Sunshine Act Meetings

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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:21 p.m. on Tuesday, June 25, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) The resolution of failed thrift institutions, (2) the sale of assets and (3) corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan Jr. (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Dean S. Marriott acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, N.W., Washington, D.C.

Dated: June 26, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–15692 Filed 6–27–91; 11:31 am]

BILLING CODE 6714-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 3, 1991.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Infant Cushions: Notice of Proposed Rulemaking*

The Commission will consider a Notice of Proposed Rulemaking addressing the risk of injury and death presented by infant cushions.

2. *Bicycle Helmet Petition CP 90–1*

The staff will brief the Commission on petition CP 90–1 from the Consumer Federation of America and other member organizations of the National Safe Kids Coalition which requests that the Commission set mandatory safety standards for bicycle helmets for children and adults.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: June 26, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–15741 Filed 6–27–91, 2:18 am]

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federal register

Monday
July 1, 1991

Part II

Environmental Protection Agency

40 CFR Part 28

Non-APA, Consolidated Rules of Practice for Administrative Assessment of Civil Penalties; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 28

[FRL-3693-3]

Non-APA, Consolidated Rules of Practice for Administrative Assessment of Civil Penalties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes non-APA, consolidated rules of practice for its administrative assessment of civil penalties under (1) sections 309(g)(2)(A) and 311(b)(6)(A) and (B)(i) of the Clean Water Act (CWA), 33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(A) and (B)(i) [1]; (2) section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9609(a), for violations of provisions specified in section 109(a) of CERCLA; (3) certain actions under sections 325(b)(1), (c)(1), (c)(2) and (d) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11045(b)(1), (c)(1), (c)(2) and (d); and (4) civil penalties under part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h, in penalty-only orders under this part or in penalty/compliance orders under this part. Although the substantive requirements of the various statutes differ, each authorizes the Administrator to assess civil penalties without recourse to the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* EPA is taking today's action to consolidate and harmonize in a single regulation the various procedural guidances and regulations which it presently employs in response to Congressional direction to provide streamlined procedure for the assessment of certain administrative penalties, and to establish procedures for Class I administrative penalty assessment pursuant to section 4301(b) of the Oil Pollution Act of 1990, which amends section 311(b)(6) of the Clean Water Act. The authority to assess administrative penalties was granted and made immediately effective under the Clean Water Act by the Water Quality Act of 1987, effective February 4, 1987, and the Oil Pollution Act of 1990, effective August 18, 1990; under the Safe Drinking Water Act by the Safe Drinking Water Act Amendments of 1986, effective June 19, 1986; and under CERCLA and EPCRA by provisions of the Superfund Amendments and Reauthorization Act (SARA), effective October 17, 1986. Non-APA administrative penalty authority is granted to the Administrator explicitly by sections 309(g)(2)(A) and 311(b)(6)(A) and (B)(i) of the Clean Water Act, 33 U.S.C. §§ 1319(g)(2)(A) and 1321(b)(6)(A) and (B)(i), and section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c). In the case of CERCLA and EPCRA, the non-APA authority is implicit because Congress specifically prescribed the use of the Administrative Procedure Act for the Administrator's assessment of Class II penalties under CERCLA and EPCRA but was silent as to procedures to be used to assess other civil penalties.

Congress has expressed its preference for streamlined administrative penalty procedures designed to assure protection of basic constitutional liberties, which also advance the goals of compliance with environmental requirements through the deterrent effect of rigorous and efficient enforcement actions. See, *e.g.*, Sen. Rep. 99–50, 99th Cong., 1st Sess. 26 (1985), reprinted in A Legislative History of the Water Quality Act of 1987, volume 2, at 1448.

DATES: Comments on this proposed rule must be submitted on or before August 30, 1991.

ADDRESSES: Persons may mail comments on this proposed rule to David Drelich or Elyse DiBiagio-Wood, Office of Enforcement, Water Division (LE–134W), room 3109, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. The administrative record of this rulemaking is available and persons may inspect comments at that address.

FOR FURTHER INFORMATION CONTACT: David Drelich (202–382–2949) or Elyse DiBiagio-Wood (202–475–8187), Office of Enforcement, Water Division (LE–134W), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On February 4, 1987, Congress amended section 309 of the CWA, 33 U.S.C. 1319, by passage of section 314 of the Water Quality Act, Public Law 100–4, to authorize the Administrator to assess civil penalties for violations of the CWA. The amendments to Section 309 created a new subsection 309(g) and established two classes of administratively assessed civil penalties, which differ with respect to maximum assessment and prescribed procedure.

CWA Class II administrative penalties may not exceed $125,000 and are required by law to be assessed in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 554. Therefore, the Agency has chosen to use 40 CFR Part 22—EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits—for the administrative assessment of Class II civil penalties. Class I administrative penalties may not exceed $25,000. An assessment action under Class I must provide the respondent a reasonable opportunity to be heard and to present evidence, but is not subject to sections 554 and 556 of the APA. Class I penalties under the CWA are presently assessed in accordance with Procedural Guidance for Class I Proceedings, which was published in the **Federal Register**. See 52 FR 30730 (August 17, 1987). The text of the procedural rules proposed today which relate to section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), will in the near future supersede as guidance the 1987 procedural guidance for CWA Class I actions.

On August 18, 1990, the President signed into law the Oil Pollution Act of 1990, Public Law 101–380, 104 Stat. 484, which had been passed unanimously by both houses of Congress. Section 4301(b) of the Act amended section 311(b)(6) of the Clean Water Act by replacing the existing text with Class I and Class II penalty procedures drawn from section 309(g) of the Act, as created by the Water Quality Act of 1987. The major differences between section 309(g) and new section 311(b)(6) are that Class I proceedings under section 311(b)(6) are not subject to participation by public commenters, that section 311(b)(6) actions are not subject to a State consultation requirement, and that both classes of proceedings are available both to the Administrator and the Secretary of the department in which the Coast Guard is operating. The text of the procedural rules proposed today which relate to section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), will in the near future be followed as guidance by the Environmental Protection Agency as the penalty assessment procedure pending the Administrator's formal promulgation of regulations.

On June 19, 1986, the Safe Drinking Water Act was amended to provide for the administrative assessment of civil penalties under both Part B [the Public Water Supply Program (PWS)] and Part

[1] Code references to 33 U.S.C. 1321 anticipate codification of elements of the Oil Pollution Act of 1990, Public Law No. 101–380, 104 Stat. 484, at that location.

C [the Underground Injection Control Program (UIC)] of the SDWA. Public Law 99-339, 100 Stat. 642 (1986).[2]

Section 1423(c) of the SDWA, 42 U.S.C. 300h-2(c), which applies to underground injection activities, provides for administrative assessment of civil penalties of not more than $5,000 for each day of violation of an applicable UIC program requirement regarding oil and gas production and recovery, up to a maximum of $125,000. That subsection also authorizes administrative penalties of not more than $10,000 per day for each day of violation of other applicable UIC program requirements, up to the same maximum of $125,000. While this section of the Act requires notice and an opportunity to be heard, Congress specifically provided that these hearings are not subject to section 554 and 556 of the APA. The provisions of this portion of the SDWA have been implemented under the statute and implementing Agency guidance issued November 28, 1986.

SARA became law on October 17, 1986. Title I of SARA amended CERCLA by adding Section 109, 42 U.S.C. 9609, which authorizes the President to assess civil penalties for violations of specified provisions of CERCLA. Title III of SARA, 42 U.S.C. 11001 et seq., is also known as EPCRA. Section 325(b) of EPCRA, 42 U.S.C. 11045(b), authorizes the Administrator to assess civil penalties for violations of section 304 of EPCRA, 42 U.S.C. 11004. Section 325(c)(1) of EPCRA, 42 U.S.C. 11045(c)(1), authorizes the Administrator to assess civil penalties for violations of sections 312 and 313 of EPCRA, 42 U.S.C. 11022 and 11023.

Section 109 of CERCLA, 42 U.S.C. § 9609, and section 325(b) of EPCRA, 42 U.S.C. 11045(b), establish two classes of administrative penalties, which differ with respect to procedure and maximum assessment. The provisions for Class I penalties allow for a maximum penalty of $25,000 per violation. The provisions for Class II penalties authorize a maximum penalty of $25,000 per day of violation and a maximum penalty of $75,000 per day of violation for a second or subsequent violation. Congress explicitly subjected these Class II proceedings to section 554 of the APA, 5 U.S.C. 554, and consequently EPA administers these proceedings under 40 CFR Part 22, and shall not administer them under these proposed rules.

Section 325(c) of EPCRA, 42 U.S.C. 11045(c), is silent as to the type of administrative hearing procedures to be employed but authorizes penalties of up to $25,000 for each violation under section 325(c)(1), and $10,000 for each violation under section 325(c)(2). Under both provisions, separate penalties may be assessed for each day of violation. Section 325(d) of EPCRA, 42 U.S.C. 11045(d), provides for the assessment of $25,000 per claim for frivolous trade secret claims.

Today's proposed rule will apply to Class I administrative civil penalty proceedings under section 109(a) of CERCLA, 42 U.S.C. 9609(a), and section 325(b)(1), (c)(1), (c)(2), and (d)(1) of EPCRA, 42 U.S.C. 11045(b)(1), (c)(1), (c)(2) and (d)(1). It will apply to violations of sections 304, 311, 312, 322(a)(2), 323(b), 325(c)(2) and 325(d) of EPCRA, 42 U.S.C. 11004, 11021, 11022, 11042(a)(2), 11043(b), and 11045(c)(2) and (d), respectively. At present, the Agency pursues violations of the listed sections of EPCRA pursuant to 40 CFR part 22. The Agency solicits comments on whether it should (1) continue its exclusive use of part 22 for such EPCRA violations; (2) use part 28 procedures except for violations of section 313 of EPCRA, 42 U.S.C. 11023 (as provided by this proposal); or, (3) exclusively use part 28 for such EPCRA violations.

EPA is presently administering these statutes through various guidances and regulations. Although this approach is legally effective, the Agency recognizes the advantages, both to the regulated community and to itself, of appropriately consolidating and harmonizing in a promulgated regulation its procedural rules for non-APA enforcement proceedings. Use of a single set of "Class I" regulations will reduce confusion by Agency decisionmakers and enforcement staffs, provide the regulated community with an essentially uniform set of procedural rules, and conform to Congress' and the Agency's desire to employ expedited penalty assessment procedures. The resulting familiarity with the proceedings by all participants should provide for more timely and efficient proceedings. A uniform administrative regulation helps assure procedural fairness through a more consistent administration of fundamentally similar statutory provisions.

The Agency recognizes, however, the need for certain distinctions in these regulations based upon varying statutory or program requirements. The proposed regulation incorporates these distinctions. The Safe Drinking Water Act and section 309(g) of the Clean Water Act, for example, authorize interested persons to participate in administrative penalty proceedings, while CERCLA, EPCRA, and section 311(b)(6)(B)(i) of the CWA do not. The proposed rules therefore include public participation rights for SDWA and CWA 309(g) proceedings alone. See, *e.g.*, §§ 28.2(g), 28.20(c) and 28.26(g)(5).

EPA also recognizes that the administrative imposition of penalties may affect constitutionally protected interests of those against whom actions have been taken, and has taken precautions to ensure that individuals subject to a finding of liability for a civil penalty will have all the protections that due process of law requires. These include, for example, an impartial Presiding Officer, the right to a hearing on liability with a right of cross-examination, and a final Agency action solely based on the administrative record and applicable law. In the interest of streamlining the administrative proceeding, these rules contain short time deadlines; limit the length of legal arguments; limit the scope and time for administrative discovery; ban administrative appeals; and, in Safe Drinking Water Act and Clean Water Act 309(g) actions, limit the participation of commenters.

EPA believes that this proposal provides all of the procedure necessary to meet constitutional due process requirements under the leading Supreme Court case, *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). In that case, the Supreme Court set out a three-part test for determining whether the administrative procedure provided to an individual prior to the deprivation of a property interest by the government meets the due process requirements of the Fifth Amendment. The *Mathews*test involves balancing the magnitude and nature of the individual interest at stake, the benefit of additional procedures in reducing the risk of erroneous deprivation of that interest, and the governmental interest in not providing such additional procedures. Although the procedures proposed today streamline the adjudicatory process provided for analogous administrative hearings under the APA, the proposed rules eliminate none of the constitutional elements of such hearings. These procedures allow a full opportunity for the person subject to an administrative penalty to review and challenge the evidence of violation and degree of sanction. Since these procedures allow for a complete, though

[2] Within part B, section 1414(g)(3)(B) of the SDWA, 42 U.S.C. 300g-3(g)(3)(B), which applies to drinking water suppliers, provides for a maximum administrative penalty assessment of $5,000 for the violation of a PWS compliance order and specifically requires notice and an opportunity for a hearing in accordance with the APA. This provision is therefore administered under 40 CFR part 22, and is not subject to these proposed rules.

streamlined, adjudication, there would be little benefit to the respondent in more extensive or attenuated procedures, but more than a little cost to the Agency and the public.

EPA has tailored its procedures here for use in the less complex cases Congress intended would be subject to expedited administrative penalty proceedings. Not only did Congress indicate a strong public interest in streamlined administrative penalty proceedings, as discussed above, but EPA also anticipates issuing an increasing number of orders as part of its enforcement efforts under these new authorities. As a result, there may be a potentially dramatic increase in the number of these hearings. Subjecting all of these actions to the more traditional, APA-style adjudications would enormously increase the costs and personnel time incurred for such hearings and cause significant delays. It would decrease the important deterrent value of these enforcement efforts and potentially cripple enforcement efforts Agency-wide by overwhelming the Agency's Administrative Law Judges. In response to these concerns, today's proposal provides for several innovative procedures. Further, the Agency does not expect it will be able to draw its Presiding Officers from the existing ranks of EPA's Administrative Law Judges. Presiding Officers under this rule are to be neutral Agency attorneys, but not necessarily Administrative Law Judges. See § 28.2(n). Establishing a supplementary corps of Agency decisionmakers will enable EPA to conduct many more administrative penalty actions than is presently possible.

Therefore, under the *Mathews* criteria, these proposed procedures provide all the process due for assessment of administrative penalties under the new authorities.

Two aspects of these proposed rules deserve special mention. First, the Agency's tentative decision not to entertain comments on the recommended decision was reached after reviewing the applicable judicial decision, discussed below, and after carefully balancing the interests of the parties and the Agency in having an additional comment opportunity against the expressed intent of Congress to streamline the administrative process for the types of violations covered by these rules. See S. Rep. No. 50, 99th Cong., 1st Sess., cited above, and H. Rep. 962, 99th Cong., 2d Sess. 207 (October 3, 1986) (regarding section 109 of CERCLA, 42 U.S.C. 9609).

An examination of existing case law disclosed only one case, *Koniag, Inc., the Village of Uyak* v. *Andrus,* 580 F.2d 601 (D.C. Cir.), *cert. denied,* 439 U.S. 1052 (1978), which suggests that due process requires that the parties be permitted to submit briefs on recommended administrative decisions before a final decision is rendered. The Agency concluded this case is distinguishable, however, on both the facts and applicable law.

The *Koniag* case involved a decision by the Secretary of the Interior as to the eligibility of a native Indian tribe to assert claims to traditional Indian lands. A decision by the Secretary of Interior denying the Indians eligibility to claim property was rendered without giving the Indians any access to two intermediate recommended decisions and despite explicit Congressional direction for tribal participation in the Secretary's determination. Under today's proposal, EPA will publish the Presiding Officer's recommended decision at the time of its transmission, and is following a general Congressional mandate to establish expedited enforcement procedures.[3] In *Koniag,* the statute under which the rights of the Indians to assert claims to property was being determined did not prescribe any procedures for conducting the hearings but did prescribe that a decision should be reached with "maximum participation by Natives in decisions affecting their rights and property." 580 F.2d at 609. Under the facts of that case and applicable Indian law, and in the absence of congressional authorization to the contrary, the court held that the Indians should be accorded due process in accordance with the APA, which provides for interim appeals.

Unlike Interior's practices described in Koniag, the rules proposed today are in response to explicit or implicit statutory direction to conduct hearings which are not subject to section 554 or 556 of the APA. In addition, the property interest being protected under the two laws are quite different. In *Koniag,* the Secretary's decision to deny eligibility prevented the Indians from laying claim to their aboriginal lands. The purpose of the procedures proposed today, however, is to determine appropriate liability for violations of environmental laws.

[3] Further, under § 28.26(k) of the proposed rules, the Presiding Officer may solicit from the parties "proposed recommended findings of fact and conclusions of law," and such submissions are made available to the Regional Administrator pursuant to §§ 28.2(b)(9) and 28.27(a)(2). Compare 580 F.2d at 608, n.5 ("[I]t appears that the Secretary did not even see the proposed findings of fact submitted by the villages to the administrative law judges.")

There does not appear to be any inconsistency with the *Koniag* case or denial of due process under these rules. Under the proposed rules, Agency decisions must be based on the administrative record. The rules provide ample opportunity for the parties to introduce relevant factual and legal information into the administrative record during the conduct of an action, require that the Presiding Officer's recommended decision contain findings of fact and conclusions of law based on the record and that the decision be made public. § 28.27(b). The proposed rules have stringent neutrality requirements for the Presiding Officer at § 28.4(c), and as a further check on the exercise of his authority allow either party to request his replacement if his conduct exceeds permissible boundaries. See § 28.13(a). The recommended decision is public and the Regional Administrator must, pursuant to § 28.28(a), either adopt the recommended decision, or write a different decision which contains both his findings of fact and conclusions of law based on the record and explains why he rejected the Presiding Officer's recommended decision. This procedure fully protects the respondent's ability to appeal the final Agency action to federal court, based on the administrative record (which includes the recommended decision) and applicable law. See sections 309(g)(8)(A) and 311(b)(6)(G) of the Clean Water Act, 33 U.S.C. 1319(g)(8)(A) and 1321(b)(6)(G); section 1423(c)(6) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(6); section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4); and section 325(f) of EPCRA, 42 U.S.C. 11045(f).

Nevertheless, because the issue requires a balancing between the benefits of an additional comment opportunity and the intent of Congress for an expedited procedure, the Agency requests comments on adding a short comment opportunity on the Presiding Officer's decision. To be consistent with the other sections of the regulations, which expedite decisionmaking, this opportunity should be limited in time and scope. First, comments by any party regarding the Presiding Officer's recommended exercise of the Agency's discretion, would be limited to the record and available remedies of law. Second, the comments would be made in a specific time (*e.g.,* ten days) after the recommended decision, and be brief (*e.g.,* five pages or less).

Second, to streamline the administrative process, EPA has decided to prohibit interim, administrative appeals. EPA believes that no respondent would be unconstitutionally prejudiced by this reform. Any appeal to the Administrator of a Regional Administrator's decision would be based on the administrative record and applicable law, and argue that the Regional Administrator acted illegally or outside his discretion. Those are the precise grounds available to any respondent in a judicial appeal under applicable law. Consequently, the Agency's prohibition of administrative appeals merely eliminates an appellate redundancy—the sequential availability of the same appeal before the Administrator and a district court.

The Agency considered, but rejected, explicitly authorizing the Presiding Officer to take the final Agency action, without recourse to a recommended decision or consultation with any other Agency officer. The Agency has concluded that the procedure it proposes will provide a clearer record of decision, and that the appropriate Agency decisionmaker in significant penalty actions should be the Regional Administrator or his delegate. These rules do not explicitly prohibit a Regional Administrator from delegating his authority to take a final Agency action in an action conducted under this part to any other neutral officer, including the Presiding Officer, but the Agency does not expect such a delegation to occur in significant penalty actions.

EPA is not changing the scope of its Consolidated Rules of Practice (40 CFR part 22). In programs under part 22, either the underlying statute or existing practice provides the basis for the use of the more traditional, APA-based procedures. For the programs affected by today's proposal, however, the Agency believes that its new approach, which provides a greater emphasis on settlement and the finality of Regional decisions, will carry out Congressional intent in the enforcement of the environmental laws.

Many of the provisions of this proposal interrelate, such as the section on prohibited communication, definition of the administrative record, and prohibition of administrative appeals. These proposed regulations should therefore be read as a whole, not as a collection of distinct and unrelated sections.

SECTION-BY-SECTION ANALYSIS

Subpart A—General Provisions

Section 28.1 Purpose and Scope

This section describes the purpose of the rules the Agency proposes today, which is to set forth procedures for the timely and efficient initiation and administration of administrative orders under the several referenced statutory provisions. EPA believes that this is consistent with the aim of Congress to establish expedited or informal administrative enforcement procedures under these provisions. See Sen. Rep. 99–50, 99th Cong., 1st Sess. (1985), reprinted in A Legislative History of the Water Quality Act of 1987, volume 2, at 1448 (Section 309(g) of the Clean Water Act); Sen. Rep. 99–56, 99th Cong., 1st Sess. (1985), at 17–18 (Safe Drinking Water Act); and Sen. Rep. 99–11, 99th Cong., 1st Sess. (1985) at 9 (CERCLA). To that end, the Agency proposes to adopt procedures within these proposed rules, such as limitations on documents and prehearing exchanges, various deadlines, and the unavailability of administrative appeals, that will provide a speedy and efficient resolution to actions taken under this proposed part.

Nothing in this proposed part affects the right of the Agency to take appropriate administrative action, such as requiring information, making inspections, or issuing compliance orders, or initiating civil or criminal actions where authorized by law, or taking any other lawful action.

Section 28.2 Definitions.

The definitions section is comprehensive and exclusive for those terms it defines. The Agency consciously chose not to employ the usual method of saying the defined word "includes" or "includes but is not limited to." Consequently, the definitions for "Administrative record" and "Public notice" are long and detailed but, like other definitions provided in the rule, exclusive. Each definition is as specific as is necessary to employ it effectively within the proposed part. "Person," although not specifically defined by these proposed regulations, is understood by the Agency to have the meaning provided for that term by applicable law.

