S. Multijurisdictional Disclosure System (MJDS). The MJDS is a system of mutual recognition between securities regulators in Canada and the United States that was established in 1991 out of a desire to streamline cross-border regulation and encourage cross-border capital raising. The MJDS permits eligible Canadian and U.S. issuers to raise capital in cross-border public financings, engage in cross-border M&A transactions and fulfill their ongoing disclosure obligations while complying primarily with their home country securities regulations, including disclosure and procedural rules. This lessens the burden of dual regulation and oversight by two sets of securities regulators.

The regulatory rationale underlying the MJDS is that the two countries' capital markets are sufficiently similar and integrated that it makes sense to afford deference to an issuer's home country rules and treat those home country rules, to a significant extent, as sufficient for the protection of investors in the other jurisdiction. By reducing the regulatory costs, timing issues and other complications associated with dual regulation, the MJDS increases the opportunities for eligible Canadian and U.S. issuers to access each other's capital markets.

This guide is meant to provide Canadian issuers and their investment bankers with an overview of the financing opportunities presented by the MJDS in the U.S. capital markets. It also describes the ongoing reporting and corporate governance obligations that apply to Canadian issuers that access the U.S. capital markets under the MJDS. Since this guide is an overview of the MJDS, we recommend that readers seek specialized advice regarding particular facts and legal issues. If you have any questions about the MJDS or would like to discuss any aspect of this guide in greater detail, please contact us.

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ISSUERS AND TRANSACTIONS ELIGIBLE FOR THE MJDS

Capital Market Activities Under the MJDS

The MJDS permits eligible Canadian issuers to engage in cross-border public offerings, rights offerings, takeover bids and business combinations by complying primarily with Canadian laws and procedural requirements rather than the rules of the U.S. Securities and Exchange Commission (SEC). Moreover, issuers eligible for the MJDS may satisfy their ongoing U.S. reporting obligations primarily by filing their Canadian annual and quarterly reports and other continuous disclosure documents with the SEC.

Prospectuses filed with the SEC under the MJDS are generally not subject to regulatory review by the SEC. Consequently, public offerings in the United States under the MJDS are relatively efficient because they avoid some of the transaction costs and timing concerns associated with SEC review.

Eligible Issuers

Canadian issuers must satisfy certain general eligibility requirements as well as certain transaction-specific eligibility tests that apply to the type of financing or other capital markets activity they plan to engage in under the MJDS. Generally, the MJDS is available to a Canadian issuer (whether federally or provincially incorporated or organized) that:

- is a foreign private issuer (discussed in the next section);
- has been a reporting issuer in Canada for at least 12 calendar months and is not in default under its reporting obligations; and
- has an aggregate market value of the public float of its outstanding equity securities of U.S.$75 million or more.

The public float refers to equity securities (excluding preferred shares) held by non-affiliates. For purposes of MJDS eligibility, affiliates are holders of more than 10% of the issuer's equity securities.

Successor Issuers

Issuers that are successor issuers following a recent amalgamation, arrangement or other business combination may be able to rely on the reporting history of their predecessor(s) to meet the MJDS reporting history requirement.

Government Issuers

The MJDS is generally not available to Canadian federal, provincial or municipal governments or Crown corporations.

Investment Companies

The MJDS is not available to investment companies registered or required to be registered under the U.S. *Investment Company Act of 1940*. Under U.S. law, the term "investment company" is defined broadly and generally includes mutual funds, closed-end investment companies and any company engaged primarily in the business of investing, reinvesting or trading in securities. Many Canadian companies engaged in these types of businesses are still eligible for the MJDS because of an exemption that excludes Canadian banks, trust companies, loan companies, broker-dealers and insurance companies from the definition.

Subsidiaries

A Canadian subsidiary issuer may be eligible to use the MJDS to offer debt or preferred securities if:

- its parent meets the applicable MJDS eligibility requirements;
- its parent fully and unconditionally guarantees the subsidiary's securities as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); and
- the securities are convertible or exchangeable, if at all, only for securities of the parent.