(a) *Administrative complaint.* In each action initiated under these proposed procedures, the administrative complaint must state with reasonable specificity the nature of the alleged violations in order to ensure that the respondent receives fair notice. The complainant must propose a penalty as authorized by the applicable law. This requirement does not mean that an administrative complaint must name a sum certain as requested relief; it does mean that a complainant may not request more in penalties than is authorized by the applicable statute. In actions under the Safe Drinking Water Act in which the complainant is seeking compliance as well as penalties, the administrative complaint may also propose a reasonable time for compliance. In certain SDWA actions, however, such as failure to provide information or monitor an injection well, it is inappropriate for an administrative complaint to provide additional time for compliance with the law. Finally, in order to ensure the regularity of Agency administrative enforcement practice and as a matter of sound administrative practice, this definition requires a certification of the legal sufficiency of the administrative complaint by Agency counsel.

The Agency considered, but rejected, the use of the term "proposed order" instead of "administrative complaint." Section 309(g)(2)(A)(1) of the Clean Water Act, 33 U.S.C. 1319(g)(2)(A)(1), refers to a "proposed order," as does section 1423(c)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(3)(B). However, because constitutionally protected interests are at stake in these proceedings, EPA does not believe that it should purport to make "findings" in an order before it has provided the respondent with an opportunity for a hearing on liability. In an administrative complaint, the enforcement staff of the Agency makes allegations as to liability, and (except in certain consent proceedings) only after the respondent's opportunity for a hearing regarding liability may a neutral Agency official make any "findings" of violative conduct. Consequently, although two statutes refer to a "proposed order," EPA believes that the initiating document in an action under this part is more appropriately styled an "administrative complaint." The Agency notes that in the Class I provisions of the Oil Pollution Act of 1990, Congress dropped the reference to "proposed order" in favor of a reference to "proposal to assess [a] penalty." Section 4301(b) of Public Law No. 101–380.

(b) *Administrative record.* The Agency proposes a definition of administrative record sufficiently comprehensive to include all material information required by the Regional Administrator to take a final Agency action to a decision under this part. A document is not and cannot be part of the administrative record unless it is filed with the Hearing Clerk and fits one of the criteria provided by paragraphs (1) through (18) of this subsection.[4]

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[4] In certain Clean Water Act and Safe Drinking Water Act cases, a proposed consent order and accompanying written explanation are lodged with the Hearing Clerk pursuant to § 28.22(b) of these proposed rules—not filed—and therefore do not meet the filing criterion established in this

Continued

Parties, commenters, or other persons may not add documents to the administrative record at will. Except in the case of a proposed consent order, documents nominated or submitted by a party or any other person to the Hearing Clerk do not, by that act alone, become part of the administrative record. If a participant fails to meet a deadline for the submission of a document for inclusion in the administrative record, the late submission is excluded from the administrative record. See §§ 28.2(b) (9) and (15) and 28.4(b)(10). The Agency is proposing to limit burdensome submissions and unsolicited pleadings and legal arguments in actions under this part. See, *e.g.*, § 28.8 (Limitations on written legal arguments and statements). The limitations and restrictions, which are designed to improve the speed and efficiency of hearings conducted under this proposed rule, may not be circumvented by parties flooding the record with voluminous documents. It will, however, be possible for a person to add a document into the administrative record if, pursuant to paragraph (15), the Presiding Officer finds it relevant to the action and not otherwise excluded from the record by the limitations of this part.

Under § 28.16(e) of the proposed rule, appropriate Agency staff shall open the administrative record "upon issuance of the administrative complaint." Except as provided by § 28.17 of this proposal, documents filed with the Hearing Clerk are available to the public for inspection and copying, and in Clean Water Act and Safe Drinking Water Act actions the Agency is proposing to provide notice of their availability according to the requirements of §§ 28.2(q)(11) and 28.16(d) of this part. Documents concerning an action that are not filed with the Hearing Clerk remain outside the disclosure rules of § 28.17 of this part, but may remain subject to the Freedom of Information Act and the applicable restrictions referenced in § 28.17. The administrative record will be certified by the Presiding Officer at the time of the transmission of a recommended decision. § 28.27(a)(1). The Regional Administrator files with the Hearing Clerk any subsequent additions to the record pursuant to § 28.28(d). In those cases where there is no recommended decision (i.e., when signatory parties propose that the Regional Administrator approve a consent order), the administrative record—without the intervening certification of the Presiding Officer—is comprised of documents filed with the Hearing Clerk by the participants. See § 28.22(b)(5).

Paragraph (1) provides that documentation relied upon by the complainant that supports the allegations as to liability in the administrative complaint, upon filing with the Hearing Clerk, become part of the administrative record. Paragraph (1) does not refer to documents relating to a proposed penalty or, in the case of the Safe Drinking Water Act, a compliance remedy. "Documentation" as used in this paragraph does not refer to privileged internal Agency communications, such as penalty settlement calculations, attorney-client communications, or memoranda relating to the complainant's decision to initiate the action. The documentation required by this paragraph relates only to factual matters, such as reports submitted by the respondent to the Agency, or relevant portions of inspection reports, that support an allegation that the respondent has violated applicable law.

Paragraph (2) provides that the administrative record also includes, upon its filing with the Hearing Clerk, any Agency record of a previously adjudicated violation by the respondent of any federal pollution control or environmental statute or regulation.

Paragraph (3) includes in the administrative record both the administrative complaint and proof of its service, when filed with the Hearing Clerk. Filing the administrative complaint opens the administrative record. See § 28.16(e).

Paragraph (4) applies only in an action undertaken pursuant to section 309(g) of the Clean Water Act and implements section 309(g)(1) of the CWA, 33 U.S.C. 1319(g)(1), which requires that the Administrator consult with the "State in which the violation occurs" before assessing an administrative civil penalty. See § 28.19. This provision does not require that a summary of such a consultation become part of the administrative record, only that the fact that the consultation occurred, or that the State received an opportunity to consult, be recorded.

Paragraph (5) provides that a copy of the public notice required by § 28.16(d) in Clean Water Act and Safe Drinking Water Act actions and proof of its publication are part of the administrative record upon being filed with the Hearing Clerk.

Paragraph (6) provides that, upon filing with the Hearing Clerk, the record of the designation of the Presiding Officer is part of the administrative record. A Presiding Officer may be designated pursuant to the terms of § 28.13(b) or § 28.16(h), or upon the request by a Presiding Officer that he be replaced pursuant to § 28.12(c)(3) or otherwise. A Region may have a standing Presiding Officer who hears all cases under this part.

Paragraph (7) provides that the date of lodging of a proposed consent order under the Clean Water Act or Safe Drinking Water Act becomes part of the administrative record of an action under this proposed part. The date of lodging is significant to the record of the action because, pursuant to § 28.22(b)(2), the action is suspended upon its lodging. This paragraph does not provide that the proposed consent order upon lodging itself becomes part of the administrative record; it does not. See § 28.2(b) ("*Administrative record* means the following documents that are filed with or by the Hearing Clerk . . ." [emphasis added]) and § 28.2(b)(14)(iii) ("*Administrative record* means . . . [a]ny relevant document which the Presiding Officer finds will assist in the timely and efficient resolution of the action and is not . . . [l]odged with the Hearing Clerk pursuant to § 28.22(b)(1)(i) of this part."). See also § 28.4(c)(5).

Paragraph (8) ensures, in conjunction with § 28.4(a) and (b), that all significant actions by the Presiding Officer are reduced to a signed writing, filed with the Hearing Clerk and thereafter made part of the administrative record.

Paragraph (9) references relevant provisions of the proposed rules which limit document length and require or allow the filing of documents with the Hearing Clerk. This paragraph provides that if the filing is timely and otherwise conforms to applicable requirements, such documents are to become part of the administrative record in the action. Conversely, the penalty for untimely filing with the Clerk—or the filing of overlong documents—is that the documents are excluded from the administrative record and may not be admitted by the Presiding Officer pursuant to § 28.2(b)(15). For example, in order to become part of the administrative record, comments by the public on the administrative complaint must be timely according to the requirements of § 28.20(c) of the proposed rule. The identity of persons who become commenters (and subsequently listed by the Hearing Clerk pursuant to § 28.5[b] of this proposed

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definition. These documents are excluded from the administrative record by definition, except to the extent provided by §§ 28.22(b)(5) and 28.28(b) (concerning an alternative definition of record for consent proceedings.) Other documents filed with the Hearing Clerk are also outside the administrative record if they fail to fit one of the criteria of paragraphs (1) through (18).

part) are included by this paragraph as part of the administrative record of an action under this proposed part.

Paragraph (10) includes in the administrative record, upon its filing with the Hearing Clerk, the record of any hearing conducted under § 28.26 of the proposed part. The Presiding Officer must create and file such a record pursuant to § 28.26(j) of this part.

Paragraph (11) provides that the recommended decision of the Presiding Officer is part of the administrative record of the proceeding. According to § 28.27(b), the Presiding Officer is required to file the recommended decision with the Hearing Clerk at the time of its transmission to the Regional Administrator.

Paragraph (12) includes in the administrative record, upon filing with the Hearing Clerk, the record of various actions of the Regional Administrator or Administrator which occur after the Presiding Officer's role in an action is concluded, or which concern decisions by the Regional Administrator relating to the Presiding Officer.

Paragraph (13), which refers only to proceedings under section 309(g) of the Clean Water Act, includes in the administrative record any evidence presented to the Regional Administrator pursuant to § 28.30 regarding a petition to set aside an order. Evidence presented by a commenter that is not determined by the Regional Administrator to be "material evidence not considered in the issuance of the order" (see section 309(g)(4)(C) of the CWA, 33 U.S.C. 1319(g)(4)(C), and § 28.30(a)) is included in the administrative record for the purpose of allowing judicial review of the decision of the Regional Administrator whether or not to set aside an order under § 28.30(c).

Paragraph (14) provides that certain Agency policies are part of the administrative record—those that concern the assessment of a civil penalty, but not those that relate to how the Agency settles with a respondent on a civil penalty. As used in this proposal, a "policy concerning the assessment of an administrative penalty" does not include a penalty settlement-only policy (or such portion of a more comprehensive penalty policy that addresses settlement penalty calculations). For example, this subsection does not refer to the Clean Water Act Penalty Policy for Civil Settlement Negotiations, a settlement-only policy, issued on February 11, 1986. See also, *e.g.*, § § 28.2(b)(15)(ii), 28.4(c)(5) and 28.26 (d) and (e).

Paragraph (15) describes the residual authority of the Presiding Officer to add documents to the administrative record which are not otherwise excluded by the provisions of the proposed rule. The admission of such documents must promote the purpose of the proposed rules—the timely and efficient resolution of an action. The Presiding Officer should not admit documents of attenuated relevance into the record. Under this standard, the admission of voluminous records is to be discouraged. A Presiding Officer may not admit documents into the record which ignore length or scope limitations, which are submitted too late, or are excluded entirely by the rule against prohibited communication. He also may not admit documents as they relate to the parties' settlement positions in this or analogous actions, relate to a challenge of a final State or Agency action, or are excluded by sanction, whether imposed by an Agency decisionmaker or by operation of the proposed rule. Compare § § 28.4(a)(1)(xi), and 28.13(c), and 28.24(e)(2) (sanctions imposed by Agency decisionmaker) with § 28.24(e)(1) (sanctions imposed by operation of law.)

The limitations and sanctions established at some length and detail in these rules are the means to achieve the purpose of timely and efficient adjudications, and limit the size of the administrative record accordingly. The Presiding Officer has the authority to include in the record documents not otherwise barred from the record to avoid injustice or to improve the Regional Administrator's understanding of relevant facts which bear on any final Agency action he may take. As stated in § 28.14(a) of this proposal, the action of the Presiding Officer in allowing or disallowing the introduction of documents into the administrative record is not subject to any interlocutory administrative appeal.

Paragraph (16) provides that any record of recusal by an Agency decisionmaker, upon filing with the Hearing Clerk, is part of the administrative record.

Paragraph (17) provides that any record of the respondent's payment of a civil penalty is included as part of the administrative record of an action under the proposed rule. See also § 28.5(d).

Paragraph (18), which relates only to an underground injection control action requiring compliance, provides that any record of the respondent's compliance with the terms of the administrative order is included as part of the administrative record of an action under the proposed rule. See also § 28.5(d).

(c) *Administrator.* Administrator is defined as the Administrator of the United States Environmental Protection Agency, or his delegate. See, *e.g.*, § 28.29 (*sua sponte* review). In any matter in which the Regional Administrator acts in a decisionmaking capacity under the proposed rule, the definition provided in subsection (s) will apply.

(d) *Agency.* Agency is defined as the United States Environmental Protection Agency.

(e) *Agency counsel.* Agency counsel is any enforcement attorney assigned to the action.

(f) *Agency decisionmaker.* Agency decisionmaker means any Agency employee who takes final Agency action in an action under this proposed part, or any Agency employee who is not an "interested person" as defined by subsection (k), who advises such a person.

(g) *Commenter.* This term applies only to actions undertaken pursuant to the Safe Drinking Water Act and section 309(g) of the Clean Water Act and implements the requirements of section 309(g)(4) of the CWA, 33 U.S.C. 1319(g)(4), and section 1423(c)(3) of the SDWA, 42 U.S.C. 300h-2(c)(3). A "commenter" has specific rights under those statutes to participate in the administrative process. Consequently, the term "participant" in § 28.2(l) and elsewhere in this proposed part, for purposes of the Safe Drinking Water Act and section 309(g) of the Clean Water Act, includes "commenters."

This definition and the deadline of § 28.20(c) of the proposed rule distinguish between active participants in its CWA and SDWA penalty proceedings, and those who wish only to communicate with the Agency on the subject of the proceedings. The Agency notes that the comments of persons who do not become participants in the proceeding do become part of the administrative record if they are submitted pursuant to the requirements of § 28.20(c)(1). The requirements for "participant" ("commenter" as "participant") status are: (1) Timeliness; (2) self-identification; and (3) submission of appropriate comments. EPA believes that these requirements are reasonable, administratively necessary, and do not unfairly burden members of the public who wish to participate in the action.

The requirements set forth in this subsection and in § 28.20(c) allow EPA to identify early in the administrative process a complete list of commenters, and thereby improve the efficiency and timeliness of the proceedings. As a matter of fairness to the parties, and to promote timely and efficient actions, persons who nominate themselves as commenters after the deadline prescribed in § 28.20(c) may not qualify as participants in the proceeding.

(h) *Complainant.* Complainant is defined as the Agency, acting through the official who initiates an action or is authorized to conclude an action by consent under this proposed part. It is possible that two different individuals may carry out these different roles. For example, a Regional program division director may have the responsibility of initiating enforcement actions, but the Deputy Regional Administrator may have the authorization to sign consent orders if commenters are participating in a Clean Water Act or Safe Drinking Water Act action. Because the complainant will be represented by Agency counsel (see § 28.6), it is Agency counsel who is to receive service and notice as the "complainant." See § 28.9(c).

(i) *Consent order.* This definition describes the basic elements that must appear in every consent order issued pursuant to this part, whether under § 28.22(a) or § 28.28(b). The requirements of paragraphs (1) and (2) are common to all administrative orders the Agency may issue under this part. The essential elements of paragraphs (3), (4) and (5) are also the same as other orders under this part. See § 28.28 (a) and (b). The requirements of paragraphs (6) through (8) are being proposed to promote finality and to ensure consistency in Agency settlement practice. Paragraph (9) sets forth the common legal dictum that all terms of the settlement are to be included in the written agreement.

Specific requirements are listed in paragraphs (1) through (6) to ensure that all consent orders recite certain basic information about the legal and factual bases of the action, the payment terms of the settlement, costs and the like. In each consent order the respondent must either admit, or neither admit nor deny, the allegations underlying the consented-to relief. For that reason, in order to establish an administrative record supporting the imposition of a civil penalty or (in the case of the SDWA) the requirement for compliance, or both, paragraphs (2) and (3) reference "uncontested" findings of fact by the Agency.

The requirements are intended to assure that all parties (and commenters, where applicable) are put on notice of certain ramifications of entering into an order on consent, such as the waiver by parties of their right to appeal and the special rights accorded commenters under the SDWA and section 309(g) of the CWA to challenge the settlement. Finally, the requirements that the consent order take into account appropriate statutory penalty factors, and that compliance remedies ordered are reasonably related to the respondent's violation of law, are intended to ensure that all settlements are entered into only after the Agency has considered the appropriate statutory criteria. Although this recitation must appear in the consent order, an analysis of how the factors apply to the action is not required to be set forth in the consent order. It is enough that the terms of the order be sufficiently supported by the administrative record so that the issuance of the order is within the discretion of the Agency.

(j) *Document.* Document is broadly defined and includes, for example, memoranda, transcriptions, tape or video recordings, maps, photographs, and drawings. The definition of document should be quite liberally applied. "Written legal arguments or statements" as described in § 28.8 are types of "documents" which are further limited by operation of § 28.8.

(k) *Interested person.* Interested person is broadly defined to include both Agency and non-Agency persons who have an active interest in the outcome of the administrative enforcement proceeding. The agent of a non-Agency participant may be an unpaid agent, and may include either a person not employed by the Agency or an Agency employee who acts as an agent on behalf of the non-Agency participant's interest in the action.

(l) *Participant.* "Participant" as used in a proceeding under the Safe Drinking Water Act or section 309(g) of the Clean Water Act includes each party and any commenter; as used in an action under any other statute governed by these proposed rules, it has the same meaning as "party." See the definitions of complainant, respondent, and commenter in § 28.2 (g), (h) and (t).

(m) *Party.* Party is defined as any complainant or any respondent who has timely responded in an action under the proposed rules (and has not been sanctioned by a finding of default by the Presiding Officer). See the definitions of complainant and respondent in § 28.2 (h) and (t).

(n) *Presiding Officer.* The Agency is proposing to limit Presiding Officers to attorneys because it anticipates significant legal issues may arise in proceedings under this part, and recognizes the advantage in timeliness and efficiency to all participants of having a legal expert preside over such proceedings.

(o) *Proceeding.* The proposal distinguishes between the terms "hearing," "proceeding" and "action." The term "hearing" is limited to the trial-type procedures of § 28.26 as it relates to liability issues. Proceeding is more broadly defined as any activity involving the parties conducted by the Presiding Officer under these proposed rules. As used in this proposal, "proceeding" does not include any action taken by the Administrator or Regional Administrator, or any negotiations among the participants without the presence of the Presiding Officer. "Action" is the term the Agency uses to encompass all activity in a case from its initiation to final Agency action.

(p) *Prohibited communication.* Prohibited communication is broadly defined—with one minor exception—as an *ex parte* communication between an interested person and an Agency decisionmaker that regards the merits of an action, the substance of settlement negotiations or a lodged proposed consent order, or the substance of a Presiding Officer's recommended decision. This definition should be read in conjunction with the definitions of "interested person" and "Agency decisionmaker," as well as the rule in § 28.12 against prohibited communication, the unavailability of administrative appeal established by § 28.14(a) of this proposal, the limitations on requests for reconsideration established by § 28.14(b) of this proposal, the default penalty procedure implemented by §§ 28.20 (d) and (e) and 28.21 of this proposed part, and the consent order procedure for certain Clean Water Act and Safe Drinking Water Act actions set forth in § 28.22(b) of this part.

The minor exception to the rule, concerning the communication between signatory parties and the Regional Administrator during the lodging period of a proposed consent order, has effect only if there is a non-signatory respondent to the action. As noted in the discussion below of § 28.21(b), in a default situation, a respondent who has failed to meet the applicable response deadline of § 28.20 is not defined as a "party" pursuant to § 28.2(m), and consequently the Agency counsel communicating with the Presiding Officer pursuant to § 28.21 of the proposed rules is not subject to the restrictions of § 28.2(p) or § 28.12. The Agency counsel has no ability to provide a defaulted respondent with an opportunity to participate in § 28.21 proceedings.

(q) *Public notice.* This subsection applies only to actions brought under the Safe Drinking Water Act and section 309(g) of the Clean Water Act. Section 28.16(d) of this proposal requires and describes how and when the Agency is to notify the public and the affected State agency. The elements of the written notice are set forth in paragraphs (1) through (11) of this proposed subsection. The element of paragraph (4) relating to authorization by rule applies only to actions taken under the SDWA, and paragraph (10) also applies only to the SDWA. The purpose of the public notice provision is to implement applicable statutory requirements of the Clean Water Act and Safe Drinking Water Act to provide notice of the commencement of the action to the public and to provide members of the public with the opportunity to participate.

(r) *Recommended decision.* This subsection defines the elements and form of a recommended decision and describes the range of possible recommended decisions the Presiding Officer may transmit to the Regional Administrator. See also §§ 28.27(a)(3) and 28.28.

(s) *Regional Administrator.* Regional Administrator is defined as the Administrator of the Regional Office of the Agency or his delegate. In a Headquarters-initiated action, the term "Regional Administrator" means the Administrator of the Environmental Protection Agency.

(t) *Respondent.* A person may be a respondent even if that person did not commit the violative act, but is legally responsible under the applicable law for the redress of the violation alleged. This includes persons who may have liability under a vicarious liability doctrine (such as joint tortfeasors, or owners or operators), responsible organizational officials, persons who may be jointly and severally liable, or entities who may be liable under an aiding, abetting, commanding or procuring theory, such as described for criminal cases in 18 U.S.C. 2. The proposed rules do not purport to impose liability where there is none under the applicable law governing the action. A defaulted "respondent" is not a "party" or "participant." Compare this subsection with § 28.2 (l) and (m).

(u) *Response.* The response to the administrative complaint is equivalent to the answer to a complaint in a civil case filed in federal court. The respondent has the burden of going forward at this point in a proceeding if the respondent wishes to contest a complainant's allegation of fact or conclusion of law regarding liability, or wishes to contest the complainant's request for relief. See §§ 28.10(b) and 28.20(d). The respondent or the respondent's counsel, if any, must sign the response and provide the name, address and telephone number of the respondent and the respondent's counsel, if he is so represented.

Section 28.3 Number and Gender

The section provides the standard rule of interpretation that words in the singular include the plural, where appropriate, and vice versa, and that words in the masculine gender also indicate the feminine gender, where appropriate, and vice versa.

Section 28.4 Presiding Officer

Under this proposal, the Regional Administrator will designate a Presiding Officer to oversee the proceedings within twenty days after the service of the administrative complaint. See § 28.16(h). The Agency intends that any actions requiring a Presiding Officer occurring before then will result in the immediate appointment of a Presiding Officer. In those Regions in which there is a standing "Judicial Officer," that official may be authorized to act as a Presiding Officer for purposes of this Part in the interim between the service of an administrative complaint and proceedings under this part.

The Agency has not included specific qualification requirements in the regulation for the Presiding Officer, except that the individual be a lawyer who is neutral to the controversy. See also §§ 28.2(n) and 28.4(c). The Agency fully anticipates that senior attorneys, preferably with litigation experience and a thorough understanding of the administrative process and environmental issues, will be selected to hear these cases. EPA has not included these requirements for the Presiding Officer as elements of the proposed regulations because it does not want to arbitrarily preclude otherwise competent attorneys from consideration, especially in the early stages of its administrative penalty program. Since EPA must, through regulation or otherwise, set qualifications for its Presiding Officers, the Agency solicits comment on this issue.

The authorities, duties, and limitations of the Presiding Officer are listed in § 28.4 (a), (b), and (c), respectively.

(a) *Authority.* The Presiding Officer is authorized to take certain actions, described in paragraph (a)(1), only by a signed writing filed with the Hearing Clerk. Because of their significance, these actions must be memorialized in writing. Under § 28.4(a)(1)(xi), the Presiding Officer may impose a sanction upon a participant if such a sanction is necessary to aid in the efficient and impartial administration of justice under this proposed part. Sanctions may include, for example, the striking of a cause of action or a defense, making a finding of default as to liability, or limiting or eliminating a commenter's right to participate in an action. Paragraph (a)(2) provides authority to the Presiding Officer to take minor or ministerial actions without requiring a signed writing, and also provides residual authority for the taking of necessary actions.

(b) *Duties.* This subsection lists the Presiding Officer's duties. Paragraph (4) requires the Presiding Officer to memorialize his actions whenever required by paragraph (a)(1), as well as requiring him to memorialize any deadlines he establishes, and to memorialize any significant action he takes under paragraph (a)(2). The requirement for the recording of deadlines is important for determining which documents are eligible for inclusion in the administrative record. See § 28.2(b) (9) and (15). The Presiding Officer is also required to maintain order and adjudicate allegations arising in actions under this proposed part efficiently and impartially. The Presiding Officer shall at all times act in a timely fashion.

(c) *Limitations.* The limitations established in this subsection, together with the provisions of § 28.13(a), are intended to maintain impartial and timely decisionmaking in actions under part 28.

Should the Presiding Officer violate a limitation imposed by this subsection or substantially fail to comply with the requirements of § 28.4(b), a party may, with supporting affidavits, request the Regional Administrator to designate an alternate Presiding Officer. See § 28.13(a). In response, the Regional Administrator must provide a written decision to the parties outlining the underlying findings and reasons for his decision on the request. The Regional Administrator may sanction the requesting party upon denying a request and determining that the requesting party acted for purposes of delay or for any other improper purpose. § 28.13 (b) and (c).

The requirement of paragraph (c)(1) that the Presiding Officer not have "any prior connection with the action before him" is intended to ensure that the Presiding Officer comes to the proceeding as a neutral. This prohibition is not intended to bar a Presiding Officer from knowledge of the relevant statute, relevant agency policies, or the persons appearing before him in the proceeding. The Agency believes that one of the advantages of administrative penalty proceedings is the potential use of experts as Presiding Officers, and views such expertise and experience as a benefit, not as a disability.

The requirement of paragraph (c)(2) that the Presiding Officer not have "any interest in the outcome of the action before him" prohibits the Presiding Officer from having any financial interest, personal interest, or career interest in the outcome of the action. Any interest of these sorts could result in the Presiding Officer having an apparent or real interest in the outcome of the proceeding.

The limitation in paragraph (c)(3) regarding the Presiding Officer's initiating or knowingly engaging in prohibited communication protects the neutrality of the administrative process. The limitation is carefully drawn, however, to exclude innocent contact by the Presiding Officer with an interested person who may attempt to compromise the officer under the proposed rules by attempting to communicate with him despite the regulatory prohibition. If the Presiding Officer is aware he has been contacted *ex parte* by an interested person, under § 28.12(b) he must disclose the contact to the other participants if it was "significant or prejudicial" and, if such communication was by a participant, upon request of any participant he shall conduct an appropriate show cause proceeding under that subsection. The § 28.12 rule against prohibited communications is, among other things, intended to safeguard the Presiding Officer from the possibility of the conflict of interest referenced in the discussion above of paragraph (c)(2).

The Agency notes that the prohibition against prohibited communication prohibits contacts between the Presiding Officer and interested persons regarding the substance of any settlement negotiations between the parties, or regarding the substance of any lodged, but unapproved, consent order. See § 28.2(p)(2). The Presiding Officer may, however, communicate with the participants regarding the existence or scheduling of any such negotiations, so long as their content is not communicated to him. The Presiding Officer is notified by the Hearing Clerk of the fact of lodging of a proposed Safe Drinking Water Act or Section 309(g) Clean Water Act consent order. See § 28.22(b)(4).

The limitation on the Presiding Officer's authority to delay an administrative proceeding under paragraph (c)(4) conforms to the goal of timely and efficient proceedings described by § 28.1. These rules do not limit the abilities of the participants to request information under applicable statutes and regulations (see, *e.g.*, § 28.1 ["Nothing in this part shall affect the authority of the Administrator to implement or enforce any other provision of law"]); however, except as allowed in limited circumstances by § 28.24(c)(2), the Agency seeks to prohibit participants from delaying a proceeding by the use of information requests, such as requests for information under the Freedom of Information Act, 5 U.S.C. 552. If the Presiding Officer agrees to delay an action because of a party's request for or failure to produce information except as allowed under § 28.24(c)(2), the Presiding Officer is subject to replacement under this paragraph and § 28.13. The proposed rules provide appropriate opportunities for obtaining needed information, and provide sanctions for a participant's refusal to provide required information in a timely fashion. See § 28.24(e)(1).

Under paragraph (c)(5) and § 28.2(b)(15)(ii) the reasoning of a party regarding the negotiation of a settlement may not become part of the administrative record, and may not be required by the Presiding Officer or other participants in an action. Such rationales and calculations are highly confidential and are privileged information. To allow the Presiding Officer or any Agency decisionmaker to require the disclosure of such information would chill the settlement process and is therefore not permitted under these rules. Agency policy documents governing settlement, although publicly available, are not discoverable under the information exchange rules of § 28.24. Such policy documents as they relate to settlement are likewise not binding on Agency decisionmakers (as defined in § 28.2[b]) in resolving actions under this Part. Consequently, in a proceeding under this Part a Presiding Officer or an opposing party may not require the production of Agency settlement policy documents or any specific calculations the Agency may have made pursuant to such a policy.

As noted in the discussion of § 28.26, paragraph (c)(5) promotes the possibility of settlement by ensuring that the Presiding Officer not allow the introduction of settlement offers into evidence in a proceeding. The provisions of §§ 28.2(p)(2) and 28.4(c)(5) ensure that the parties are not prejudiced by settlement negotiations and remain in control of settlement discussions. Settlement positions are not relevant to the function of the Presiding Officer, and are potentially prejudicial to the litigation positions of the parties. The irrelevancy of settlements in other cases is even greater; each case is different on its facts. Consideration by the Presiding Officer of settlements in other cases would chill settlements generally, and would unduly delay the proceedings while irrelevant materials were considered. Consequently, such information is barred from the administrative record and consideration of such materials is grounds for replacement of the Presiding Officer. See also §§ 28.2 (b)(15)(ii) and (p)(2), 28.12 and 28.13(a).

The prohibition of paragraph (c)(6) restates and gives effect to the limitation on the scope of the proceedings under the proposed Part. If the Presiding Officer allows a "challenge to a final State or Agency action," the Presiding Officer is subject, as is true for any violation of a limitation under this subsection, to replacement under § 28.13(a). See also § 28.2(b)(15)(ii).

Paragraph (c)(7) prohibits the Presiding Officer from dismissing an administrative complaint. As provided by subpart D, if an administrative complaint does not state a cause of action, it shall be withdrawn by the Regional Administrator. See §§ 28.2(r)(1), 28.27(a)(3) and 28.28(a)(2)(i).

Section 28.5 Hearing Clerk

This section sets forth the duties and responsibilities of the Hearing Clerk. In almost all cases, the Hearing Clerk will be a Regional employee, but in those cases in which the complainant is a Headquarters official, and the action initiates at Headquarters, the Hearing Clerk will be a Headquarters employee.

Subsection (a) provides that once a Presiding Officer is designated by the Regional Administrator under § 28.16(h), the Hearing Clerk shall immediately notify, in writing, the complainant and each respondent of the name of the Presiding Officer. However, for purposes of administrative convenience, in Safe Drinking Water Act and section 309(g) Clean Water Act actions the Clerk is to notify each commenter of the designation under § 28.16(h) at the same time—upon the close of the comment period. If the Regional Administrator designates a new Presiding Officer under § 28.13(b), the Hearing Clerk shall immediately notify all participants of that event.

Subsection (b) requires the Hearing Clerk to create and maintain a list of any persons who, by the close of the public comment period, become commenters under the Safe Drinking Water Act or section 309(g) of the Clean Water Act by fulfilling the requirements of § 28.2(g) and § 28.20(c). The names of persons who are commenters become part of the administrative record pursuant to those subsections and § 28.2(b)(9) of these proposed rules, and any organization of that information by the Hearing Clerk pursuant to this subsection would also be publicly available.

In Safe Drinking Water Act and section 309(g) Clean Water Act actions in which a commenter participates, following the close of the public comment period subsection (c) requires the Hearing Clerk to notify the respondent, complainant, any commenters, and the Presiding Officer of the name and address of each participant. In the case of the complainant, the Hearing Clerk shall provide the name and address of Agency counsel.

Although the name of the respondent, for example, will be known to every participant, if the respondent is represented by counsel, counsel's name and address shall be provided. (The name and address of the respondent's counsel, if any, will be provided in the response to the administrative complaint. See § 28.2[u].) The complainant will be notified by service on Agency counsel. See § 28.9(c). If any other participant is represented by another person, the Hearing Clerk should provide the name and address of the participant's representative. See the definitions of "commenter," "respondent," and "participant" at § 28.2 (g), (l), and (t).

The requirement of subsection (d) that the Hearing Clerk record the date of receipt of a document does not thereby make it part of the administrative record. Recording the date of receipt of a document from a non-participant will merely demonstrate whether such a document was received pursuant to the deadline of § 28.20(c). Documents under this subsection include proof of payment of an assessed penalty, and administrative order compliance reports under the Safe Drinking Water Act.

Subsection (e) requires the Hearing Clerk to keep the Presiding Officer apprised of all filings in the action by notifying him of the receipt of any documents filed by the respondent, complainant, or any commenters. However, a filing does not become part of the administrative record unless it meets the requirements of § 28.2(b) of this proposed part. In some actions, the Presiding Officer has discretion under § 28.2(b)(15) to decide whether a filing becomes part of the administrative record. (The Presiding Officer, however, is prohibited from reviewing proposed consent orders or written explanations lodged under § 28.22[b] of this part.) In such actions, the Presiding Officer may also have to decide other issues, such as whether a filing occurs pursuant to the requirements, such as timeliness, of § 28.2(b)(9). No person may appeal such a decision by the Presiding Officer. See § 28.14(a).

Subsection (f) requires the Hearing Clerk to properly maintain and to provide to non-signatory participants any proposed consent order lodged in a SDWA or CWA 309(g) action pursuant to § 28.22(b) of this part.

Under subsection (g), the Hearing Clerk shall bill any costs relating to the copying of documents in the public record.

Under subsection (h) the Clerk is to return the disapproved proposed order, and any explanation of it, to the signatory parties so that the Presiding Officer may not be inadvertently influenced by it.

Subsection (i) provides that the Hearing Clerk will perform any other ministerial and clerical duties the Presiding Officer may require to assist him in carrying out his responsibilities under this proposed part.

Subsection (j) provides that the Hearing Clerk will assist the Regional Administrator in carrying out functions under this part. This includes recording and maintaining documents the Regional Administrator files under § 28.28(d).

Section 28.6 Representation by Counsel

This section provides that the respondent and any commenters may be represented by counsel at any stage of an action under this part. This section further provides that the complainant shall be represented by Agency counsel in all verbal and written communication with any Agency decisionmaker. The proposed regulation does not require that Agency counsel represent the complainant in negotiations with other participants.

Section 28.7 Computation of Time

This proposed section is modeled in part on 40 CFR 22.07, the Agency's rules for computation of time and service for other laws it administers.

(a) *Computation of days.* The time period is to begin to run on the day after the act, event or default takes place. The last day of the period is to be included, unless the last day falls on a Saturday, Sunday or federal holiday, in which case the last day to act will be extended to the end of the following business day.

(b) *Time of notice.* The proposed rule provides that whenever service of a notice, pleading or other document is by mail or other substituted form of service, five days be added to the prescribed period for the person served to act. The Agency considered using the three day rule of the Federal Rules of Civil Procedure, but is proposing a five day rule to be consistent with 40 CFR part 22, because the resultant delay is not very consequential. If the party noticed has signed a receipt of service, the date of receipt is the date of notice.

(c) *Time of compliance.* Except as otherwise provided, this subsection provides that the time of compliance with a deadline imposed pursuant to this part is deemed to occur on the date of a personal response or the date of the postmark (or equivalent proof) of a mailed or messengered response.

Section 28.8 Limitations on Written Legal Arguments or Statements

The purpose of these limitations is to improve the speed and efficiency of the hearings conducted under this proposed rule by requiring succinct legal arguments and statements and to prevent the participants from flooding the record with arguments or documentation not relevant to the action. Good cause for authorizing additional submissions under this part would be for the purpose of promoting a more efficient, equitable and timely administration of the proceedings.

Documents that do not conform to the requirements of this section cannot become part of the administrative record unless the parties have lodged a proposed consent order that is not disapproved (see §§ 28.2[b] and 28.22[b][5]), and may not otherwise be considered by the Regional Administrator in his decision in an action under this proposed part. See §§ 28.2(b)(9) and (15)(ii), 28.27(a)(1), and 28.28(a)(1). Limitations under this section applicable to legal arguments or statements do not apply to supporting factual documents, such as affidavits, unless so ordered by the Presiding Officer.

Section 28.9 Service of Documents

(a) *By participants.* Participants in the action may serve all pleadings and other papers, except a subpoena or the administrative complaint, personally or by certified or first class mail, postage prepaid. A certificate of service must be attached to all papers served. (By contrast, pursuant to §§ 28.11(b) and 28.16(c), the Hearing Clerk serves a subpoena or the administrative complaint either personally or by certified mail, return receipt requested.) The original of all papers served, including the original certificate of service, must be simultaneously filed with the Hearing Clerk. The complainant files the administrative complaint with the Hearing Clerk upon its issuance. See § 28.16(e).

"Pleadings" include, for example, administrative complaints and responses (and their amendments), motions, briefs, legal statements, and any notice of withdrawal of an administrative complaint. The term does not include any proposed consent order lodged pursuant to § 28.22(b), which is not provided to the Presiding Officer, or information exchanged pursuant to § 28.24, which pursuant to § 28.24(d) is served upon the Presiding Officer, but not filed with the Hearing Clerk or provided to participating commenters. The parenthetical regarding "messengered service" allows participants to use alternate forms of service, such as U.S. Next Day Mail, or certain private deliverers with receipt and trace capacity that are at least as fast and reliable as first class or certified mail.

(b) *By the Hearing Clerk.* This section places with the Hearing Clerk the primary responsibility for serving participants with notices, rulings, orders, and other documents issued by Agency decisionmakers. For example, the Hearing Clerk is required to notify each participant of the appointment of a Presiding Officer (§ 28.5(a)) and the identity of all participants in the action (§ 28.5(c)), the scheduling of any proceeding to take place under these rules, and is required to serve each participant with a copy of the Presiding Officer's recommended decision, the decision of the Regional Administrator, and other rulings, such as the entry of a default order. Notification of commenters in Safe Drinking Water Act or section 309(g) Clean Water Act actions of the scheduling of proceedings does not in any way invest the commenters with the right to participate in prehearing conferences or other aspects of the proceedings limited by this proposed Part to the parties alone.

(c) *Upon counsel.* Other than service of the administrative complaint, which is to be served upon the person named in the complaint, all service made upon a participant who is represented by an attorney shall be made upon that person's attorney, unless otherwise ordered by the Presiding Officer.

Section 28.10 Parties' Burdens of Going Forward, Proof and Persuasion

This section describes the regulatory burdens on the parties of presenting and defending the action before the Presiding Officer.

(a) Complainant's burden of going forward. The complainant has the initial burden of presenting a prima facie case supporting the cause of action alleged in the administrative complaint and a request for relief. That is, the complainant must make allegations which, if true, would be sufficient to show that the respondent may be subjected to providing relief under the law. See § 28.16(a).

(b) The respondent has the burden within the deadlines imposed by § 28.20 (a) and (b) of claiming (1) that the allegations as to liability in the complaint are untrue or that it is otherwise not liable for the redress of the violations alleged, and (2) that the relief requested by the complainant should not be granted. In addition, where the complainant is seeking a penalty, a respondent who has met the deadlines imposed by § 28.20 (a) and (b) carries the burden of going forward no later than the deadline imposed by the Presiding Officer under § 28.23(b)(3) to provide all information requested by the complainant relating to the respondent's inability to pay a civil penalty and relating to the respondent's economic benefit received from alleged violations of applicable law.

(c) Parties' joint burden of going forward. This subsection applies only to actions under the Safe Drinking Water Act and section 309(g) of the Clean Water Act in which commenters are participating. The parties who submit a proposed consent order for approval by the Regional Administrator are jointly responsible, upon the request of the Regional Administrator pursuant to §§ 28.22(b)(1)(ii) and 28.28(b)(1), for providing the Regional Administrator with the legal bases for signing it. If a consent order has been lodged, the Regional Administrator may not rely on the Presiding Officer for advice. See also §§ 28.2(p), 28.4(c)(3), 28.12 and 28.13.

(d) Complainant's burden of proof. In any hearing as to liability held under § 28.26, the complainant has the burden of proving its case as to liability. To do so, it must prove every fact it has alleged as an element of the violation, and that the respondent has contested, by a preponderance of the evidence. A "preponderance" of the evidence is the greater weight; the complainant must present evidence which, when judged by its weight, value and credibility, is more convincing than the opposing evidence offered by the respondent. If commenters participate in a Safe Drinking Water Act or section 309(g) Clean Water Act liability hearing, the Presiding Officer is to determine whether the preponderance of evidence as presented by all participants demonstrates each fact necessary to prove liability.

(e) Parties' burden of persuasion. In proceedings other than fact-finding § 28.26 hearings on liability, no formal burden of proof applies. Instead, the proponent of any legal argument made to the Presiding Officer bears a burden of persuasion, that is, of convincing the Agency decisionmakers that the legal position asserted is correct and should be adopted in the action.

When the complainant seeks a civil penalty, the complainant must carry the burden of persuasion—before the Presiding Officer transmits a recommended decision to the Regional Administrator—that the penalty sought is appropriate in light of the statutory factors and documents submitted to the Hearing Clerk for inclusion in the administrative record. Under these proposed regulations, the complainant does not incur this burden until the Presiding Officer conducts either a default proceeding under § 28.21 or a remedy proceeding under § 28.25 or § 28.26(h).

Because penalty issues are matters of persuasion rather than proof, the complainant is not subject to an information request regarding the basis for a requested assessment of a civil penalty under either § 28.11 (Subpoenas) or § 28.24 (Information exchange). The Presiding Officer has no authority to require the complainant to carry the burden of persuasion as to requested relief prior to a § 28.21, § 28.25, or § 28.26(h) proceeding. Statutory penalty factors are set out in sections 309(g)(3) and 311(b)(8) of the Clean Water Act, 33 U.S.C. 1319(g)(3) and 1321(b)(8); section 1423(c)(4)(B) of the Safe Drinking Water Act, 42 U.S.C. 300h- 2(c)(4)(B); 109(a)(3) of CERCLA, 42 U.S.C. 9609(a)(3); and Section 325(b)(1)(C) of EPCRA, 42 U.S.C. 11045(b)(1)(C) (for Class I emergency notification violations only). No specific statutory factors are provided for administrative penalties authorized by sections 325(c)(2) and (d) of EPCRA, 42 U.S.C. 11045(c)(2) and (d). If the respondent has not met its burden of going forward regarding its inability to pay a civil penalty, the complainant carries no burden on this issue; the respondent will be deemed able to pay the maximum statutory penalty. See §§ 28.10(b)(2) and 28.24(e)(1)(iii). If the respondent has not met its burden of going forward regarding any economic benefit it has enjoyed as a result of its violations, the complainant likewise carries no burden, but the amount that the Presiding Officer may recommend and the Regional Administrator may impose in the absence of any support in the administrative record should be a token or symbolic amount.