Meaning of "Foreign Private Issuer"

Only Canadian issuers that are "foreign private issuers" under U.S. securities law are eligible for the MJDS. In this context, "private" means "non-governmental." The term "foreign private issuer" is defined under SEC rules as an issuer organized outside

the United States, unless more than 50% of the issuer's outstanding voting securities are directly or indirectly owned by U.S. residents *and* any one of the following is true:

- a majority of the issuer's executive officers or directors are U.S. citizens or residents;
- more than 50% of the issuer's assets are located in the United States; or
- the issuer's business is administered principally in the United States.

Eligible Securities Under the MJDS

The MJDS may be used to offer various types of securities, including securities issued in exchange offers, mergers or other business combinations. However, derivative securities may not be offered under the MJDS except for:

- warrants and options, provided that they and the underlying securities are offered by the issuer, its parent or one of their affiliates; and
- convertible securities, provided that they are convertible only into securities of the issuer, its parent or one of their affiliates.

Canadian issuers may also extend rights offerings to their U.S. shareholders under the MJDS. The rights themselves will not be freely tradable in the United States, but the securities issued to holders on the exercise of the rights will be freely tradable.

Bought Deals

Although there is no U.S. equivalent to Canada's bought deal procedures, a Canadian bought deal may be combined with a U.S. public offering under the MJDS. In these transactions, care must be taken to properly coordinate the filing of offering materials with securities regulators on both sides of the border.

Listing on a U.S. Stock Exchange

In conjunction with an MJDS offering, a Canadian issuer may seek to list its securities on a U.S. stock exchange such as the NYSE or NASDAQ. To do so, the issuer must:

- meet the quantitative listing standards of the relevant exchange, which are posted on each exchange's website;
- prepare a listing application, including historical financial and other company information;

- enter into a listing agreement with the relevant exchange; and
- undertake to comply with the ongoing requirements for maintaining a listing set forth in the stock exchange's regulations.

Most of the reporting, corporate governance, shareholder approval and other on-going listing requirements of the U.S. stock exchanges are similar to what the TSX requires. If a conflict does arise for a Canadian dual-listed company, the U.S. stock exchanges will usually defer to TSX regulation.

Alternatives to MJDS Offerings

Non-MJDS Public Offerings

A Canadian issuer that is not eligible to use the MJDS may still offer securities to the public in the United States. Instead of the MJDS rules, the applicable SEC rules would be those that apply to public offerings by other non-U.S. issuers. The nature and scope of these rules will depend, to some extent, on the size of the issuer and the size of the offering, but in general, the disclosure, procedural and timing requirements are not as favorable as under the MJDS, since MJDS offerings are essentially governed by Canadian regulations with very few additional U.S. rules. Moreover, the disclosure documents in non-MJDS offerings are subject to review and comment by the SEC. For these reasons, an MJDS transaction is generally considered to be the best option for a Canadian company raising capital in the U.S. public market.

Private Placements

Private placements are another means by which Canadian issuers may raise capital in the U.S. market. Canadian issuers routinely supplement their Canadian public offerings with sales to U.S. institutional investors under a private placement exemption from SEC registration. Conducting a private placement in the United States will not subject an issuer to on-going SEC reporting obligations as will most MJDS offerings (see Chapter 5). Furthermore, the speed and predictability of U.S. private placements, particularly when sales are made solely to qualified institutional buyers, may be significant advantages when markets are volatile.

Liability Under U.S. Securities Laws

The MJDS does not exempt Canadian companies or other participants in a public offering from liability under U.S. securities laws. In raising capital or engaging in any other transaction under the MJDS and in filing the associated documents with the SEC, Canadian companies and their officers and directors, as well as the underwriters, accountants and other offering participants, are subject to substantially the same risks of liability for misleading disclosure as issuers who offer securities in the U.S. capital markets without using the MJDS. SEC rules specify that prospectuses and other SEC filings must include, in addition to the information expressly required

by the rules and forms, any information that may be necessary to prevent the disclosure from being misleading in the circumstances. The *Securities Act of 1933* and the *Securities Exchange Act of 1934* contain anti-fraud and civil liability provisions that permit the SEC as well as private investors to sue the issuer and other offering participants if there is fraud in connection with an offering or if there are material misstatements or omissions in any of the disclosure materials. In connection with a public offering, the underwriters will conduct a due diligence investigation and will ask U.S. counsel and, in certain cases, Canadian counsel to provide a "Rule 10b-5 letter," which provides comfort that the disclosure materials are free of material misstatements and omissions.

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DISCLOSURE REQUIREMENTS AND MECHANICS OF MJDS OFFERINGS

Overview

Prospectuses used in MJDS offerings must comply with Canadian disclosure requirements. The U.S. and Canadian versions of an MJDS prospectus will be substantially the same, with certain differences noted below. Apart from the legal requirements for an MJDS prospectus, its content will reflect the manner in which the offering is being marketed. For example, the prospectus for an offering that is being sold solely or predominantly in the United States will more closely reflect U.S. marketing and disclosure practices. Although a Canadian issuer may be well-established in Canada and eligible for the short form prospectus system, the prospectus for its U.S. IPO will likely include, for the benefit of U.S. investors and in conformity with U.S. long form requirements, a detailed description of the issuer's business, three years of audited financial statements, and five years of selected financial information.

Testing the Waters and Publicity

Both U.S. and Canadian securities laws regulate the kinds of marketing and publicity that issuers and underwriters may engage in during the course of a public offering. The U.S. *Jumpstart Our Business Startups Act of 2012* (JOBS Act) created a so-called on-ramp for U.S. IPOs, reducing some of the regulatory requirements for eligible issuers in respect of public offerings and reporting with the SEC post-offering. Eligible issuers are defined as Emerging Growth Companies (EGCs). These are companies that are not yet public in the United States and that have total annual gross revenue of less than U.S.$1 billion. An EGC may maintain this status for five years following its initial public offering in the United States, unless its public float exceeds U.S.$700 million, its total annual gross revenue equals or exceeds U.S.$1 billion or it issues more than U.S.$1 billion of non-convertible debt in a three-year

period.

A Canadian company whose revenue, market capitalization and debt are below the relevant thresholds can qualify as an EGC simultaneously with qualifying as an MJDS issuer. One advantage of EGC status is that, in conducting a U.S. public offering, EGCs and dealers acting on their behalf may "test the waters" by communicating with U.S. qualified institutional buyers (QIBs) and other U.S. institutional accredited investors before a registration statement is filed with the SEC. (This is similar to the Canadian rule permitting testing the waters in IPOs, but the JOBS Act permits this activity in all public offerings by EGCs, not just IPOs.)

In a cross-border MJDS offering, once a preliminary prospectus is filed with Canadian securities regulators and a registration statement is filed with the SEC, road shows may be conducted in appropriate cities in each jurisdiction and the issuer and underwriters may take advantage of the other marketing methods permitted under U.S. and Canadian securities laws, in particular, the use of free-writing prospectuses in the United States and equivalent marketing materials in Canada. In all marketing activities, the disclosure provided to investors should be materially the same on both sides of the border.

The U.S. MJDS Filing Materials

Form F-10 is the most common form of U.S. registration statement for MJDS public offerings. Form F-7 is used for rights offerings. The MJDS forms consist of several pages of legal information wrapped around the Canadian prospectus. The Canadian prospectus and the wraparound document together make up the U.S. registration statement that is filed with the SEC. An MJDS registration statement may exclude any disclosure that is applicable solely to Canadian investors and that would not be material to U.S. investors, including:

- any discussion of Canadian tax considerations not material to U.S. investors;
- the names of any Canadian underwriters not acting as underwriters in the United States, or any description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution);
- any description of investors' statutory rights under Canadian securities law (except to the extent that the issuer is providing such rights to U.S. purchasers); and
- the certificates of the issuer and underwriters that are required under Canadian securities law to be included in the prospectus.