Section 28.11 Subpoenas

This section sets forth the authority of the Presiding Officer to subpoena witnesses and documents, and the procedure for doing so. This authority is provided explicitly by the applicable statutes, as noted below. The penalty for the violation of an Agency subpoena is provided by applicable law. See sections 309(g)(10) and 311(b)(6)(I) of the Clean Water Act, 33 U.S.C. 1319(g)(10) and 1321(b)(6)(I); section 1423(c)(8) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(8); section 109(a)(5) of CERCLA, 42 U.S.C. 9609(a)(5); and section 325(f)(2) of EPCRA, 42 U.S.C. 11045(f)(2).

(a) *Issuance.* The authority of the Presiding Officer to issue subpoenas is statutorily based. In the case of the Clean Water Act, sections 309(g)(10) and 311(b)(6)(I) provide the authority; in the case of the Safe Drinking Water Act, section 1423(c)(8) provides the authority; in the case of CERCLA, section 109(a)(5), and in the case of EPCRA, section 325(f)(2). See 33 U.S.C. 1319(g)(10) and 1321(b)(6)(I) and 42 U.S.C. sections 300h–2(c)(8), 9609(a)(5) and 11045(f)(2). The Clean Water Act, CERCLA and EPCRA provide, in relevant part, that the Agency "may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings" under the administrative penalty provisions cited in § 28.1. In the case of CERCLA, this authority among others is delegated to the Administrator by Executive Order 12580 (January 23, 1987). The SDWA provides a more expansive authorization than other statutes to be governed by this part by allowing the issuance of subpoenas "in connection with administrative proceedings under this subsection." To the extent that the SDWA may authorize investigatory subpoenas that authority is outside the scope of this part. Under § 28.1 "Nothing in this part shall affect the authority of the Administrator to implement or enforce any other provision of law." See also § 28.24(a) ("Except . . . by authorization of law outside the scope of this part, this section provides exclusive authority for the provision of information by parties . . . .")

Subpoena authority under this section is available to support a liability hearing under § 28.26 (see discussion of § 28.10(e) above) and subpoenas are to be issued at the discretion of the Presiding Officer. The parties have a right only to request the issuance of a subpoena. The scope of subpoenas issued by the Presiding Officer under this subsection is limited to the scope of a § 28.26 hearing as to liability. Under no circumstance may a subpoena be used as a "fishing expedition" or as a supplement or replacement for information exchange under § 28.24.

(b) *Service.* The proposed rules establish subpoena service requirements that are the same for the service of the administrative complaint upon the respondent. In the case of a witness not otherwise involved in a proceeding, there is an equivalent need to conclusively establish the Agency's personal jurisdiction over the person receiving the subpoena.

(c) *Filing with Hearing Clerk.* Section 28.2(b)(8) provides that each subpoena issued under this section is to become part of the certified administrative record. Information produced in response to the subpoena at a liability hearing will become part of the administrative record if the Presiding Officer admits it into evidence pursuant to § 28.26 (d) and (i). See also § 28.2(b)(9).

Section 28.12 Prohibited Communication

This section of the proposed rule prohibits certain communications and establishes procedures for curing any problem created by the communication.

(a) *Prohibition.* This subsection prohibits certain communication, as specifically defined by § 28.2(p), between any interested person (defined by § 28.2(k)) and any Agency decisionmaker (defined by § 28.2(f)).

(b) *Notification and investigation.* This subsection charges the Presiding Officer with the responsibility for notifying immediately each participant in a proceeding of the occurrence of any prohibited communication. If requested by a participant, under certain circumstances the Presiding Officer must conduct a proceeding in order to determine whether to impose any sanction against a participant for the prohibited communication.

(c) *Sanctions or recusal.* This subsection establishes the Presiding Officer and Regional Administrator's authority to impose sanctions against any participant who is responsible for a prohibited communication and describes the duty of recusal of any Agency decisionmaker who "has initiated or knowingly engaged in prohibited communication." If the decisionmaker has initiated or knowingly engaged in such communication with a defaulted respondent—a non-participant, but nonetheless an "interested person"—that Agency official shall recuse himself or be subject to replacement under § 28.13.

The Presiding Officer is the sanctioning official in an action until he has transmitted the recommended decision, except during a suspension of an action under § 28.22(b)(2). Sanctioning is otherwise the responsibility of the Regional Administrator.

Recusal is required only where the Agency decisionmaker bears some responsibility for the prohibited communication or where the communication is so prejudicial as to preclude the decisionmaker from fairly deciding the action. If the decisionmaker has been contacted as to the merits of an action by a person whom the Agency official does not know as an interested person, the official, who may be blameless and not influenced by the communication, should not recuse himself on the basis of that contact alone. Any Agency decisionmaker may, however, recuse himself for cause at any time in an action.

Section 28.13 Request for an Alternate Presiding Officer

This section serves to ensure that the duties and limitations imposed on the Presiding Officer by § 28.4 (b) and (c) are respected.

(a) *Request.* As previously noted, an improper delay (§ 28.4(c)(4)), involvement in settlement (§ 28.4(c) (3) and (5)), reconsideration of final Agency action (§ 28.4(c)(6)), and dismissal of an administrative complaint (§ 28.4(c)(7)), are grounds for replacement of the Presiding Officer. Replacement in such circumstances goes beyond the usual, stated grounds for such actions in other administrative adjudicatory proceedings. The possibility of replacement emphasizes and helps carry out the provisions of these rules which are intended to make the subject proceedings simpler and quicker than more traditional proceedings.

In addition, under this proposed part, the Presiding Officer has no "equitable" power knowingly to disregard or suspend any provision of the part itself. Such an action would represent one way in which the Presiding Officer may substantially fail "to comply with his duties under § 28.4(b)." The Agency does not intend, however, that Presiding Officers be subject to disqualification for occasional, inadvertant mistakes in the application of proposed part 28.

(b) *Decision.* This subsection provides that a decision by the Regional Administrator to grant or deny such a request must be in writing and provide the basis for the decision. The action of the Regional Administrator is to be filed with the Hearing Clerk and become part of the administrative record of the action. See §§ 28.2(b)(12), 28.5(j) and 28.28(d).

(c) *Sanctions.* This subsection allows the Regional Administrator to impose sanctions (other than fine or imprisonment) on any party making a request for an alternate Presiding Officer for delay or other improper purposes. This authority is intended to deter dilatory, frivolous, or otherwise inappropriate disqualification requests.

Section 28.14 Unavailability of Administrative Appeal; Limitation on Requests for Reconsideration

(a) *Unavailability of administrative appeal.* This provision establishes the absolute unavailability of an administrative appeal of any action of the Presiding Officer or the Regional Administrator in an action under this proposed part. The Agency takes seriously congressional instructions that it resolve administrative enforcement actions quickly. See legislative histories cited in discussion of § 28.1, above. EPA intends to promote efficient and timely administrative resolutions of actions undertaken pursuant to this part by establishing the ultimate procedural authority of the Presiding Officer over a proceeding conducted under this part and the ultimate administrative authority of the Regional Administrator (subject only to the Administrator's review authority under § 28.29) over actions undertaken under this part. Under the proposal, if a person tries to appeal administratively any action by an agency decisionmaker, this would constitute a prohibited communication under §§ 28.2(p) and 28.12(a), and subject the nominal "appellant" to sanctions under § 28.12(c).

The Agency notes, in this context, that (1) any recommended or proposed recommended findings of fact and conclusions of law provided by the Presiding Officer to the participants under § 28.25(e) and (2) any determination of genuine issues of fact under § 28.25(f) are neither final Agency action for purposes of an appeal, nor appealable administratively on an interlocutory basis. Such materials are provided to the participants only to clarify the legal basis of the remainder of the action.

The unavailability of an administrative appeal does not affect the right of any person authorized by applicable law to receive appropriate judicial review of a final Agency action.

(b) *Limitation on requests for reconsideration.* This subsection prohibits any person from requesting the Presiding Officer to reconsider the recommended decision, but does not prohibit participants from requesting the Presiding Officer to reconsider rulings made before the transmission of the recommended decision to the Regional Administrator pursuant to § 28.27(a). This subsection recognizes, for purposes of section 309(g)(4)(C) of the Clean Water Act and § 28.30, that a commenter may request a Regional Administrator to reconsider the issuance of an order assessing a penalty. See also § 28.28(f)(1). A person who violates the prohibition of this subsection is subject to sanction for initiating or engaging in a prohibited communication. See §§ 28.2(p) and 28.12.

Section 28.15 Prospective Effect of this Part

This procedural section provides that the rules are prospectively effective. This part will not apply in any action initiated before its effective date, except where it has been adopted as procedural guidance. Any action initiated by the issuance of an administrative complaint on or after its effective date will be governed by the proposed rules.

Subpart B—Prehearing

Section 28.16 Initiation of Action

This section establishes how the Agency shall initiate an action under this proposed part. The complainant issues the administrative complaint, provides for its service, provides public notice of its service in Clean Water Act and Safe Drinking Water Act actions, and opens the administrative record by the filing of the administrative complaint and certificate of service. In opening the record, the complainant may also file anticipatory motions, including motions for summary determination, accelerated decision, and for remedy upon default. See § 28.16 (e) and (f).

In certain cases under these rules, EPA anticipates that many actions, especially under EPCRA and CERCLA, may be decided very quickly. These early resolutions could be obtained through the complainant, at the time the complaint is filed, by, for example: (1) Filing documentation of its liability and remedy case, (2) Satisfying all but its supplemental information exchange obligations by declaring it has produced all known information that will constitute its case against the respondent and by notifying the respondent it will request no additional information pursuant to § 28.24, and (3) Filing anticipatory motions with supporting materials, in the alternative, for either summary determination and an accelerated recommended decision under § 28.25, or a default remedy under § 28.21—depending on whether or not the respondent appears by the deadline established under § 28.20.

The effect of this approach is to reduce significantly the time needed for the Presiding Officer to transmit a recommended decision to the Regional Administrator. For example, in a case in which the complainant filed all the documentation in a case, declined the opportunity for later information requests, and also filed alternative anticipatory motions, the respondent would have thirty days to answer both the administrative complaint and the motion for an accelerated recommended decision.[5] If the respondent failed to answer, the Presiding Officer could transmit a recommended decision based on default as soon as thirty days after the filing of the administrative complaint. See § § 28.16 (e) and (f), 28.20 (a) (d) and (e), 28.21 and 28.27(a). (Because of the early filing of the default remedy motion, there is no need for an additional thirty days under § 28.21(b).) If the respondent answers, the Presiding Officer may transmit an accelerated recommended decision as soon as thirty days after the prehearing conference, or approximately sixty days after the response is filed. See § § 28.16 (e) and (f), 28.20(a), 28.23(c), 28.25 and 28.27(a).

Under this section, the Hearing Clerk notifies the Agency decisionmaker of the initiation of the action and proof of service of the administrative complaint and, if the Presiding Officer has not already been designated, the Regional Administrator assigns a Presiding Officer to the action.

In this proposal, the Agency treats the administrative complaint as analogous to a judicial complaint filed in United States district court. The Agency is following a notice pleading rule, and requires only that the administrative complaint allege each element of liability of each claim and propose a penalty or, in the case of the Safe Drinking Water Act, propose a penalty and compliance with the law. Under this rule, at the outset of the action the complainant bears only the burden of coming forward with the liability elements of the complaint and a request for relief. The complainant has no burden to prove its allegations as to liability or carry a burden of persuasion as to the assessment of an appropriate penalty or compliance remedy until later in the action. See § 28.10 and accompanying preamble discussion. The

[5] The time for resolution described in this paragraph may be extended by thirty days if the respondent certifies to the Hearing Clerk that he had made a settlement offer within thirty days of receiving the administrative complaint. See § 28.20(b)(2).

complainant may not be required to justify its penalty request upon the filing of the administrative complaint any more than if the penalty request had been filed in a federal district court.

The Agency believes that, in proceedings such as those proposed today, and unlike Agency practice developed under the Consolidated Rules of Practice at 40 CFR part 22, it is inappropriate to require the complainant to carry a burden of persuasion upon the initiation of the action. Consequently, at the outset of a action, the Agency will be free in the administrative complaint to request "up to" the statutory maximum, or to request a specific dollar amount, in either case taking into account whatever statutory penalty factors may apply. As a result of separating the penalty justification from the administrative complaint, Agency Presiding Officers will consider statutory penalty assessment criteria and the administrative record developed before them in reaching a recommended decision, and not any Agency policy governing only settlement requirements.

In most cases, EPA anticipates that the parties will reach a settlement of the dispute. In that circumstance, and if the action is one in which a commenter participates under the Safe Drinking Water Act or section 309(g) of the Clean Water Act and the Regional Administrator requests a written explanation of the settlement, the burden of justifying the penalty under the applicable law will be shared. See § § 28.10(c) and 28.22(b)(1)(ii). In the remaining actions, in instances of default or litigation, the burden of persuasion will fall on the complainant at a later stage, after the opportunity to develop information on the violations, and at a time when the burden is more appropriately borne. See § § 28.10(e), 28.21(b), 28.24, and 28.25 and 28.26 (h) (i) and (k).

(a) *Issuance of administrative complaint.* This subsection sets forth the substantive statutory claims to which these proposed consolidated administrative enforcement regulations apply.

Paragraph (1) tracks the statutory language of Section 309(g)(1) of the CWA, 33 U.S.C. 1319(g)(1), which authorizes the issuance of administrative complaints for penalties whenever the Administrator has a good faith basis to believe that any person has violated various sections of the CWA or permit conditions or limitations implementing such sections of the CWA. These proposed rules are intended to cover only the so-called "Class I" administrative complaints, which are not sub- ject to the requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. 554 and 556. See CWA section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A). Clean Water Act Class I proceedings are limited by statute to actions for civil penalties only.

Paragraph (2) tracks the statutory language of section 311(b)(6)(A) of the CWA, 33 U.S.C. 1321(b)(6)(A), which authorizes the issuance of administrative complaints for penalties whenever the Administrator has a good faith basis for believing that any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility has violated section 311(b)(3) of the CWA or is violating regulations issued pursuant to Section 311(j) of the Act, 33 U.S.C. 1321 (b)(3) and (j).

Paragraph (3) provides for the initiation of administrative actions authorized by section 1423(c) of the SDWA, 42 U.S.C. 300h–2(c), relating to violations of the requirements of an applicable underground injection control program, under these proposed regulations. Section 1423(c) of the Safe Drinking Water Act authorizes the issuance of an administrative complaint seeking both compliance and civil penalties for past violations, and these proposed rules have been drafted to enable Agency decisionmakers to fashion the complete relief contemplated by the statute. Under the first sentence of this paragraph, the Administrator may seek both compliance and civil penalties against a person who "is violating" applicable law; under the last sentence, the Administrator may seek civil penalties against a person who "has violated" applicable law, "but such violation has ceased and its cause has been remedied." In the latter case, there is no need for an order requiring compliance. A violation has not ceased, however, if it is intermittent; the Agency understands "cessation" to mean an effective, permanent solution to the violations has been adopted.

Paragraph (4) identifies the underlying CERCLA claims that may be administratively adjudicated under these proposed regulations. Specifically, so-called "Class I" civil penalties authorized by section 109(a)(1) of CERCLA, 42 U.S.C. 9609(a)(1), for violations of the following substantive provisions of CERCLA may be sought under these proposed procedures: Violations of sections 103 (a) and (b), 103(d) (2) and 108, violations of orders issued under Section 122(d)(3) and, pursuant to section 122(l) of CERCLA, failures or refusals to comply with administrative orders, consent decrees or other agreements entered into under section 122 of CERCLA. 42 U.S.C. 9603 (a), (b), and (d)(2), 9608, 9622 (d)(3) and (l).

Paragraphs (5) through (8) set forth the violations of EPCRA, 42 U.S.C. 11001 *et seq.*, that may be administratively adjudicated under these proposed rules. EPCRA violations arising under Section 313, 42 U.S.C. 11023, are outside the scope of this proposal. See discussion above in introductory preamble.

Paragraph (5) provides that violations of section 304 of Title III, 42 U.S.C. 11004 (emergency notification), are subject to so-called "Class I" civil penalties under section 325(b)(1)(A), 42 U.S.C. § 11045(b)(1)(A). Paragraph (6) sets forth that violations of section 312 of EPCRA, 42 U.S.C. 11022, are subject to civil penalties assessed pursuant to section 325(c)(1) of EPCRA, 42 U.S.C. 11045(c)(1). Paragraph (7) provides that violations of Sections 311 (material safety data sheets) and 323(b) (provision of information to health professionals, etc.), 42 U.S.C. 11021 and 11043(b), and failures to furnish information pursuant to sections 322(a)(2) of Title III (pertaining to trade secrets), 42 U.S.C. 11042(a)(2) are subject to penalties assessed under section 325(c)(2), 42 U.S.C. 11045(c)(2). Paragraph (8) provides that trade secret claims under section 325(d)(1), 42 U.S.C. 11045(d)(1), are subject to penalties as provided therein.

(b) *Notice of respondent's opportunity for hearing.* This subsection requires the complainant to notify the respondent of his right to a hearing to determine whether or not there was a violation of applicable law, the consequences of his failure to respond to the administrative complaint, and the applicability of this Part. This notification may occur by cover letter to the administrative complaint, inclusion in the text of the complaint, or any other appropriate means. The requirement in paragraph (3) may be satisfied by noting the applicability of the rules and where they are published.

(c) *Service of administrative complaint.* Special service rules apply to the service of the administrative complaint to ensure that all parties receive effective notice of the commencement of the action. Where the respondent is a corporation, the administrative complaint must be addressed to the attention of either the president of the corporation or the corporation's registered agent for service of process. However, where respondent is any entity, including a corporation, partnership or unincorporated association, the signature of any employee or agent of respondent authorized to sign for certified mail in the ordinary course of that employee's duties is sufficient to properly complete service of the administrative complaint under these rules. Where respondent is a natural person, service is complete upon the signature of any person of suitable age and discretion at respondent's residence or, if the violation is alleged to have occurred in connection with respondent's proprietorship of a business or other entity, by such signature at the address of said entity. If respondent is a State, a municipal corporation, or other governmental entity, the administrative complaint should be addressed to the chief executive officer of such entity or his authorized agent to receive certified mail. If the complainant is unable to complete service either personally or by certified mail, the complainant may complete service by any other means consistent with the requirements of due process.

(d) *Notice of administrative complaint.* This provision implements the requirements of the Safe Drinking Water Act and section 309(g) of the Clean Water Act to provide public notice upon the initiation of an administrative action. See, *e.g.*, section 309(g) of the CWA, 33 U.S.C. 1319(g). The complainant is to provide public notice no later than the time of proof of service. Consequently, based on the most efficient approach, a complainant may provide such public notification at any time between the issuance of the complaint and the receipt of proof of service. Because this statutory requirement describes a duty owed by the Agency to the public, failure by the Agency to provide timely notice would not provide a respondent with any defense to an action under this part. If the Agency provides such notice through publication, its date of submission of the notice to the publication, rather than the date of publication itself, satisfies the public notification deadline of this subsection.

This provision requires that those members of the public that have requested notice be given such notice by first-class mail. The Agency does not by this provision intend to obligate itself to seek out individual members of the public on a case-by-case basis. Rather, the Agency will attempt to inform members of the public of the initiation of actions under these proposed rules where, for example, the Agency has set up an appropriate mailing list and invited members of the public to place their names on the mailing list, or where a member of the public requests that it be informed of the initiation of certain types of actions by the Agency. This subsection also provides that potentially affected members of the public be given notice in a manner reasonably calculated to provide such notice. Again, the Agency does not intend by this provision to obligate itself to personally notice to all members of the public potentially affected by an administrative proceeding commenced pursuant to these proposed rules. Rather, the Agency intends ordinarily to fulfill its statutory obligation by, for example, publishing notices of the commencement of the action in a local newspaper of general circulation or through other media.

The Agency expects that in many cases affected States will place themselves on notification mailing lists. Nothing in this part prevents a complainant from notifying any State or any person of the commencement of an action.

(e) *Opening of the administrative record.* The complainant shall open the administrative record by filing the administrative complaint and a certificate of service with the Hearing Clerk upon mailing of the administrative complaint. The complainant may file additional documents, such as any documentation underlying allegations as to liability, anticipatory motions, and any cover letter sent to the respondent. Documents filed under this subsection are available to the public under § 28.17, although they are not yet certified as part of the administrative record by the Presiding Officer.

Nothing in this proposal requires the complainant to make public or file additional documents underlying the issuance of the administrative complaint before any prehearing exchange in an action. Ultimately, the submission of such documentation is required before the Presiding Officer certifies the administrative record to the Regional Administrator pursuant to § 28.27(a). In every administrative proceeding under this proposed part, including consent and default proceedings, there must be an identifiable administrative record, since the Regional Administrator must have access to the administrative record of the proceeding to make an independent inquiry into the appropriateness of the relief. See *Katzson Brothers, Inc.* v. *EPA*, 839 F.2d 1396 (10th Cir. 1988).

(f) *Anticipatory motions by complainant.* This subsection provides explicit authority supporting an accelerated motion practice that enables the Presiding Officer to act on the merits at the earliest possible time. See general discussion of this section above.

(g) *Notification of Agency decisionmaker.* This subsection requires the Hearing Clerk to notify the Presiding Officer, if there is a standing assignment of a Presiding Officer, or the Regional Administrator, if no Presiding Officer has been assigned, of the issuance and completion of service of the administrative complaint. If no Presiding Officer has been assigned, the notification of the Regional Administrator pursuant to this subsection serves to inform the Regional Administrator of the need to appoint such an officer by the time required by subsection (h) of this section.