Various informational legends for the benefit of U.S. investors must be included in the prospectus. These legends notify U.S. investors that the prospectus has been prepared in accordance with Canadian disclosure requirements; that the financial

statements contained in the prospectus may not be comparable to the financial statements of U.S. companies; that the investment may have tax consequences for U.S. investors that are not fully described in the prospectus; and that it may be more difficult for U.S. investors to pursue civil remedies for any securities law violations in connection with the offering because some or all of the relevant potential defendants and their assets are located in Canada.

The MJDS registration statement must be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions, and its authorized representative in the United States.

No U.S. GAAP Reconciliation Required

The financial statements included in an MJDS prospectus may be prepared in accordance with U.S. GAAP or International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB). If the financial statements are prepared in accordance with IFRS-IASB—which has been adopted as Canadian GAAP—a reconciliation to U.S. GAAP wil not be required.

Planning the Timetable for the Offering

Disclosure Document Preparation

When planning the timing for an MJDS offering, the issuer and its advisers should account for the time required to prepare a Canadian prospectus (either short form or long form, depending on the issuer's eligibility), including the preparation of additional business and financial information, if necessary for marketing purposes. Additional time does not need to be built in for SEC review.

Filing and Regulatory Review

Offerings Being Sold in Both Jurisdictions

The preliminary prospectus is filed with Canadian regulators and is subject to review and clearance in accordance with Canadian procedures. In the United States, a registration statement that includes the Canadian preliminary prospectus is filed but is not reviewed by the SEC except in unusual cases where there is a problem with the transaction. After the Canadian review process is complete, the issuer files its final materials, and sales of securities may then be completed in both jurisdictions.

U.S.-only Offerings

If securities in an MJDS offering are being sold only to U.S. investors, the issuer will file the prospectus with the SEC and just one provincial securities regulator,

typically in its home jurisdiction. Depending on the applicable Canadian regulator, the prospectus will often not be reviewed except in unusual cases where there is a problem with the transaction. If the prospectus is selected for review, the issuer will be notified within three business days of filing. The period from filing the preliminary prospectus to filing the final prospectus and becoming clear to complete sales of securities could be as short as a few days or even less. The timetable for a U.S.-only offering under the MJDS may, therefore, be much shorter than the timetable for an offering being sold in both jurisdictions involving Canadian securities regulatory review.

Although U.S.-only offerings under the MJDS may be appealing because of their potential timing advantages, they are not always feasible under Canadian securities laws. If a widely held issuer has common shares interlisted on U.S. and Canadian stock exchanges, for example, it may be extremely difficult for the issuer to implement measures that will effectively safeguard against flow-back of shares into Canada after they are sold in the United States. In that case, securities laws would require the issuer to file a prospectus to qualify sales of securities across Canada, and the offering would be structured as a U.S.-Canada offering, with the disclosure documents being subject to review by Canadian regulators. If, on the other hand, an interlisted issuer is offering debt securities that are not actively traded in Canada, the adoption of reasonable measures to prevent flow-back may be sufficient. In general, any flow-back prevention measures should be tailored to the circumstances of the issuer, the nature of the securities being offered and the nature of, and volume of trading in, the principal trading markets for such securities.

Availability of the Shelf Prospectus System

Under Canadian rules, issuers eligible to participate in the short form prospectus system are permitted to clear a shelf prospectus that omits certain terms of the securities offered (such as the price, the amount of securities to be sold and the plan of distribution). For a period of 25 months from the date of the final receipt, the issuer can, from time to time, price and offer securities off the shelf simply by filing and delivering a prospectus supplement, which is generally not subject to prior regulatory review. The shelf prospectus system may also be used for continuous distributions and at-the-market distributions.

Under the MJDS, Canadian issuers can make shelf prospectus offerings in both Canada and the United States using the Canadian shelf procedures, alternating jurisdictions for various tranches depending on their financing needs and market conditions. Prospectus supplements must be filed with the SEC within one business day of being filed with Canadian authorities.

Availability of Post-Receipt Pricing Procedures

For most types of distributions, Canadian issuers may obtain a receipt for a final prospectus that omits the price of the securities and other price-related information. An

issuer that uses this method can price the offering at any time within 20 days after clearing the final prospectus, without further advance filing or clearance obligations. This post-receipt pricing procedure allows the underwriters to begin confirming sales immediately after pricing. A supplemented prospectus containing the pricing information must be filed with Canadian securities regulators by the second business day following the pricing date.

MJDS offerings of equity securities that are being sold in both jurisdictions typically take advantage of the post-receipt pricing procedure since this corresponds to typical practice for underwriters in U.S. public offerings. A prospectus supplement containing the pricing information must be filed with the SEC within one business day of being filed with Canadian securities regulators.

Amount of Securities Registered and Filing Fees

All MJDS offerings require the payment of a filing fee, in U.S. dollars, of a specified percentage of the aggregate offering price of the securities being registered. The number of securities registered with the SEC will be the portion to be offered in the United States, plus an extra amount to cover securities that, depending on the circumstances of the offering, may flow from Canada into the United States in secondary trading.

Requirements Under State Securities Laws

State securities laws apply to MJDS offerings in the states where offers and sales are made. Registration and review by state authorities will be necessary unless an exemption is available. In many cases, MJDS offerings are eligible for the broad exemption from state regulation for securities of an issuer that are either listed or authorized for listing on a U.S. stock exchange or have equal or greater seniority to the issuer's listed securities.

Broker-Dealer Regulation and FINRA Review

Public offerings of securities in the United States, including MJDS offerings, are subject to review by the Financial Industry Regulatory Authority (FINRA), the regulatory body that oversees U.S. broker-dealers. A filing must be made with the corporate finance department of FINRA and must include the U.S. registration statement, draft underwriting agreement and a filing fee. FINRA reviews the terms and fairness of the underwriting arrangements. The SEC will not declare a registration statement effective until FINRA has advised that it has no objections. Certain kinds of offerings are exempt from review by FINRA, including offerings of:

- investment grade, non-convertible debt or preferred shares;
- securities by issuers that already have outstanding unsecured, non-convertible investment grade debt with a term of issue of at least four years or unsecured,

non-convertible investment grade preferred securities (in both cases, other than in connection with initial public offerings); and

- securities offered under Canadian shelf prospectus offering procedures that are registered on
- Form F-10.

Securities offerings in the United States must be conducted by U.S.-registered broker-dealers. Therefore, Canadian dealers may only offer and sell securities in the United States through their affiliates that are U.S.-registered broker-dealers.

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M&A UNDER THE MJDS

In addition to providing favourable opportunities for capital raising, the MJDS also provides favourable treatment to certain cross-border merger and acquisition transactions. For takeover bids:

- the MJDS provides exemptions from the SEC's tender offer rules relating to procedure, timing and other mechanics, to minimize conflicts with Canadian takeover bid rules, provided the target is a Canadian foreign private issuer and less than 40% of the target's securities are beneficially owned by U.S. securityholders; and

- if securities are being offered to U.S. shareholders as consideration, those securities may be registered with the SEC using the MJDS, provided the acquirer and target are both Canadian foreign private issuers and the acquirer satisfies the MJDS criteria of having a 12-month Canadian reporting history and a public float of at least U.S.$75 million.

It is important to note that even when an MJDS exemption from SEC rules is available for a takeover bid, certain SEC requirements pertaining to the basic fairness of the transaction will continue to apply, e.g., U.S. shareholders must be treated substantially the same as Canadian shareholders (although not necessarily offered exactly the same form of consideration) and the transaction documents must be sent to shareholders and filed with the SEC.