(h) *Designation of Presiding Officer.* The proposed rules require the Regional Administrator to appoint the Presiding Officer within twenty days of the issuance of the administrative complaint. The Regional Administrator may accomplish this by either appointing a Presiding Officer to each action on an individual basis or, at his option, by implementing a standing or rotational appointment system. In some Regions, the Regional Administrator may authorize the standing Judicial Officer to act as Presiding Officer until a response is filed.

The twenty day rule is intended to provide the parties with a forum for the resolution of disputes prior to the deadline for respondent's filing of his response pursuant to § 28.20 of the proposed rules. If the Regional Administrator, for whatever reason, fails to appoint a Presiding Officer within twenty days, jurisdiction of the Agency to initiate the action is not affected. However, the right of the respondent to make any preliminary legal argument shall not be prejudiced by the Regional Administrator's delay.

Section 28.17 Availability of Documents Filed with the Hearing Clerk

This section allows members of the public an opportunity to review information relating to the Agency's enforcement action. Documents on file with the Hearing Clerk do not necessarily represent the administrative record on which the Regional Administrator will base his decision in the action. Certification of the complete record does not occur until the Presiding Officer transmits a recommended decision. In addition, some documents held by the Hearing Clerk may be ineligible for inclusion in the administrative record. See § 28.2(b).

Subsection (a) addresses the Agency's obligation to honor valid claims of confidential business information made by the respondent, when such claims have been properly filed with the Agency.

Subsection (b) imposes a mandate on the Agency to treat the filed documents in such a way as to reasonably guard against tampering, destruction, loss or theft.

Subsection (c) addresses and imposes existing Agency rules governing reproduction costs. Fees for reproduction of records are applicable to this proposed rule.

Section 28.18 Withdrawal or Amendment of Administrative Complaint.

This section establishes the forms and deadlines for withdrawal or amendment of the administrative complaint by the complainant and for notifying the other participants of any withdrawal or amendment.

(a) *Withdrawal of administrative complaint.* This subsection provides that the complainant may withdraw the administrative complaint without prejudice (1) as of right any time before the applicable deadline of § 28.20 (a) and (b), or the respondent's response, whichever is sooner; or (2) by stipulation with the respondent or by permission of the Presiding Officer at any time after the applicable deadline prescribed in § 28.20 (a) and (b) or the respondent's response, whichever is sooner.

(b) Amendment of administrative complaint. This subsection provides that the complainant may amend the complaint (1) as of right, any time before the expiration of the applicable deadline of § 28.20 (a) and (b) of the proposed rule or the respondent's response, whichever is sooner; or (2) by stipulation with the respondent or permission of the Presiding Officer after expiration of the applicable § 28.20 (a) and (b) deadline or the respondent's response in the action.

Section 28.19 Consultation with State. [Section 309(g) of the Clean Water Act only]

Section 309(g)(1) of the Clean Water Act, 33 U.S.C. § 1319(g)(1), specifies that "after consultation with the State in which the violation occurs" the Administrator may "assess a class I civil penalty . . . under this subsection." This section implements that statutory requirement for consultation with the appropriate State agency. The State's opportunity for consultation must occur within thirty days of the respondent's receipt of the administrative complaint. The Agency may provide an opportunity for consultation by any reasonable means, including notifying the appropriate State official of the initiation of the action by letter, by telephone, or in person. The record of the fact of consultation or, as applicable, the opportunity for consultation, shall become part of the administrative record. The substance of the consultation is not required to be part of the administrative record. See § 28.2(b)(4).

The Agency is under no statutory obligation, and no obligation imposed under this proposed part, to consult with the affected State prior to the initiation of an action under section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g). The statute requires consultation only once and only before assessment of a civil penalty, which is final Agency action. EPA has decided in this proposal to curtail its discretion to consult with the affected State at later stages of a section 309(g) action only because such late consultation would interfere with the timely and efficient administration of this part. EPA interprets the statutory consultation requirement to govern the federal relationship between two sovereigns—the affected State and the United States—and not to invest any defenses or rights in a respondent in a Clean Water Act enforcement action.

Section 28.20 Responses to Administrative Complaint.

This section of the proposed rules establishes the deadlines for the respondent and (in the case of the Safe Drinking Water Act and Section 309[g] of the Clean Water Act) the public's participation in actions undertaken pursuant to these proposed rules. It also provides for the respondent's amendment of his response, and describes the effect of the respondent's failure to make a timely response or to deny an allegation as to liability in the administrative complaint.

(a) *Respondent's deadline.* This subsection requires the respondent to reply to the administrative complaint by filing with the Hearing Clerk a timely response, which is to become part of the administrative record pursuant to § 28.2(b)(9). This response is due within thirty days of receipt of the administrative complaint or, if applicable, within thirty days of receipt of the Regional Administrator's disapproval of a proposed consent order. See § 28.2(u) for the required elements of a response. If a respondent does not timely provide a response, he is not a "party" or "participant" under this proposed part, and is subject to the admission and waiver provisions of this section.

An administrative action under this part may conclude in a consent order without the filing of a response if certain preconditions are met. In a CERCLA, EPCRA, or CWA 311(b)(6) action, the parties may reach an agreement before the response is due. In that situation, the action concludes upon their compliance with § § 28.2(i) and 28.22(a)(1).

In a proceeding under the Safe Drinking Water Act or section 309(g) of the Clean Water Act, the parties cannot conclude an action without allowing time for commenters to participate. The procedure varies depending on whether the commenters' deadline precedes the respondent's, and whether any commenters participate in the action. See §§ 28.16(d) and 28.20(c). If the commenter's deadline precedes the respondent's § 28.20(a) deadline, and no commenter participates in the action, the parties may conclude the action before the response is due under § 28.20(a). In many cases, however, the commenter's deadline will fall after the respondent's § 28.20(a) deadline. In that circumstance, if a consent order is to moot the requirement for a response, the parties must extend the respondent's deadline under § 28.20(b) beyond the commenters' deadline. If no commenters participate in the action, the parties may conclude the action without the filing of a response by memorializing a consent order before the respondent's § 28.20(b) deadline. § 28.22(a). If a commenter participates, the parties may lodge a proposed consent order with the Regional Administrator under § 28.22(b). If the Regional Administrator approves the lodged consent order pursuant to § 28.28(b), no response need be filed. See § 28.22 (a), (b) (1) and (2).

(b) *Extension of respondent's deadline.* Paragraph (1) allows the complainant, in concert with the respondent, to extend the respondent's deadline to respond to the administrative complaint up to 120 days after the respondent's receipt of the administrative complaint. Pursuant to paragraph (2), upon notice of an offer of a penalty settlement by the respondent which has been timely filed with the Hearing Clerk, the deadline for the response is extended by thirty days. The purpose is to allow the parties to engage in informal settlement negotiations. The substance of the offer shall not be filed with the Hearing Clerk, but only a notice as to the fact of its existence. Presiding Officers may not become involved in the substance of any settlement offers. See preamble to § 28.4(c)(5).

The Presiding Officer may not extend a respondent's deadline.

The Agency considers approximately four months a reasonable period of time to allow the parties to attempt to reach a settlement of the action, while imposing a time limit on negotiations that will assist in the timely resolution of actions. These proposed rules impose no obligation on the part of the Agency to settle, or to provide any extension. Any extension granted must be by a written stipulation filed with the Hearing Clerk within thirty days after service of the administrative complaint upon the respondent. These rules do not authorize any extension of a respondent's deadline based upon the date of the Regional Administrator's disapproval of a proposed consent order under § 28.28(b)(5). Consequently, if the Regional Administrator disapproves a proposed consent order more than eighty nine days after service of the administrative complaint, pursuant to this subsection the respondent's deadline for a response is not later than thirty days after the disapproval.

EPA favors the resolution of disputes in the most timely and effective manner possible, and is particularly concerned that it not burden small or unsophisticated respondents with unnecessary proceedings. During the time before the answer to the complaint is due, the parties may agree to alternative forms of dispute resolution, such as various forms of arbitration or mediation. Use of these means may result in a consent order, or proposed consent order, or may result in the voluntary withdrawal of the complaint by the Agency, if that is appropriate. Consequently, these proposed rules favor the settlements of disputes. If, however, these alternative approaches do not resolve the dispute at this early stage, the respondent would have to file an answer to the administrative complaint by the deadline provided under § 28.20 (a) or (b), whichever applies. EPA solicits comments on the use of alternative dispute resolutions prior to the answer being filed in an action and solicits suggestions as to types of appropriate alternatives.

(c) *Deadline for public comment and participation.* This subsection applies only to actions undertaken pursuant to the Safe Drinking Water Act and section 309(g) of the Clean Water Act. See section 1423(c)(3) of the SDWA, 42 U.S.C. 300h–2(c)(3), and section 309(g)(4) of the CWA, 33 U.S.C. 1319(g)(4), which require an opportunity for public participation in these proceedings. The Agency recognizes that an individual may wish to submit comments for the record, although not become an active participant in the proceeding. In that case, such timely comments within the scope of the action will become part of the administrative record of the action, pursuant to § 28.2(b)(9). (Comments that are untimely or go beyond the scope of the administrative complaint, however, would not qualify under § 28.2(b)(9) and (15) to become part of the administrative record.) If the person wishes to become a participant—a "commenter" per the definition of § 28.2(g)—that person would timely have to identify himself to the Hearing Clerk as a commenter, submit appropriate comments or note what allegations in the complaint he will address through his participation in the action, and provide the Clerk with a return address. The thirty day deadline provided in this subsection should run almost concurrently with the thirty days provided to the respondent, since under § 28.16(d) of the proposed rules, the public notice is to be provided "no later than the time of proof of service of the administrative complaint."

Although the public may submit comments in proceedings under CERCLA, EPCRA and CWA 311(b)(6), such comments do not automatically become part of the administrative record of the action unless admitted by the Presiding Officer pursuant to § 28.2(b)(15). These proposed rules do not provide any opportunity for a member of the public to become a participant in a CERCLA, EPCRA or CWA 311(b)(6) proceeding.

(d) *Admission.* This subsection provides that if the respondent fails to make a timely response, or fails to deny any allegation included in the administrative complaint, the unopposed allegations as to liability are deemed admitted for purposes of the action, and may not later be contested.

(e) *Waiver.* This subsection provides that if the respondent fails to make a timely response, the respondent shall have waived its opportunity to appear in the action for any purpose, including receiving notice of further proceedings or opposing the arguments of Agency counsel in any default penalty proceeding under § 28.21 of these proposed rules. See also *Moose Oil Co.* v. *United States,* Civ. No. 88–1178E (N.D.N.Y. August 6, 1990) and *Regis* v. *United States,* Civ. No. 88–1179E (N.D.N.Y. August 6, 1990) (Holding that timely appeals to district court under SDWA § 1423(c)(6), 42 U.S.C. 300h–2(c)(6), would not be upheld on due process grounds when the respondents had failed to avail themselves of their right to request a hearing and the Agency had substantial evidence in the record to support its orders.)

(f) *Amendment of response.* This subsection governs the amendment of responses to the administrative complaint.

Paragraph (f)(1) authorizes a respondent who has timely responded to the complainant's administrative complaint to amend his response no later than thirty days after the complainant amends the administrative complaint pursuant to § 28.18.

Paragraph (f)(2) authorizes a respondent to amend his response up to thirty days before the date set for a summary determination of liability under § 28.25 or a liability hearing under § 28.26, whichever occurs first, (1) if the complainant agrees or (2) if the Presiding Officer permits only "upon a finding of good cause shown, and a finding that such an amendment would not prejudice the complainant." Good cause may be present, for example, if the respondent can show that he had incompetent counsel, or was unable to help in his defense. The complainant may be prejudiced, for example, if allowing amendment of the response would provide the respondent with an unfair advantage, or an inappropriate delay.

Section 28.21 Default Proceedings

If the respondent fails timely to respond pursuant to § 28.20 (a) or (b), there are three important consequences which ensue. First, all allegations in the complaint which are unanswered or not denied are deemed admitted. Second, and most importantly, if the complainant has stated a cause of action, the respondent will be deemed in default. Third, the respondent shall have waived its opportunity to appear in the action for any purpose, including contesting the complainant's arguments for the imposition of a penalty. A respondent who fails timely to respond to the administrative complaint is not defined as a "participant" per § 28.2(l). Further, a defaulting respondent waives the right to appear in the action "for any purpose." § 28.20(e). Consequently, the Clerk is not required under § 28.9(b) to notify a defaulting respondent of a § 28.21 default proceeding.

If a respondent is sanctioned by a Presiding Officer pursuant to § 28.4(a) with a finding of default, as to the complainant's claim or claims to which there has been a default, the respondent is no longer a "party" or "participant" in the action. See § 28.2(l) and (m). In the case of the sanction of default, which the Agency expects a Presiding Officer to consider in only the most egregious circumstances of misconduct or recalcitrance, the person in default, for purposes of this section, from that time forward is treated for the purpose of the defaulted claim as if he had failed timely to respond pursuant to § 28.20 (a) or (b). Default proceedings are bifurcated into a determination of liability and the determination of an appropriate remedy.

(a) *Determination of liability.* Under subsection (a), the only factor to be considered by the Presiding Officer in determining liability is whether the complaint states a cause of action. If the Presiding Officer finds that the complaint states a cause of action, he is to direct the entry of the respondent's default in the administrative record. At that point, the allegations of fact and conclusions of law as to liability included in the administrative complaint become recommended findings of fact and conclusions of law that the Presiding Officer will transmit in a recommended decision to the Regional Administrator. As noted earlier, all allegations unanswered or not denied are deemed admitted. If the Presiding Officer determines that the complaint does not state a cause of action, the Presiding Officer shall permit amendment of the complaint or shall recommend that the Regional Administrator withdraw the administrative complaint. Any withdrawal of an administrative complaint under this proposed Part is without prejudice, since there is no ruling on the merits of the action. See § 28.18(a).

Under § 28.4(c)(7) of this proposed Part, the Presiding Officer may not "[d]ismiss the administrative complaint."

(b) *Determination of remedy.* Where a determination of liability has been made by the Presiding Officer and made part of the administrative record by the Hearing Clerk, the Presiding Officer shall require the submission of a written argument by the complainant regarding the appropriate civil penalty to be assessed. The complainant must provide such an argument even if the administrative complaint requested the assessment of a specific sum. This submission should include any supporting documents and must be submitted within thirty days of receipt of the entry of respondent's default. If complainant submits such information upon opening the administrative record under § 28.16(e), there is no need for the thirty day period to run. A failure by the complainant to provide written argument to the Presiding Officer under this section may result in a failure by the complainant to carry its burden of persuasion as to remedy. As the respondent has waived its opportunity to appear in any action by failing timely to respond, this communication by the complainant to the Presiding Officer is not a prohibited communication. See § 28.2(p)(1).

Depending on the statute under which the complainant is proceeding, specific statutory factors must be addressed in the written argument supporting the proposed penalty. For penalty actions under section 309(g) of the CWA, CERCLA and section 325(b) of EPCRA, Congress has instructed the Agency to consider "the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." Section 109(a)(3) of CERCLA, 42 U.S.C. 9609(a)(3), and section 325(b)(1)(C) of EPCRA, 42 U.S.C. 11045(b)(1)(C). See also section 309(g)(3) of CWA, 33 U.S.C. 1319(g)(3) (substantively identical provision). The statutory factors applicable to actions under section 311(b)(6) of the Clean Water Act are "the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require." 33 U.S.C. 1321(b)(8). For penalty actions under the SDWA, the argument is limited to the seriousness of the respondent's violation or violations, any economic benefit respondent enjoyed resulting from the violation, any history of such violations, any good faith efforts by the respondent to comply with the applicable requirements, the economic impact of the penalty on the respondent, and such other matters as justice may require. Section 1423(c)(3)(B) of SDWA, 42 U.S.C. 300h-2(c)(3)(B).

The complainant has the burden of presenting arguments to the Presiding Officer—the burden of persuasion—regarding the assessment of an appropriate civil penalty. See § 28.10(e). The complainant, however, does not have the burden of persuading Agency decisionmakers regarding the civil penalty based on the respondent's inability to pay, or regarding the respondent's economic savings, if the respondent has failed to come forward with that information by the applicable deadline. See §§ 28.10 (b)(2) and (e) and 28.24 (b)(2) and (c). By defaulting, the respondent has admitted all allegations and has waived its right to appear in the action. A default results in an unrebuttable presumption that the respondent can pay any assessed penalty and has enjoyed an economic benefit. See §§ 28.10(b) and 28.20 (d) and (e). In the absence of any showing by the complainant as to the amount of economic benefit, however, the Presiding Officer may take appropriate official notice of any relevant information on that subject, or may assign a token amount as the economic benefit.

In addition, for SDWA actions in which the complainant is requesting compliance, the burden of persuasion regarding the reasonableness of the requested relief rests with the complainant.

The Presiding Officer shall prepare and transmit his recommended decision to the Regional Administrator, as outlined in § 28.27, after reviewing the written argument and the administrative record. The remaining procedures are identical to those used for contested actions. See Subpart D—Post-Hearing. If the Regional Administrator issues an order assessing a penalty, the Regional Administrator shall make findings of fact which establish the Agency's subject matter jurisdiction and the respondent's violation of applicable law, shall set forth conclusions of law, and shall assess an appropriate penalty after taking into account, and providing a discussion of, the application of penalty factors he must consider under applicable law. This requirement explicitly addresses the decision in *Katzson Brothers, Inc.* v. *EPA*. The respondent shall pay any civil penalty assessed no later than thirty days following the effective date provided in the order pursuant to § 28.31. Upon the failure of a respondent to pay an assessed penalty, the Agency may collect the penalty under applicable law. See, e.g., section 309(g)(9) of the Clean Water Act, 33 U.S.C. 1319(g)(9).

Section 28.22 Consent Order

(a) *Agreement of parties.* The parties may agree to settle any administrative action brought under this proposed rule by entering into a consent order at any time prior to the taking of final Agency action. This settlement must comply with § 28.2(i). Except in cases in which a commenter has participated under the Safe Drinking Water Act or section 309(g) of the Clean Water Act, the action may not conclude until the parties file the consent order with the Hearing Clerk and provide a copy to the Presiding Officer. The Presiding Officer has no authority under these rules to disapprove or void a consent order signed by the parties pursuant to this section. Any consent order signed by the parties under this section has the force and effect of an order signed by the Regional Administrator under § 28.28 upon filing with the Hearing Clerk, except that the signatory respondent's waiver of his appeal rights under this subsection and § 28.2(i)(6) provides for greater finality. In the case of a SDWA or CWA 309(g) action in which a commenter participates, the Regional Administrator must approve and issue each proposed consent order before it may become effective. Under the SDWA and CWA 309(g), the effective date of a consent order is subject further to the rights of commenters. See § 28.28(f) (1) and (3).

The rules limit the scope of the settlement to the allegations set forth in the administrative complaint and the legality of the relief agreed to by the parties. See §§ 28.2(i) and 28.28(b)(1).

(b) *Submission of proposed consent order.* This subsection sets forth procedures for the consideration of consent orders by the Regional Administrator in Safe Drinking Water Act or Clean Water Act 309(g) actions in which a commenter participates.

In other actions involving settlement under this part, the parties may conclude the action (see subsection [a] of this section), but because all timely public comment under the SDWA and CWA 309(g) is part of the administrative record, and because the final Agency action must be based on the administrative record, under paragraph (b)(1) the thirty day public comment period set forth by § 28.20(c) must run before parties in a SDWA or CWA 309(g) action can lodge a proposed settlement. It also requires that the parties, upon the request of the Regional Administrator, provide a written explanation of the legality of the proposed order. See also § 28.10(c). No consent order lodged under this paragraph may be given effect unless the Regional Administrator approves it pursuant to § 28.28(b). Consequently, pursuant to § 28.22 (b)(1)(i) and (b)(4), all timely public comments will be made available to the Regional Administrator before he makes a decision on whether or not to approve the proposed consent order. Under section 309(g) of the Clean Water Act, the delay in lodging the consent order until the comment period has run will also minimize the possibility that the Regional Administrator would be required under § 28.30(b) to set aside an order on consent for failure to consider material evidence, since commenters would have had an opportunity to provide the Agency decisionmaker with necessary material information to consider in making a decision on the legality of the proposed consent order. See also section 309(g)(4)(C) of the Clean Water Act, 33 U.S.C. § 1319(g)(4)(C). The parties may satisfy the requirement of subparagraph (b)(1)(ii) in whatever form may be appropriate, from a cover letter to a brief with supporting documentation.

Paragraph (b)(2) provides for the automatic suspension of proceedings upon the lodging of the consent order.

Paragraph (b)(3) requires that the complainant shall serve any non-signatory participant, i.e., any commenter or any non-settling respondent, with a copy of the proposed consent order when the consent order is lodged, and notify the participant of the suspension of the proceeding pending action of the Regional Administrator. The non-signatory participants may not communicate with the Presiding Officer or Regional Administrator regarding the merits of the proposed consent order. See §§ 28.2(p)(2) and 28.12(c)(2).

Paragraph (b)(4) recites the obligations of the Hearing Clerk upon the lodging of a SDWA or CWA 309(g) proposed consent order. Under the Rules, the Hearing Clerk shall not provide the Presiding Officer with a copy of the proposed consent order, but only notification that is has been received and transmitted to the Regional Administrator. The Presiding Officer needs to know of the lodging of the proposed consent order in order to oversee the suspension of the proceeding pursuant to § 28.22(b)(2) of the proposed rules. However, because the Presiding Officer may be called upon to provide the Regional Administrator with a recommended decision in the event of the Regional Administrator's disapproval of the proposed consent order, the Presiding Officer is not to read or discuss with any person the proposed settlement terms. See §§ 28.2(p)(2) and 28.13(a).