Separate from the MJDS system, for plans of arrangement, the SEC's proxy solicitation rules governing meetings of shareholders do not apply when the issuer is a foreign private issuer, and an exemption from SEC registration will be available in respect of any securities offered as consideration, on the basis that a court is approving the plan of arrangement.

The MJDS does not provide an exemption from the SEC's rules governing going private transactions. These rules impose special disclosure obligations and such disclosure is subject to SEC review.

As noted earlier in this guide, when an MJDS or other exemption is available from SEC rules, the parties will still be subject to potential liability under U.S. law for misleading disclosure, insider trading or other fraudulent activities in connection with the transaction.

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U.S. REPORTING AND CORPORATE GOVERNANCE REQUIREMENTS UNDER THE MJDS

Canadian issuers that access the U.S. capital markets by offering securities to the public, whether under the MJDS or otherwise, usually become subject to ongoing reporting and corporate governance obligations imposed by the SEC (and U.S. stock exchanges, if the issuer becomes listed in the United States). Foreign private issuers, including Canadian MJDS issuers, enjoy the benefit of certain exemptions from the SEC's rules that apply to U.S. domestic issuers. Specifically, foreign private issuers are exempt from the U.S. proxy solicitation rules under section 14 of the Exchange Act and from the insider reporting requirements and short-swing profit liability provisions of section 16 of that Act; they file their annual reports under different form requirements, and with a more lenient deadline, than U.S. domestic issuers; their quarterly and current reporting obligations are driven by home country rules rather than SEC rules; and they may often follow home country corporate governance practices in lieu of complying with U.S. stock exchange requirements, subject to a requirement to disclose the differences.

In addition to the above accommodations for all foreign private issuers, the SEC's ongoing reporting system provides certain additional accommodations for MJDS issuers, discussed below.

Annual Reports on Form 40-F

MJDS issuers file annual reports with the SEC on Form 40-F. Form 40-F annual reports must include the issuer's Canadian annual information form (AIF), audited annual financial statements and annual management's discussion and analysis (MD&A), all prepared in accordance with Canadian securities law requirements. In addition, Form 40-F requires disclosure about off-balance sheet arrangements and contractual obligations, the presence of a financial expert on the issuer's audit committee, and information about the issuer's disclosure controls and procedures and

internal control over financial reporting (similar to what is required under Canadian disclosure rules).

Form 40-F must be filed with the SEC on the same day that the annual materials are due to be filed with Canadian regulators.

If an issuer's financial statements included in its Form 40-F annual report are prepared in accordance with IFRS-IASB—which has been adopted as Canadian GAAP—a reconciliation to U.S. GAAP is not required by the SEC.

CEO and CFO Certifications

Annual reports filed with the SEC must contain two different certifications of the CEO and CFO:

- the securities law certification required by section 302 of S-Ox (which is similar to, and may be filed in Canada instead of, the CEO and CFO certification required under Canada's National Instrument 52-109); and

- the criminal law certification required by section 906 of S-Ox.

Both sets of certifications are filed as exhibits to the issuer's annual report. The SEC does not require foreign private issuers to file quarterly certifications.

Internal Control Reports and Auditor's Attestation

All SEC-reporting issuers are required to include an internal control report of management in their annual reports, and this includes MJDS issuers using Form 40-F. "Internal control over financial reporting" is defined, similar to the corresponding definition under Canadian rules, as processes designed to provide reasonable assurance as to the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. The issuer's internal control report must contain:

- a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting;

- a statement identifying the framework that management used to evaluate the issuer's internal controls;

- management's assessment of the effectiveness of the internal controls as of the end of the fiscal year; and

- disclosure of any material weaknesses in internal controls.

Form 40-F annual reports must usually include an auditor's attestation of the issuer's internal control over financial reporting. The auditor's attestation must be included beginning with the issuer's second Form 40-F filed with the SEC following the U.S. IPO. This is one of the most significant requirements imposed on public companies under U.S. securities law that goes beyond what is required under Canadian law. The JOBS Act, however, provides an exemption for up to five years from the auditor attestation requirement, if the issuer is an Emerging Growth Company. See Chapter 3 for the criteria an issuer must meet to qualify as an EGC.

Mine Safety Disclosure

Under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), mining companies must include health and safety information about U.S. mines in their annual reports filed with the SEC. This applies to MJDS issuers filing Form 40-F annual reports. The disclosure must include information about significant violations of mandatory health or safety standards; citations and orders received under the Mine Safety and Health Act of 1977; the dollar value of proposed assessments from the U.S. Mine Safety and Health Administration; pending legal actions before the U.S. Federal Mine Safety and Health Review Commission; and mining related fatalities.

Disclosure Required by the Iran Threat Reduction and Syria Human Rights Act of 2012

The *Iran Threat Reduction and Syria Human Rights Act of 2012* identifies certain transactions and other activities relating to Iran and Syria that are subject to sanctions and imposes disclosure obligations on SEC-reporting issuers, including MJDS issuers filing annual reports on Form 40-F. The required disclosure includes the nature and extent of specified Iran- and Syria-related activities engaged in by the issuer or its affiliates and the associated gross revenues and net profits. A separate notice must also be filed with the SEC for forwarding to the President for investigation.

Current Reports on Form 6-K

All foreign private issuers, including MJDS filers, use Form 6-K to provide the SEC with any material information (other than the annual materials discussed above) that is made public under Canadian law or sent to shareholders in Canada throughout the fiscal year. Canadian issuers generally submit their material press releases as well as the following additional disclosure documents on Form 6-K:

- quarterly financial statements and MD&A;
- glossy annual reports to shareholders;

- material change reports;
- management proxy/information circulars;
- business acquisition reports; and
- earnings releases.

Form 6-K must be furnished to the SEC promptly after the information is either made public in Canada, filed with a Canadian regulator, or distributed to securityholders in Canada. Because Form 6-K requires disclosure in the United States of all material information that is made public in Canada, a Canadian issuer's disclosure record will be virtually identical on both sides of the border.

Conflict Minerals Disclosure

Under the Dodd-Frank Act, SEC-reporting issuers in the manufacturing industry may be required to file a report on Form SD by May 31 each year disclosing information about the presence of conflict minerals in manufactured products. Conflict minerals are defined as specified minerals, including gold and tin, whose production contributes to the financing of armed conflict and human rights abuses in and around the Democratic Republic of Congo. The disclosure requirements and related due diligence investigations and audit reporting apply to issuers if conflict minerals are necessary to the functionality or production of a product that the issuer manufactures or contracts to have manufactured.

SEC Review

Historically, periodic filings under the MJDS, such as annual reports and financial statements, were not subject to SEC review. However, in contrast to the way MJDS prospectuses are treated, the SEC is required under S-Ox to review the periodic filings of all listed public companies on a regular and systematic basis at least once every three years. Canadian MJDS issuers should therefore expect their on-going disclosure to be reviewed periodically by the SEC. Such review will most likely focus on the issuer's MD&A, risk factors and financial information. Any SEC comment letters, as well as the issuer's responses, will be made public approximately 20 business days after the review is completed.

About Torys LLP

Torys LLP is a respected international business law firm with a reputation for quality, innovation and teamwork. Our experience, our collaborative practice style, and the insight and imagination we bring to our work have made us our clients' choice for their largest and most complex transactions as well as for general matters in which strategic advice is key.

We believe that clients should respect, trust and like their legal counsel. Our clients tend to be deeply loyal, enjoying in return Torys' exceptional loyalty and value, and enduring professional and personal bonds. Torys operates from offices in Toronto, New York, Montréal and Calgary.

Our Approach to Client Service

Torys is internationally known as a first-class, full-service business law firm. We are renowned for our professional and practical approach to problem solving, and for our strategic outlook. We focus on process and results: exceptional quality in the delivery of legal services and excellence in the legal outcome. We stress to all our people the importance of prompt, efficient, constructive and effective performance, generated in a collegial environment. Our service orientation extends to all those with whom we interact.

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