Paragraph (b)(5) establishes an inclusive, alternate definition of the administrative record for proceedings concluded pursuant to this subsection and § 28.28(b). If the parties have agreed to settle their dispute, there is no need to limit the scope of the administrative record underlying that resolution, or to expend Agency resources determining the boundaries of an appropriate record. However, in the case of a partial settlement, use of this alternative definition does not support the inclusion in the administrative record in the still-active remainder of the action of any documents filed with the Hearing Clerk. The certifiable administrative record for any remaining issues is defined by § 28.2(b).

A proposed consent order is not filed with the Hearing Clerk by the parties, but lodged. It therefore becomes part of the administrative record only if the proposed order is ultimately approved. See § 28.28(d). Paragraph (b)(5) ensures, in concert with §§ 28.2(p)(2) and 28.12(a) (defining and prohibiting prohibited communication) that, in the event the Regional Administrator rejects a proposed settlement and the action is thereafter adjudicated on the merits, the Presiding Officer does not make a recommended decision to the Regional Administrator based in any part on the parties' settlement positions previously rejected by the Regional Administrator, and further ensures that the Presiding Officer is not involved in any settlement discussions between the parties. See also §§ 28.4(c)(3) and 28.13(a) (concerning grounds for requesting an alternate Presiding Officer).

Additionally, the rules contemplate that the Presiding Officer will not be privy to the actual terms of the settlement unless the consent order is approved and issued by the Regional Administrator. § 28.5(h). Compare §§ 28.2(p)(2), 28.4(c)(5), 28.13(a) and 28.22(b)(5) with § 28.27(a)(1) (providing for the Presiding Officer's certification of the administrative record). This limitation is intended to avoid prejudicing the Presiding Officer in the event that the Regional Administrator disapproves the proposed settlement, necessitating that the action continue. This approach is similar to that employed by the federal court system in its dual use of so-called settlement judges as well as trial judges. The Agency does not intend that either party should risk compromising its litigation position by agreeing to a settlement proposal that would be available to the Presiding Officer; this would discourage settlement, and the Agency intends by these rules to promote the settlement of disputes.

Section 28.23 Prehearing Conference

This section provides for a prehearing conference between the Presiding Officer and the parties in order to consider matters which may expedite the disposition of the proceedings, as well as to set the time and place for further proceedings. The Agency anticipates that, upon the filing of a response, the Presiding Officer will promptly issue a directive to the parties which (1) schedules the time, and, if the conference is conducted in person, the place of the prehearing conference; and (2) advises the parties of the matters which will be the subject of the prehearing conference.

(a) *Time and form of conference.* To promote the efficient and timely initiation and administration of actions brought under this rule, § 28.23 establishes a strict time frame in which the Presiding Officer must hold the prehearing conference. Accordingly, subsection (a) requires a prehearing conference be held no later than thirty days following the filing of the response. In all cases the Presiding Officer shall memorialize his rulings no later than fifty days following the filing of a response. See § 28.23 (a) and (d). In some cases, it may be advisable for the parties to appear before the Presiding Officer in person; however, the Agency expects that in many cases, the prehearing conference will be conducted by telephone.

(b) *Purposes of conference.* This subsection sets forth the purposes of the prehearing conference. If no party requests an information exchange, the Presiding Officer may not schedule one. The Presiding Officer may, within his discretion, further limit the scope of the information exchange (see also § 28.24(b)), although the Agency does not anticipate such limitations occurring unless the parties have entered into a stipulation that moots the usefulness of a more complete information exchange.

If the complainant has already filed with the Hearing Clerk all documentation the Agency intends to provide in the action, and states that the Agency seeks no further information from the respondent, the Presiding Officer may forego all but supplementary exchanges, since elimination of the initial exchange would speed the action by as much as sixty days without prejudicing either party.

(c) *Time and place of further proceedings.* Under paragraph (c)(1), the Presiding Officer is to set a time and place for a proceeding on the merits, such as a summary determination of liability or an accelerated recommended decision under § 28.25 or a hearing under § 28.26. The proceeding may be scheduled to occur no sooner than thirty days following the prehearing conference. This interval allows the parties time to prepare. Under paragraph (c)(2), either party may, however, within ten days of receipt of notice of the scheduling of the further proceedings, request in writing that the Presiding Officer schedule such proceeding at a different time or location.

(d) *Prehearing order.* Subsection (d) provides that, within twenty days following the prehearing conference, the Presiding Officer shall issue a written prehearing order to memorialize the rulings the Presiding Officer made at the prehearing conference, including rulings on such procedural issues as the time and place of further proceedings and, if appropriate, deadlines for the submissions of stipulations of fact or amendments to the pleadings. The Presiding Officer may also set forth any stipulations of fact or conclusions of law agreed to by the parties during the prehearing conference. The Agency is aware that certain unforeseen circumstances may arise after the prehearing order is issued and therefore subsection (d) provides that the Presiding Officer may modify the prehearing order as necessary to aid in the efficient administration of justice. The deadline for the parties to complete the exchange of information as provided for in the prehearing order may not be modified under this subsection. In Clean Water Act and Safe Drinking Water Act actions, however, the Presiding Officer may delay the completion of an exchange pursuant to § 28.24(c)(2).

Section 28.24 Information Exchange

This section establishes the authority of the parties to require the provision of information under the relevant administrative enforcement hearing provisions of applicable law. Nothing in this section or this proposed part affects the right of the Agency to gather information under other applicable law, such as section 308 of the Clean Water Act, 33 U.S.C. 1318, section 1423(c)(8) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(8), or section 104(e) of CERCLA, 42 U.S.C. 9604(e), or the right of any person to request information of the Agency under other applicable law. See § 28.1.

(a) *Authority.* This subsection sets forth the exclusive role of this section in information exchanges, and provides that this section is available only if a respondent is a "party" in the action. See §§ 28.2(m) and 28.20(e). The Presiding Officer has no authority under this part to require parties to provide any more information than this section explicitly authorizes.

(b) *Scope of exchange.* Discovery is not constitutionally or statutorily required in this forum. See *Chemical Waste Management* v. *EPA*, 873 F.2d 1477 (D.C. Cir. 1989) and *NLRB* v. *Interboro Contractors, Inc.*, 432 F.2d 854 (2d Cir. 1970). The Agency proposes to strictly limit administrative discovery to expedite and simplify litigation under this part. This approach is implicitly authorized by Congress, since it helps the Agency carry out the purposes of the administrative enforcement authorities of the relevant statutes. See the legislative materials referenced in the discussion above of § 28.1 and Davis, Administrative Law Treatise, vol. 1, § 5.03. Operation of this part does not prevent the parties from voluntarily agreeing to widen the scope of a prehearing exchange; they may stipulate to other means or subjects of discovery.

Under subsection (b), the information that may be exchanged is limited to (1) documents intended to be introduced at proceedings under this part for purposes other than the impeachment of a witness' testimony and not already filed with the Hearing Clerk under § 28.16(e) (see §§ 28.2[b][1] and 28.16[e] regarding documents the complainant may have filed at the time the action is initiated); (2) witness lists, qualifications of expert witnesses and the subject matter of intended witness testimony; and (3) information known to the respondent relating to the respondent's inability to pay a civil penalty or relating to any economic advantage accruing to the respondent as a result of his alleged violations of law. Other forms of discovery, including the taking of depositions, issuance of requests for the production of documents, and requests for admissions, are not permitted unless stipulated to by the parties pursuant to subsection (a). Documents filed by the complainant with the Hearing Clerk pursuant to § 28.16(e) are already available to adverse parties under § 28.17.

(c) *Timing of exchange.* This subsection governs the timing of the information exchange. Paragraph (1) applies to actions under all applicable laws; paragraph (2) applies only to the Clean Water Act and Safe Drinking Water Act.

The sixty day deadline in paragraph (c)(1) ensures that litigation under this part be as quick and efficient as possible, and does not allow undue delays in scheduling information exchanges. If it would be more efficient, the Presiding Officer may schedule more than one round of information exchange, as long as the final round concludes within sixty days from the date of the prehearing conference. Where appropriate, and in particular in instances in which the complainant has announced the filing of its liability and remedy case and forgoes requesting additional information of the respondent, the Presiding Officer may eliminate all exchange except for supplemental exchange. See preamble discussion to § 28.16.

The sixty day deadline of § 28.24(c)(1) is not amendable by a prehearing order issued under § 28.23(d), but in Clean Water Act and Safe Drinking Water Act actions, the Presiding Officer may extend the exchange deadline according to the terms of § 28.24(c)(2). Unlike CERCLA, for example, in which Congress expressed a preference for expedited settlements in a "special notice" provision under Section 122(e), 42 U.S.C. 9622(e), the CWA and SDWA contain no specific expedited settlement language. The Agency also anticipates that, unlike CERCLA and EPCRA, the CWA and SDWA violations subject to this part will not be primarily reporting violations. Litigation in water cases may at times require an extension of the sixty day information exchange deadline of § 28.24(c)(1).

Since the parties may extend the respondent's deadline to 120 days under § 28.20(c), participate in a prehearing conference 30 days following that, and receive 60 days for the exchange of information, they will have as much as seven months' grace before facing a final administrative discovery deadline. In addition, in all actions the parties may supplement the exchange of information with newly learned information regarding witnesses and the introduction of documents. EPA does not believe that seven months is an unreasonably short period of time in which to prepare for limited discovery in an administrative action.

Because new information concerning witnesses or documents may develop after an information response deadline passes, the parties may supplement information provided under § 28.24(b)(1); if a party chooses not to provide supplementary information, § 28.24(e) prevents use of such witnesses or documents. EPA therefore expects parties to voluntarily supplement information on these subjects. In any dispute over when a supplementing requested party became aware of the supplementary information, the requested party bears the burden of going forward and of proof, since that party has the best access to relevant facts.

The Agency does not anticipate that issues regarding a respondent's inability to pay a civil penalty or economic benefit received will materially change in the interim between the end of the prehearing order discovery period and a determination of remedy, and therefore, in considering the need for effective administrative penalty proceedings against the unlikelihood of a material change in a respondent's financial position, has struck a balance by not providing for an opportunity to supplement the information exchange on these issues. If the respondent does not provide information on those subjects by the prehearing order deadline (as it may be extended pursuant to § 28.24(c)(2) in Clean Water Act and Safe Drinking Water Act actions), subparagraph (e)(1) (iii) and (iv) sanctions apply.

The seven day rule is proposed to discourage the abusive litigation practice of delaying a response until the eve of a hearing, and then flooding the requestor with boxes of unsorted and often largely unresponsive documents. If such an event occurs, or if the Presiding Officer determines that the party providing the supplemental information had such information on hand before the initial exchange deadline set forth in the prehearing order, the sanctions of § 28.24(e) apply. Under § 28.24(c)(1), the Presiding Officer may not allow, without good cause, a party's supplemental response to a request for witness information to be provided later than seven days before a summary determination of liability under § 28.25, a liability hearing under § 28.26, or a determination of remedy, whichever occurs first.

Paragraph (2) provides that in a CWA or SDWA action, the Presiding Officer may under this paragraph, for good cause shown, extend the deadline for the exchange of information for a period not to exceed 30 days. Good cause for delaying the exchange includes the illness of a participant or the imminence (but not just possibility) of settlement, but does not include neglect or inattention by the parties or their counsel to the demands of the administrative action. The Agency intends that the Presiding Officer will promptly respond to a request for a delay. The parties may subsequently request individual extensions of up to 30 days each, based on a showing of good cause for each such subsequent request.

(d) *Service.* Subsection (d) provides that each party shall serve the information upon each other party and the Presiding Officer. Information exchanged under this section is not by definition of § 28.2(b) part of the administrative record of the proceeding, except as the Presiding Officer may include it under §§ 28.2(b)(15) and 28.27(a)(1). The proposed rules provide for service upon the Presiding Officer so that he may oversee compliance with the requirements of this section or summarily determine, on his own initiative, whether there are grounds for a summary determination of liability or for an accelerated recommended decision. The Agency expects the Presiding Officer to include all such relevant documents in the administrative record in any action in which the Presiding Officer *sua sponte* makes such a determination. See §§ 28.2(b)(15) and 28.25(d)(2).

(e) *Sanctions.* This subsection establishes both mandatory and discretionary sanctions for failure to comply with the requirements of § 28.24. See *ARCO* v. *U.S. Department of Energy,* 769 F.2d 771, 795–96 (D.C. Cir. 1984) (an administrative agency may establish sanctions in hearing procedures as part of a general grant of authority by the legislature). For example, if a party fails timely to provide the name and all supporting information regarding any witness it intends to present at a hearing under § 28.26 of this proposed part, such witness may not be presented. Similarly, if a party fails timely to produce a document it intends to introduce at such a hearing, that document may not be introduced to prove the truth of what it asserts. It may, however, be introduced solely to impeach the testimony of an adverse witness. The Presiding Officer may also impose additional sanctions that are just and proper (short of fine or imprisonment) on a party that fails to comply fully with the requirements of this section.

Section 28.25 Summary Determination and Accelerated Recommended Decision

This section authorizes summary adjudication of the allegations, without further proceedings, either upon the request of a party, or on the initiative of the Presiding Officer, whenever the Presiding Officer finds there are no material facts in dispute and a party is entitled to judgment as a matter of law. It also authorizes the Presiding Officer to accelerate the transmittal of his recommended decision to the Regional Administrator if there is no compelling need for additional fact-finding on remedy issues.

(a) *Initiation.* Paragraph (a)(1) provides that either party may request a summary determination or an accelerated recommended decision at any time after service of the response until 30 days before the time set for a § 28.26 liability hearing. The Presiding Officer may, however, for good cause shown, grant a party leave to file a request for summary determination at any time before the close of the liability hearing. Under paragraph (a)(2), the Presiding Officer may on his own summarily determine any of the allegations only after the time for the exchange of information pursuant to § 28.24 has run and only after he has examined the entire administrative record. The Presiding Officer may accelerate the transmittal of the recommended decision upon finding liability in a summary determination or upon stipulation as to liability by the parties, if there is no need for further fact-finding as to remedy.

(b) *Response.* Under this subsection, the party against whom a request for summary determination or accelerated recommended decision has been made may serve a response to the request or a counter-request for summary determination or for an accelerated recommended decision, or both, within 20 days of his receipt of the request, unless (1) the Presiding Officer establishes a different schedule, or (2) the request was made more than twenty days before the response to the complaint was due, in which case the response to the motion cannot be due before the answer response deadline of § 28.20(a)(1). A party against whom a counter-request has been made may, under this subsection, serve a response to the counter-request within 20 days of his receipt of the counter-request. Such a response is not to be considered an argument in reply for purposes of § 28.8 of these rules.

The parties must serve copies of the request, the response, or the counter-request, as appropriate, on each participant in the action and file the original with the Hearing Clerk. See § 28.9. Whether the parties can submit reply briefs is discretionary with the Presiding Officer under § 28.8; however, the Agency anticipates that reply briefs, but not sur-reply briefs, will be allowed in most summary determinations. Any legal argument filed under this section must comply with the limitations in § 28.8.

(c) *Form and record of argument.* Although the Presiding Officer has the discretion to require oral argument of each participant under subsection (c), the Agency expects that the majority of requests and counter-requests for a summary determination or an accelerated recommended decision will be decided on the pleadings. The Presiding Officer may not entertain argument regarding settlement positions or allow collateral attacks on Agency action in argument under this section. This subsection also requires that the Presiding Officer maintain and file a permanent record of any oral argument under this section.

(d) *Basis for ruling.* This subsection sets forth the Presiding Officer's basis for ruling on summary determination or accelerating a recommended decision. This subsection provides the basis for a decision to grant or deny a request for summary determination, or on his own decide to grant a complete or partial summary determination. See also § 28.25(a)(2). "Compelling need," as used here, refers to the need of the Agency decisionmakers to have an adequate record upon which to base final Agency action and represents a stringent standard to be met before testimony is allowed on the subject of remedy. If the Presiding Officer finds that accelerating a recommended decision is not appropriate, he shall schedule a proceeding under § 28.26(h).

(e) *Determination of liability.* If the Presiding Officer renders a summary determination on less than all of the allegations, he shall issue a ruling which specifies which allegations are materially in dispute and which allegations are not materially controverted. The Presiding Officer shall promptly serve such ruling on each participant and the action shall continue on the allegations for which there is a material controversy. At the time the Presiding Officer resolves the remaining issues in the action, he shall incorporate the elements of his ruling into the recommended decision he transmits to the Regional Administrator.

(f) *Determination of genuine issue of fact.* If the Presiding Officer denies a request for summary determination, he shall promptly issue to each participant his ruling on the matter and the action shall continue on the factual allegations in dispute. His ruling is not subject to appeal. See § 28.14(a).

(g) *Supplementation of administrative record.* This subsection requires the Presiding Officer to include in the administrative record those exchanged documents that he considered in making a summary determination on his own initiative. Such documents may not become part of the administrative record unless the Presiding Officer files them with the Hearing Clerk pursuant to § 28.2(b) of this part.

Subpart C—Hearing

Section 28.26 Hearing

This section has been proposed to ensure a fair and impartial hearing for the respondent, advance the Congressional interest in timely and efficient administrative enforcement actions and, in the case of the Safe Drinking Water Act and section 309(g) of the Clean Water Act, provide for the participation of commenters.

As stated throughout this preamble, the proposed rules attempt both to promote expeditious proceedings and to protect the interests of justice. Toward that end, the Presiding Officer is authorized under subparagraph (b)(2)(iv) to limit the number of witnesses and the scope and extent of both the direct and cross-examination and subsections (d) and (e) confirm that respondents (or other participants) may not make counterclaims or cross-claims within the administrative forum. See, *e.g.,* section 509(b)(2) of the Clean Water Act, 33 U.S.C. 1369(b)(2); see also §§ 28.1 and 28.4(c)(6). Should a party or other participant wish to engage in affirmative litigation with the Agency, it may do so to the extent authorized by statute or regulation in the appropriate judicial forum, or in another administrative forum.

(a) *Scope of hearing.* The proposed rules contemplate that the issues that must be administratively adjudicated under this part be limited to the resolution of disputed allegations necessary for the trier of fact to rule on liability issues. Consistent with the aim of streamlining the administrative adjudicatory process, the Agency encourages the Presiding Officer, where appropriate, to have the parties enter into stipulations setting forth all undisputed issues of fact and defining disputed issues of fact prior to the commencement of the hearing. See § 28.23(b)(1) (prehearing order). Remedy issues may be addressed pursuant to this section in the participants' closing argument, whether under subsection (i) or (k), or in the specific remedy proceeding established under subsection (h). Remedy issues are not addressed within the adjudicative context set forth in the remainder of this section.

(b) *Conduct of hearing.* The overriding intent of the procedures set forth for the conduct of liability hearings under this section is that the Presiding Officer conduct a liability hearing that meets all requirements of procedural due process. Subsection (b) sets forth the duties and authorities of the Presiding Officer in conducting a proceeding to determine liability in an action under this part.

(c) *Testimony.* Subsection (c) provides for the taking of testimony in any form that is most efficient under the circumstances, at the discretion of the Presiding Officer. The Agency anticipates that the most efficient form of testimony may vary from program to program. In water actions, for example, EPA anticipates the primary use of oral testimony; in CERCLA actions, EPA expects written testimony to predominate. No matter what form of testimony is permitted, the proposed rules contemplate that the Presiding Officer will make adequate provision to ensure that each party retains its right of cross-examination if the witness is available to testify or is subject to a subpoena.

(d) *Admission of evidence.* As is typical in administrative proceedings, strict adherence to the Federal Rules of Evidence is not required by the proposed rules. With one exception, all testimony or documentation that is "relevant, material or of significant probative value," including hearsay, is admissible, as long as the witness presenting the information is subject to cross-examination by any opposing party. See § 28.26(f).

The fact that the Presiding Officer is not required to apply the Federal Rules does not preclude the Presiding Officer from relying on the Federal Rules (or other evidentiary rules) as guidance, in whole or in part, in making evidentiary rulings in a liability hearing. The only requirement under this part is that all evidence admitted meet the criteria for admissibility set forth above. But see, limitation on scope of cross-examination in § 28.26(f). Where authenticity or identification is in dispute, this subsection also authorizes the Presiding Officer to require the authentication of any writing or the identification of voice communications.

(e) *Official notice.* The substantive standard for the taking of "official" notice under this subsection is derived from Rule 201 of the Federal Rules of Evidence. Like the Federal Rule, the proposed rule is intended to govern only notice of adjudicative facts, not legislative facts. "Adjudicative facts," are described in the Notes of the Advisory Committee on Proposed [Federal] Rules as those facts "to which the law is applied in the process of adjudication." Unlike the Federal Rule, however, under the proposed rule, the Presiding Officer's decision to take official notice is discretionary in all cases, whereas Federal Rule 201(d) requires the court to take judicial notice "if requested by a party and supplied with the necessary information." Further, the Presiding Officer may not take official notice of facts relating to settlement, as described in § 28.4(c)(5), or facts relating to a person's challenge to a final State or Agency action.

(f) *Cross-examination.* Subsection (f) has been designed to be generally consistent with Rule 611(b) of the Federal Rules of Evidence, although in these proposed regulations cross-examination is limited to the scope of the direct examination. These rules do not allow a party to use cross-examination as a supplement to the limited and exclusive administrative discovery process provided by § 28.24. Parties may cross-examine a witness presented by a commenter to the same extent as if the witness had been presented by an opposing party.

(g) *Elements and order of presentation.* This subsection describes the usual agenda for a liability hearing under this proposed part. The order and content of such a hearing may be altered by the Presiding Officer on a case-by-case basis. The proposed rules contemplate that each party has an opportunity to make an opening statement (with the Agency making its opening statement first), that the Agency put on its prima facie case, and that the respondent thereafter has an opportunity to present its defense.

It is only by leave of the Presiding Officer that parties may present rebuttal and sur-rebuttal testimony, except that any party has the right to present rebuttal testimony after any commenter witnesses are heard. In the case of the SDWA and section 309(g) of the CWA, under paragraph (5) commenters may, after presentation of the parties' cases-in-chief, offer into evidence a witnesses' previously identified testimony. The twenty day notification requirement upon commenters set forth in this paragraph is analogous to requirements imposed upon the parties under the information exchange rule in § 28.24, and is intended to reduce unfairness and surprise. Unlike the parties, commenters are not subject to prehearing administrative discovery. See § 28.24.

(h) *Remedy issues.* The Agency recognizes that there may be actions in which underlying facts which are material to statutory penalty assessment factors, or, in the case of the Safe Drinking Water Act, which directly bear on the reasonableness of the requested remedy, are so deeply disputed that the Presiding Officer may have a compelling need to hear testimony on subject of remedy. Remedy testimony is appropriate when other means of establishing an adequate record fail.

(i) *Closing argument.* Participants may present oral closing arguments at the discretion of the Presiding Officer, and such closing arguments should address both liability and remedy issues. The participants may submit documentation supporting their argument. If the Presiding Officer does not allow oral closing argument, the Agency anticipates that he would solicit the submission of written proposed recommended findings of fact and conclusions of law as to liability and remedy under subsection (k) in order to ensure that he hears remedy arguments.

(j) *Hearing record.* Subsection (i) requires the Presiding Officer to create a verbatim record of the hearing by any permanent and reliable means, and file it with the Hearing Clerk. The filed record is part of the administrative record of the proceeding pursuant to § 28.2(b)(10).

(k) *Findings and conclusions.* Subsection (j) authorizes the Presiding Officer to solicit from the participants' proposed recommended findings of fact and conclusions of law as to liability and remedy, along with any supporting documentation regarding the remedy, prior to submitting his recommended decision to the Regional Administrator.

Subpart D—Post-Hearing

Section 28.27 Recommended Decision

(a) *Preparation and transmission.* This subsection requires that the Presiding Officer shall, following an appropriate determination of the complainant's legal claim (under § 28.21, § 28.25, or § 28.26), or following a remedy determination: (1) Certify the administrative record as complete and in compliance with the requirements of this part; (2) Make the administrative record available to the Regional Administrator; and, (3) Prepare and transmit a recommended decision to the Regional Administrator.

In concert with the definition of "recommended decision" set forth at § 28.2(r), this subsection requires that the Presiding Officer base his recommended decision on the administrative record and consider any penalty factors required by applicable law. The purpose of this subsection is to ensure that the recommended decision clearly sets forth the legal and factual bases underlying any final Agency action undertaken by the Regional Administrator. The Presiding Officer's authority to prescribe a remedy is limited to recommending the withdrawal of the administrative complaint or recommending the issuance of an order. In the case of a recommended decision concerning the appropriateness of a compliance order under section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. 300h–2, the Presiding Officer is also required to provide an explanation of the reasonableness of the recommended remedy.

The purpose and effect of this subsection assures that any recommended decision by the Presiding Officer and, ultimately, final Agency action by the Regional Administrator is based on the administrative record, includes consideration of all the statutory penalty assessment factors and expresses appropriate reasons for each factual or legal conclusion. These provisions embody constitutional due process requirements, and further provide any reviewing court with a clear path to the Agency's administrative record and the reasoning underlying its decision.

(b) *Publication.* This subsection requires the Presiding Officer to file a copy of his recommended decision with the Hearing Clerk at the time of its transmittal to the Regional Administrator. The Hearing Clerk is required to serve each participant with a copy of the recommended decision. § 28.9(b).

Publication of the recommended decision does not invest any participant or other person with any procedural rights not already described in this proposed part or under applicable law. In particular, the publication of the recommended decision does not authorize its recipients to make motions to the Presiding Officer for his reconsideration or withdrawal of the recommendation, does not affect the prohibition against prohibited communication set forth in § 28.12, and does not authorize administrative appeals prohibited by § 28.14(a) of this proposed part. Publication of the recommended decision does not authorize any person to provide a document of any kind to the Regional Administrator regarding his decision under § 28.28. Such communication is not to be considered by the Regional Administrator under § 28.2(b), and may result in sanctions against the person submitting the document. § 28.12(c).

Section 28.28 Decision of the Regional Administrator

This section sets out the form of and criteria for the Regional Administrator's decision resolving the action, discusses the method of public notice of such decision, and establishes the effective date of any order issued by the Regional Administrator under this part. It also provides that the Regional Administrator's decision constitutes final Agency action for the purposes of any right of judicial review. This section does not provide for a briefing opportunity for participants in the action to lobby the Regional Administrator on his decision. See preamble discussion regarding § 28.27(d). The purpose of this section is to describe the procedures the Regional Administrator shall follow in concluding actions taken under this part in a manner that provides a clear statement of the factual and legal bases for the decision and creates and preserves a record for any judicial appeal.

(a) *Contested or default order.* This subsection sets forth the alternative remedies which may be ordered by the Regional Administrator as a result of proceedings under this proposed part and provides that the Regional Administrator's decision must be based on applicable law and the administrative record, which includes the recommended decision of the Presiding Officer. See § 28.2(b)(11).

In accordance with this subsection, upon receipt of the Presiding Officer's recommended decision, the Regional Administrator may either withdraw the complaint if the Administrator concludes that the complainant has not sustained its burden of proof, or issue an order granting the requested relief, in whole or in part. Any decision by the Regional Administrator under this part must be in writing, supported by clear reasons based on the administrative record and applicable law, and include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. In the case of section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), the order shall also note the right of a commenter to petition for a penalty proceeding in accordance with § 28.26(h) of this rule. If the Regional Administrator rejects the recommendation of the Presiding Officer, the explanation for that rejection is to be reduced to writing and made part of the administrative record. See § 28.28(d).

In any order issued under this part the Regional Administrator is required to (1) make findings of fact which establish the Agency's subject matter jurisdiction and the respondent's violation of applicable law, and (2) set forth conclusions of law. In the case of a penalty order, the decision must include a discussion of the applicable penalty factors which were considered in the assessment of a penalty under the particular statute and set forth the penalty assessed. In the case of a compliance order under the Safe Drinking Water Act, the decision must also include an explanation of the reasonableness of the required compliance, including the reasonableness of the time provided for compliance.

(b) *Consent Order.* This subsection sets forth the criteria for the Regional Administrator's review of a proposed consent order in a Clean Water Act or Safe Drinking Water Act action in which a commenter participates.

This subsection takes into account the limitations imposed on the Presiding Officer when the parties lodge a proposed consent order. Because the Presiding Officer does not certify the administrative record in a consent order proceeding (see § 28.27(a)(1)), the administrative record in the case of a proposed consent order is defined to include "all documents that have been filed with the Hearing Clerk by the participants before the time the proposed consent order is lodged and any written explanation of the legality of the proposed order submitted * * * by the parties * * *." § 28.22(b)(5). Since the Presiding Officer may not see a proposed consent order, he may not advise the Regional Administrator as to its legality. Consequently, upon the Regional Administrator's request, the parties themselves advise the Regional Administrator. See also §§ 28.10(c), 28.22(b)(1)(ii) and 28.28(b)(1). In order to avoid the Presiding Officer's knowledge of the proposed consent order or reasons for it, the parties' explanation becomes part of the administrative record only if the Regional Administrator approves the proposed order. See §§ 28.5(m), 28.22(b)(5) and 28.28(d). For similar reasons, the Regional Administrator's explanation to the parties of his disapproval of a proposed consent order may not become available to the Presiding Officer by becoming part of the administrative record. See §§ 28.5(h) and 28.28(d).

(c) *Publication.* This subsection provides that the Hearing Clerk shall send a copy of any signed order (whether by consent or not) by the Regional Administrator to the Presiding Officer and each participant within seven days of the decision. The Regional Administrator therefore must promptly provide his signed order to the Hearing Clerk. The Regional Administrator is to send a copy of each contested or default order to the Administrator to enable the Administrator to determine whether to suspend implementation of the order for the purpose of reviewing its conclusions of law under § 28.29.

(d) *Completion of administrative record.* This subsection provides for the completion of the administrative record after the Presiding Officer's role in an action is concluded. Certain actions taken by the Regional Administrator or Administrator occur after the Presiding Officer has transmitted a recommended decision, and this subsection provides the means by which those actions become part of the administrative record. See also § 28.2(b).

(e) *Date of issuance.* The decision is deemed issued five days following the date of mailing of the Regional Administrator's Order to the respondent. This period of time conforms to the five day rule for the presumption of mail delivery prescribed by § 28.7(b).

(f) *Effective date.* This subsection provides that any order issued under this part becomes effective thirty days after issuance unless the Administrator suspends the implementation of the order under § 28.29, a judicial appeal is taken under the provisions of the applicable statute or, in the case of section 309(g) of the Clean Water Act, if a commenter files a timely petition for reconsideration under § 28.30. No person may stay the effective date of an administrative order by attempting to appeal it administratively. See § 28.14(a). No interested person (as defined by § 28.2(k)) may lobby the Administrator to suspend implementation of the order under § 28.29. See §§ 28.2 (b) and (p), 28.12, and 28.14.

(g) *Final Agency action.* This subsection provides that the decision of the Administrator to approve a consent agreement or issue an order constitutes final Agency action on its effective date for the purposes of any judicial appeal. Withdrawal of the complaint, however, does not constitute final Agency action under this part. Withdrawal of an administrative complaint, therefore, is without prejudice to the complainant. See also § 28.18(a).

Section 28.29 Sua Sponte Review

This section authorizes the Administrator to review rulings by Regional Administrators in actions under this proposed part on issues of law, but does not authorize the Administrator to become involved in fact-finding, or to second guess the amount of a penalty issued by the Regional Administrator, or to overturn orders issued on consent. The Agency anticipates that the review authority will be exercised infrequently, but believes that this authority is necessary to ensure a consistent Agency position on applicable law. Without a provision for *sua sponte* review, the Agency would have no opportunity to reconcile conflicting regional decisions, or to reconcile inconsistencies with the interpretation of law provided by the federal courts.

The thirty-day period for the Administrator's review matches the thirty-day delay of the effective date of a § 28.28 order. Consequently, the review period will not create any additional period of uncertainty regarding the finality of the Regional Administrator's decision.

The Administrator is to withdraw a Regional Administrator's order if the Administrator determines that the Agency lacks jurisdiction to assess a penalty or compliance remedy, or if the Administrator determines that the respondent is not liable under applicable law. The Administrator is to remand an administrative order if he determines that elements of the respondent's liability are different from those found by the Regional Administrator, and the remedy should be conformed to the amended conclusions of law, or if he finds that the order does not meet the requirements of § 28.28(a)(3), such as a failure to provide clear reasons for the decision. The Administrator shall allow the Regional Administrator's order to issue unchanged if the Administrator, upon review, finds the order legally sufficient and agrees with all material conclusions of law.

Parties are not permitted under these regulations administratively to appeal adverse rulings. See §§ 28.2 (b) and (p), 28.12 and 28.14(a).

Section 28.30 Petition to Set Aside an Order. [Section 309(g) of the Clean Water Act Only.]

(a) *Initiation.* This subsection implements section 309(g)(4)(C) of the Clean Water Act, 33 U.S.C. 1319(g)(4)(C), which gives commenters the right to petition for a hearing on the penalty within 30 days of issuance of an order if the commenter was given no opportunity (other than that provided by § 28.20(c)) to present argument or information in a proceeding conducted under § 28.21, § 28.22, § 28.25, or § 28.26 of this proposed part. For purposes of this part, a "commenter participating in [the] action" must meet the requirements of §§ 28.2(g) and 28.20(c)(2) to have standing to request a Regional Administrator to set aside a § 28.28 order.

(b) *Granting of petition.* The Regional Administrator is to grant such a petition and set aside the order as to its assessment of a penalty if he finds that the commenter is presenting material evidence not considered in the order, and that either the Presiding Officer had not afforded the commenter an opportunity for argument in the proceeding or the Regional Administrator had issued the order on default or on consent without conducting a proceeding under § 28.25 or § 28.26. If the Regional Administrator grants such a petition, he is to instruct the Presiding Officer to redetermine the penalty through an appropriate penalty proceeding.

(c) *Denial of petition.* This subsection authorizes the Regional Administrator, pursuant to the terms of Section 309(g) of the Clean Water Act, to deny a petition to set aside an order if the commenter fails to provide him with material evidence not considered in the issuance of the challenged order. As required by statute, such a denial, together with the reasons for the denial, shall be published in the **Federal Register**. Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

Section 28.31 Payment of Assessed Penalty

This section specifies the time and method of payment of assessed penalties. Contested or default penalties must be paid within thirty days of the effective date of the order assessing them, while consent penalties shall be paid according to the terms of the consent order. Respondent is to pay by certified or cashier's check, unless that requirement is waived by the Presiding Officer for good cause. In no case shall the Presiding Officer waive the condition of payment by certified or cashier's check when such a waiver may endanger the Agency's receipt of funds. The payment is to be sent to the address provided by Agency counsel, or set forth in the order. Penalties paid pursuant to section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), are to be paid to the Oil Spill Liability Trust Fund, established under section 9509 of the Internal Revenue Code of 1986, 26 U.S.C. 9509, as required by section 2002(s) of Public Law 101–380, the Oil Pollution Act of 1990.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any purposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required.

This regulation will not impose significant costs on any small entities. The overall economic impact on small entities is expected to be slight. In addition, the rule is procedural and does not impose additional regulatory requirements on small entities. Accordingly, I hereby certify that these regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

Executive Order No. 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory

Impact Analysis. The notice published today is not major because the proposed rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

Paperwork Reduction Act

These proposed rules do not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 28

Administrative practice and procedure, Hazardous substances, Penalties, Superfund, Water pollution control.

Dated: June 11, 1991.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR be amended by adding the following new part 28 as follows:

PART 28—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CLASS I CIVIL PENALTIES UNDER THE CLEAN WATER ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AND THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT, AND THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES UNDER PART C OF THE SAFE DRINKING WATER ACT

Authority: 33 U.S.C. 1319(g) and 1321(b)(6); 42 U.S.C. 9609(a); 42 U.S.C. § 11045(b)(1), (c)(1), (c)(2) and (d); and, 42 U.S.C. § 300h–2(c).

Subpart A—General Provisions

§ 28.1 Purpose and Scope.

This part sets forth procedures for the efficient and timely initiation and administration of administrative actions under sections 309(g)(2)(A) and 311(b)(6)(A) and (B)(i) of the Clean Water Act (CWA), 33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(A) and (B)(i); certain actions under section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h–2(c); section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9609(a); and, certain actions under section 325(b)(1), (c)(1), (c)(2), and (d) of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. 11045(b)(1), (c)(1), (c)(2) and (d). Nothing in this part authorizes any person to challenge in any action commenced under this part any final State or Agency action, including the validity or reasonableness of any applicable permit or permit condition or (in the case of the Safe Drinking Water Act), any regulation establishing an authorization by rule. Nothing in this part shall affect the authority of the Administrator to implement or enforce any other provision of law.

§ 28.2 Definitions.

(a) *Administrative complaint* means a document issued by the complainant that:

(1) Names one or more respondents;

(2) Alleges one or more violations of applicable law, stating with reasonable specificity the nature of the alleged violations;

(3) Proposes a penalty be assessed upon the respondent as authorized by applicable law;

(4) [Safe Drinking Water Act compliance actions only] Seeks respondent's compliance with applicable law and may propose a reasonable time for achieving compliance; and

(5) Is certified by signature of Agency counsel as a legally sufficient pleading.

(b) *Administrative record* means (except for purposes of proposed SDWA and CWA 309(g) consent orders lodged pursuant to §§ 28.22(b) and 28.28(b) of this part) the following documents that are filed with or by the Hearing Clerk:

(1) Documentation relied upon by the complainant to support the allegations as to liability which were set forth in the administrative complaint;

(2) Any record held by the Agency of any previously adjudicated violation by the respondent of any federal pollution control or environmental statute or regulation;

(3) The administrative complaint and proof of its service;

(4) [Section 309(g) of the Clean Water Act only] The record or summary of the complainant's consultation or provision of opportunity for consultation with the State in which the alleged violations occurred;

(5) [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] A copy of the public notice provided by the complainant pursuant to § 28.16(d) of this part and proof of its publication;

(6) The record of the designation of the Presiding Officer;

(7) [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] A memorialization of the date of lodging of any proposed consent order;

(8) Each action, including the issuance of a subpoena pursuant to § 28.11(a) of this part, memorialized in writing and signed by the Presiding Officer;

(9) Each document that is timely submitted by any participant or any member of the public pursuant to the requirements and subject to the limitations established pursuant to §§ 23.2(g), 28.4(a), 28.8, 28.9(a), 28.13(a), 28.20(a–c) and (f), 28.21(b), 28.22(a)(1),

28.25(a)(1) and (b), 28.26(d)(e)(h) (i) and (k), and 28.30(a) of this part;

(10) A verbatim record or transcription of any liability hearing held under § 28.26 of this part or of any oral argument regarding a determination of remedy presented pursuant to this part;

(11) Any recommended decision of the Presiding Officer;

(12) Any document filed by the Regional Administrator pursuant to § 28.28(d) of this part;

(13) [Section 309(g) of the Clean Water Act only] Any evidence regarding the respondent in an action under this part presented by a participating commenter to the Regional Administrator and timely filed with the Hearing Clerk as part of a request to set aside an order pursuant to § 28.30(a) of this part and section 309(g)(4)(C) of the Clean Water Act, 33 U.S.C. 1319(g)(4)(C).

(14) Any applicable Agency policy (excluding any Agency policy, or portion thereof, that applies to settlement of a penalty claim) concerning the assessment of an administrative penalty, and any information relevant to a penalty determination under such policy;

(15) Any relevant document which the Presiding Officer finds will assist in the timely and efficient resolution of the action and which is not:

(i) A prohibited communication as defined by subsection (p) of this section;

(ii) Excluded from the administrative record by the failure of a participant to meet a deadline or other requirement regarding a document referenced by paragraph (b)(9) of this subsection, excluded by operation of § 28.2(b)(15), § 28.4(c) (5) or (6) or § 28.24(e)(1) of this part, or excluded by any sanction an Agency decisionmaker imposes pursuant to this part in connection with the conduct of an action; or

(iii) [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] Lodged with the Hearing Clerk pursuant to § 28.22(b)(1)(i) of this part.

(16) Any record of recusal by an Agency decisionmaker;

(17) Any record of payment of an assessed civil penalty submitted pursuant to § 28.31 of this part; and

(18) [Safe Drinking Water Act compliance action only] Any record of the respondent's compliance with the terms of the administrative order.

(c) *Administrator* means the Administrator of the United States Environmental Protection Agency or his delegate.

(d) *Agency* means the United States Environmental Protection Agency.

(e) *Agency counsel* means any Agency attorney who represents the complainant in an action under this part;

(f) *Agency decisionmaker* means the Presiding Officer, the Regional Administrator, the Administrator, or any neutral Agency employee who advises the Regional Administrator or Administrator relating to the merits of an action under this part;

(g) [*Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] Commenter* means any person (other than a party) or representative of such person who, by the deadline prescribed by § 28.20(c) of this part:

(1) Declares in writing to the Hearing Clerk that for purposes of the noticed action he is providing comments pursuant to the Clean Water Act or Safe Drinking Water Act, whichever applies, and intends to participate in the action;

(2) Submits comments on the allegations set forth in the administrative complaint or the relief proposed in the administrative complaint, or both, or specifies such allegations or proposed relief upon which he will comment; and

(3) Provides the Hearing Clerk with a return address.

(h) *Complainant* means the Agency, acting through any Agency employee authorized by the Administrator to initiate an action under this Part or authorized to conclude such an action, in whole or in part, upon consent;

(i) *Consent order* means a written order, issued by the Regional Administrator and agreed to by one or more respondents, consisting of:

(1) Uncontested findings of fact by the Agency and stipulations by the parties establishing subject matter jurisdiction;

(2) Uncontested findings of fact by the Agency establishing the respondent's violation of applicable law which has been alleged in the administrative complaint;

(3) An order consented to by the parties which assesses a civil penalty that explicitly takes into account the penalty factors applicable under law and (in the case of the Safe Drinking Water Act) a compliance remedy which is reasonably related to the respondent's violation of law;

(4) [*Section 309(g) of the Clean Water Act only*]. In any action in which a commenter is participating pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, a statement that any commenter to the action under this part and section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), may petition the Regional Administrator to set aside the order under § 28.30 of this part;

(5) [*Safe Drinking Water Act only*]. In any action in which a commenter is participating pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, a statement that any commenter to the action under this part and section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c), may file in the appropriate federal district court an appeal of a final consent order pursuant to section 1423(c)(6) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(6), within thirty days of the date the final consent order is issued;

(6) A statement that the respondent waives its right under applicable law to file in the appropriate federal court an appeal of the consent order;

(7) Provisions requiring payment of the agreed civil penalty pursuant to § 28.31 of this part;

(8) A statement that each signatory party shall bear its own costs and fees; and

(9) All terms of the agreement as authorized by applicable law.

(j) *Document* means any record or collection of information maintained in a discrete physical form;

(k) *Interested person* means any:

(1) Agency employee or contractor who may or does investigate, litigate, or present information or evidence, arguments, or the position of the Agency in the action before the Presiding Officer, or who advises such an Agency employee regarding the action;

(2) Agency employee who actively participated at any time, directly or as a supervisor, in any preparation, investigation or deliberations resulting in the issuance of the administrative complaint;

(3) Person who the complainant may arrange to have appear as a witness on its behalf in the action; and

(4) Non-Agency participant, witness or agent of a non-Agency participant, or defaulted respondent.

(l) *Participant* means any party or (in the case of the Safe Drinking Water Act or section 309(g) of the Clean Water Act) any commenter.

(m) *Party* means the complainant, or any respondent who has complied with the requirements of § 28.20(a) or (b) of this part and who has not been sanctioned by the Presiding Officer with a finding of default.

(n) *Presiding Officer* means an Agency attorney who is to preside over an action conducted pursuant to this part, and who is to make a recommended decision thereon.

(o) *Proceeding* means any hearing, determination or other activity involving the parties conducted by the Presiding Officer pursuant to the requirements of this part;

(p) *Prohibited communication* means any communication, documentary or oral, between an interested person and an Agency decisionmaker (except between certain interested persons and the Regional Administrator pursuant to § 28.22[b][1] of this part), regarding:

(1) The merits of an action under this part, without each other party to the action having had an opportunity simultaneously to participate in or respond to such communication;

(2) The substance of any settlement negotiation between parties or the substance of any proposed consent order lodged with the Hearing Clerk; or

(3) The substance of a recommended decision set forth by the Presiding Officer pursuant to §§ 28.2(r) and 28.27(a)(3) of this part.

(q) [*Safe Drinking Water Act and Section 309(g) of the Clean Water Act only*]. Public notice means a document consisting of:

(1) The name and address of the EPA office initiating the referenced action;

(2) The name and address of the respondent, and the activity and facility or site which the administrative complaint addresses;

(3) A brief description of the business or activity conducted by the respondent;

(4) Any permit number and permit issuance date referenced by the administrative complaint, or (in the case of the Safe Drinking Water Act) any regulation establishing an authorization by rule referenced by the administrative complaint;

(5) A brief description of the allegations of violations in the administrative complaint and the relief proposed by the complainant;

(6) The name, address and telephone number of the Hearing Clerk from whom interested persons may obtain further information;

(7) A brief statement of the opportunity for any member of the public to submit written comments on the administrative complaint to the Hearing Clerk, and the deadline for the submission of such comments;

(8) A brief description of the procedure by which a member of the public may become a participant in an action pursuant to §§ 28.2(g) and 28.20(c) of this part;

(9) A brief statement of the authority of the Regional Administrator to issue an order upon default if respondent fails to file a response within the time period specified in § 28.20 of this part;

(10) [Safe Drinking Water Act only.] A brief, general description of the name or general description of the receiving formation and the location of the well field, or each existing, new or proposed injection well, whichever applies; and

(11) A brief statement describing the location and availability (pursuant to § 28.17 of this part) of documents filed with the Hearing Clerk in the action.

(r) *Recommended decision* means a document written by the Presiding Officer, in the form of a decision by the Regional Administrator pursuant to the requirements of § 28.28(a)(3) of this part, which recommends that the Regional Administrator either:

(1) Withdraw the administrative complaint on the basis that the administrative complaint does not state a cause of action or that the allegations of fact and conclusions of law in the administrative complaint are not supported by the administrative record; or

(2) Issue an order on the basis that the administrative record and applicable law support such an order.

(s) *Regional Administrator* means the Administrator of any Regional Office of the Agency or his delegate. In a case where an authorized Agency Headquarters employee initiates an action under this part, the term "Regional Administrator" as used in these rules shall mean the Administrator.

(t) *Respondent* means any person named in the caption of an administrative complaint, or representative of such person, who the complainant alleges is liable for the redress of any violation alleged in the complaint.

(u) *Response* means a document, responsive to the administrative complaint and signed by the respondent, that consists of the name, address and telephone number of the respondent and, if the respondent is represented by counsel, also includes the name, address and telephone number of the respondent's counsel and that:

(1) Admits liability; or

(2) Denies liability in whole or in part and specifies each allegation of fact or conclusion of law as to liability which is in dispute and the specific factual or legal grounds for the respondent's defense; and

(3) Opposes or agrees to pay the proposed penalty in the administrative complaint and (in the case of the Safe Drinking Water Act) opposes or agrees to comply with the relief requested in the administrative complaint regarding the regulation, schedule, or other requirement of the applicable underground injection control program that is alleged in the administrative complaint to have been violated, or both.

§ 28.3 Number and gender.

For purposes of this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as appropriate.

§ 28.4 Presiding Officer.

(a) *Authority.* (1) The Presiding Officer may by a signed filing with the Hearing Clerk:

(i) Issue a subpoena pursuant to § 28.11 of this part;

(ii) Allow the withdrawal or amendment of an administrative complaint pursuant to § 28.18 (a)(2) or (b)(2) of this part;

(iii) Determine liability, direct entry of default as to liability, and conduct a default remedy determination proceeding pursuant to § 28.21 of this part;

(iv) Allow amendment of a response pursuant to § 28.20(f)(2) of this part;

(v) Set alternate limitations on written legal arguments or statements pursuant to § 28.8 of this part;

(vi) Issue or modify a prehearing order pursuant to § 28.23(d) of this part;

(vii) Schedule and further limit information exchange pursuant to § 28.23(b)(2) of this part, and (in a Clean Water Act or Safe Drinking Water Act action) delay information exchange pursuant to § 28.24(c)(2) of this part;

(viii) Reschedule proceedings pursuant to § 28.22 of this part;

(ix) Make a summary determination pursuant to § 28.25 of this part;

(x) Notify participants of the occurrence of a prohibited communication pursuant to § 28.12(b) of this part;

(xi) Impose sanctions (other than by fine or imprisonment) pursuant to §§ 28.12(c) and 28.24(e)(2) of this part or to aid in the maintenance of order and the efficient and impartial administration of justice;

(xii) Certify the administrative record and set forth and transmit a recommended decision pursuant to § 28.27(a) of this part; and

(xiii) Waive payment conditions pursuant to § 28.31(b) of this part; and

(2) The Presiding Officer may:

(i) Except as more specifically provided by paragraph (a)(1) of this section, schedule and take certain administrative actions in conducting any proceeding pursuant to § 28.25 or § 28.26 of this part; and

(ii) Except as more specifically authorized or limited by paragraphs (a) and (c) of this section and the requirements of this part, take any other action specifically authorized by this part or necessary to conduct an action under this part which will aid in the efficient and impartial administration of justice.

(b) *Duties.* The Presiding Officer shall in a timely fashion:

(1) Carry out his duties as required by this part;

(2) Oversee and direct the activities of the Hearing Clerk in an action under this part;

(3) Schedule activities of the participants pursuant to the requirements of this part;

(4) Memorialize in a signed writing filed with the Hearing Clerk:

(i) Any action he takes pursuant to his authority provided by paragraph (a)(1) of this section;

(ii) Any deadline he establishes pursuant to his authority provided by subsection (a) of this section; and

(iii) Any significant action he takes pursuant to his authority provided by paragraph (a)(2) of this section; and

(5) Except as limited by paragraph (c) of this section and the requirements of this part, take any other action necessary for the maintenance of order and for the efficient and impartial adjudication of allegations arising in an action under this part.

(c) *Limitations.* The Presiding Officer shall not:

(1) Have any prior connection with the action before him including the performance or supervision of investigative or prosecutorial functions;

(2) Have any interest in the outcome of the action before him;

(3) Initiate or knowingly engage in any prohibited communication with any interested person or fail to disclose any attempt by any interested person to initiate or engage in any prohibited communication;

(4) Grant an extension, delay, continuance or stay to a participant based on a participant's request for information pursuant to law outside the scope of this part;

(5) Allow the introduction of any document or testimony into the administrative record relating to settlement of the instant action or of any other action;

(6) Hear or consider any challenge to a final State or Agency action, including the issuance of any applicable permit or (in the case of the Safe Drinking Water Act) the promulgation of any applicable authorization by rule; or

(7) Dismiss the administrative complaint.

§ 28.5 Hearing Clerk.

The Regional Administrator shall designate a Hearing Clerk. The Hearing Clerk, in addition to carrying out his duties as specified elsewhere by this part, shall:

(a) Immediately notify in writing the complainant and each respondent of the name of the Presiding Officer designated under § 28.16(h) of this part, and (in the case of the Safe Drinking Water Act and section 309(g) of the Clean Water Act) the Hearing Clerk shall notify in writing each commenter upon the close of the comment period provided pursuant to § 28.20(c) of the name of the Presiding Officer designated under § 28.16(h) of this part. The Hearing Clerk shall immediately notify in writing each participant of the name of any Presiding Officer designated under § 28.13(b) of this part;

(b) (Safe Drinking Water Act and section 309(g) of the Clean Water Act only) create and maintain a list of all commenters identified under §§ 28.2(g) and 28.20(c) of this part;

(c) (Safe Drinking Water Act and section 309(g) of the Clean Water Act only) In any action in which a commenter participates pursuant to § 28.20(c)(2) of this part, immediately after the deadline prescribed by § 28.20(c) of this part notify the Presiding Officer and each participant of the name and address of each participant in the action, and of the name and address of Agency counsel and counsel for the respondent, if any;

(d) Record the date of receipt of each document received regarding the action or (in the case of a Safe Drinking Water Act compliance order) regarding the respondent's compliance with the terms of the order;

(e) Immediately notify the Presiding Officer of the receipt of any document filed with the Clerk by any participant;

(f) (Safe Drinking Water Act and section 309(g) of the Clean Water Act only) Maintain securely and make available to each non-signatory participant each document lodged pursuant to the requirements of § 28.22(b) of this part;

(g) Bill any costs accrued under § 28.17(c) of this part;

(h) *[Safe Drinking Water Act and section 309(g) of the Clean Water Act only].* Remove from the file and return to the signatory parties any proposed consent order and supporting explanation upon the disapproval of such proposed order by the Regional Administrator pursuant to § 28.28(b) of this part;

(i) Perform such other ministerial and clerical matters as required by the Presiding Officer to assist him in carrying out his responsibilities under this part; and

(j) Perform such ministerial and clerical matters as required by the Regional Administrator or Administrator to assist him in carrying out his responsibilities under this part.

§ 28.6 Representation by counsel.

A respondent or commenter may be represented by counsel at any stage of an action conducted under this part. The complainant shall be represented by Agency counsel in all proceedings under this part.

§ 28.7 Computation of time.

(a) *Computation of days.* In computing any period of time in an action under this part, the day of the event from which the designated period runs shall not be included. Saturdays, Sundays and federal holidays shall be included, except that when a deadline falls on a Saturday, Sunday, or federal holiday, the deadline shall be extended to the next business day.

(b) *Time of notice.* Except as specifically provided elsewhere in this part, for purposes of this part, notice shall be deemed given at the time of personal service, or five days after the date of mailing or other means of substituted service, except that if notice is provided by certified mail, return receipt requested, (or its equivalent pursuant to § 28.9 of this part) notice occurs on the date that the return receipt (or its equivalent) is signed.

(c) *Time of compliance.* Except as provided otherwise by the Presiding Officer or § 28.24(c)(1) of this part, a participant shall be deemed to have complied with a deadline under this part if the participant either responds personally or posts the response by first class mail (or any other messengered service that is no less speedy and reliable) by the applicable deadline.

§ 28.8 Limitations on written legal arguments or statements.

Any written legal argument or statement submitted to the Presiding Officer by a participant in an action under this part shall be double spaced and typed in pica (twelve point) or larger type. Except as otherwise provided by this part, further limited by the Presiding Officer, or otherwise authorized by the Presiding Officer for good cause shown, no written legal argument or statement, exclusive of any supporting documentation, may exceed:

(a) Twelve pages, if an initial argument;

(b) Six pages, if a responsive argument; and

(c) Three pages, if an argument in reply specifically authorized by the Presiding Officer; or

(d) Ten pages, if a statement specifically authorized by the Presiding Officer.

§ 28.9 Service of documents.

(a) *By participants.* Except as otherwise provided by this part, each participant in an action simultaneously shall serve with an attached certificate of service upon each other participant and the Presiding Officer, personally or by first class or certified mail (or any other manner of messengered service that is no less reliable or speedy), a copy of each pleading and shall file the original pleading and the attached certificate of service with the Hearing Clerk.

(b) *By the Hearing Clerk.* Except as otherwise provided by this part, the Hearing Clerk promptly shall serve with an attached certificate of service upon each participant, personally or by first class or certified mail (or any other manner of messengered service that is no less reliable or speedy), any notice, ruling, order, or other document issued by the Presiding Officer, Regional Administrator, or Administrator.

(c) *Upon counsel.* Except for service of the administrative complaint or as otherwise ordered by the Presiding Officer, any service made upon a participant who is represented by an attorney shall be made by serving the participant's attorney.

§ 28.10 Parties' burdens of going forward, proof and persuasion.

(a) *Complainant's burden of going forward.* The complainant has the burden pursuant to § 28.16(a) of this part of presenting a cause of action and request for relief in the administrative complaint.

(b) *Respondent's burden of going forward.* The respondent has the burden of timely presenting:

(1) In its responsive pleading made pursuant to §§ 28.2(u) and 28.20 of this part any exculpatory statement as to liability and any statement opposing the complainant's request for relief proposed in the administrative complaint; and

(2) All information requested by the complainant pursuant to § 28.24(b)(2) of this part and known to the respondent.

(c) *Parties' joint burden of going forward.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only.] Each signatory to a lodged proposed consent order shares the burden, upon the request of the Regional Administrator pursuant to § 28.22(b)(1)(ii) of this part, of presenting to the Regional Administrator information supporting the legal bases of the proposed order.

(d) *Complainant's burden of proof.* Except where the respondent has failed to carry a burden of going forward as to a given matter under paragraph (b)(1) of this section, in any hearing under § 28.26 of this part the complainant has the burden of proving each allegation of fact in the administrative complaint by a preponderance of the evidence.

(e) *Parties' burden of persuasion.* Except where the respondent has failed to carry a burden of going forward as to a given matter under paragraph (b)(2) of this section, in any proceeding under this part the proponent of an argument to the Presiding Officer has the burden of persuasion.

§ 28.11 Subpoenas.

(a) *Issuance.* The Presiding Officer may, on his own initiative or at the request of a party, subpoena the testimony of witnesses or the production of documents, or both, for a hearing as to liability conducted pursuant to § 28.26 of this part, in order to determine the truthfulness of any allegation as to liability included in the administrative complaint or statement as to liability made in the response.

(b) *Service.* The Presiding Officer shall serve the subpoena upon its recipient in the manner prescribed for the service of an administrative complaint pursuant to § 28.16(c) of this part.

(c) *Filing with Hearing Clerk.* The Presiding Officer shall file a copy of the subpoena with the Hearing Clerk, who shall serve it on the parties in the manner required by § 28.9(b) of this part.

§ 28.12 Prohibited communication.

(a) *Prohibition.* No interested person or Agency decisionmaker shall initiate or engage in any prohibited communication.

(b) *Notification and opportunity for investigation.* If during proceedings under this part the Presiding Officer receives or becomes aware of a prohibited communication by any interested person, he shall immediately notify each participant of the circumstances and substance of the communication. If a participant in the action initiated or engaged in any prohibited communication as defined by § 28.2(p)(2) of this part or a prohibited communication as defined by § 28.2(p)(1) of this part which was significant or prejudicial, or caused it to be made, the Presiding Officer shall upon the request of any participant require the participant who so communicated or caused the communication to be made, to the extent consistent with justice and applicable law, to show cause why that participant's claim or interest in the action should not be denied, disregarded, or otherwise adversely affected on account of such communication.

(c) *Sanctions or recusal.* (1) Except as otherwise provided in paragraph (c)(2) of this section, the Presiding Officer may, at any time before transmission of a recommended decision under § 28.27(a)(3) of this part, impose a sanction on any participant who has initiated or engaged in a prohibited communication in violation of paragraph (a) of this section, or caused such communication to be made.

(2) The Regional Administrator may, at any time following transmission of a recommended decision under § 28.27(a) of this part, impose a sanction (other than by fine or imprisonment) on any participant who, after such transmission, has initiated or engaged in a prohibited communication in violation of paragraph (a) of this section, or caused such communication to be made. [Safe Drinking Water Act and Section 309(g) of the Clean Water Act only] During any suspension of proceedings pursuant to § 28.22(b)(2) of this part, the Regional Administrator may impose a sanction (other than by fine or imprisonment) on any participant who has initiated or engaged in a prohibited communication, or caused such communication to be made.

(3) Any Agency decisionmaker who has initiated or knowingly engaged in prohibited communication shall recuse himself from further participation in the action except as a witness.

§ 28.13 Request for an alternate Presiding Officer.

(a) *Request.* A party may, by filing with the Hearing Clerk a legal argument with supporting affidavits, request the Regional Administrator to designate an alternate Presiding Officer on the basis that the Presiding Officer has not met a limitation imposed by § 28.4(c) of this part or has substantially failed to comply with his duties under § 28.4(b) of this part.

(b) *Decision.* The Regional Administrator's decision on a request for an alternate Presiding Officer shall be in writing and shall be supported by findings. The Regional Administrator shall grant the request and designate an alternate Presiding Officer if he determines that the challenged Presiding Officer has not met a limitation imposed by § 28.4(c) of this part or has substantially failed to comply with the requirements of § 28.4(b) of this part. The Regional Administrator shall deny the request if he determines, as applicable, that the challenged Presiding Officer has at all times met the limitations imposed by § 28.4(c) of this part or has substantially complied with the requirements of § 28.4(b) of this part.

(c) *Sanctions.* The Regional Administrator may sanction the requesting party (other than by fine or imprisonment) if he denies a request made pursuant to paragraph (a) of this section and determines that the requesting party acted for purpose of delay or otherwise did not make the request in good faith.

§ 28.14 Unavailability of administrative appeal; limitation on requests for reconsideration.

(a) *Unavailability of administrative appeal.* No person may administratively appeal any ruling, decision, or other action of the Presiding Officer or Regional Administrator, whether interlocutory or final, made or taken in connection with an action under this part. No person may administratively appeal the issuance of a subpoena issued pursuant to § 28.11 of this part.

(b) *Limitation on requests for reconsideration.* No person may request the Presiding Officer to reconsider the terms of a recommended decision transmitted to the Regional Administrator pursuant to § 28.27(a) of this part. Except as otherwise provided by § 28.30 of this part, no person may request reconsideration of any ruling, decision, or other action of a Regional Administrator or the Administrator, whether interlocutory or final, made or taken under this part.

§ 28.15 Prospective effect of this part.

This part operates prospectively and shall govern any action that is initiated by the issuance of an administrative complaint on or after the effective date of this part.

Subpart B—Prehearing

§ 28.16 Initiation of action.

(a) *Issuance of administrative complaint.* If the complainant has information that:

(1) [Section 309(g) of the Clean Water Act only] Any person has violated section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act (33 U.S.C. §§ 1311, 1312, 1316, 1317, 1318, 1328 or 1345), or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Clean Water Act, 33 U.S.C. 1342, by the Regional Administrator or by a State, or in a permit issued under section 404 of the Clean Water Act, 33 U.S.C. 1344, by a State, the complainant may issue an administrative complaint.

(2) [Section 311(b)(6) of the Clean Water Act only] Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility:

(i) Has discharged oil or a hazardous substance in violation of section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3), or

(ii) Fails or refuses to comply with any regulation issued under section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), to which that owner, operator, or person in charge is subject, the complainant may issue an administrative complaint.

(3) [Safe Drinking Water Act only] Any person is violating the requirement of an applicable underground injection control program, the complainant may issue an administrative complaint which alleges such violation and either proposes a penalty or proposes a penalty and compliance, as authorized by section 1423(c) of the SDWA, 42 U.S.C. 300h–2(c). An administrative complaint proposing compliance shall propose that the respondent comply with the regulation, schedule, or other requirement of the applicable underground injection control program that is alleged to have been violated. If the complainant has information that a person has violated the requirement of an applicable underground injection control program, but such violation has ceased and its cause has been remedied, the complainant may issue an administrative complaint which proposes a penalty for that person's violation but does not propose compliance.

(4) [CERCLA only] A person has failed or refused to comply with the requirements of an administrative order or agreement entered pursuant to section 120 of CERCLA (42 U.S.C. 9620), a consent decree or agreement entered pursuant to section 122 of CERCLA (42 U.S.C. 9622), or has violated the requirements of section 103 (a) or (b) of CERCLA, 42 U.S.C. 9603 (a) or (b) (relating to notice to National Response Center); section 103(d)(2) of CERCLA, 42 U.S.C. 9603(d)(2) (relating to the destruction of records and related subjects); section 108 of CERCLA, 42 U.S.C. 9608 (relating to financial responsibility and related subjects); or an order issued under section 122(d)(3) of CERCLA, 42 U.S.C. 9622(d)(3)(relating to settlement agreements for action under section 104[b] of CERCLA, 42 U.S.C. 9604[b]), the complainant may issue an administrative complaint.

(5) [Section 325(b)(1) of EPCRA only] Any person has violated the requirements of section 304 of EPCRA, 42 U.S.C. 11004, the complainant may issue an administrative complaint.

(6) [Section 325(c)(1) of EPCRA only] Any person has failed to provide access or failed to prepare, have, make available or submit information as required by section 312 of EPCRA, 42 U.S.C. 11022, the complainant may issue an administrative complaint.

(7) [Section 325(c)(2) of EPCRA only, except as it may apply to reporting requirements under section 313 of EPCRA] Any person has violated any requirement of section 311 or 323(b) of EPCRA, 42 U.S.C. 11021 or 11043(b), or has failed to furnish information to the Administrator as required by section 322(a)(2) of EPCRA, 42 U.S.C. 11042(a)(2), the complainant may issue an administrative complaint.

(8) [Section 325(d)(1) of EPCRA only, except as it may apply to trade secrecy claims under section 313 of EPCRA] Any person has submitted a trade secret claim in violation of the requirements of section 325(d)(1) of EPCRA, 42 U.S.C. 11045(d)(1), the complainant may issue an administrative complaint.

(b) *Notice of respondent's opportunity for hearing.* At the time of the issuance of the administrative complaint, the complainant shall notify the respondent in writing of:

(1) The respondent's opportunity to respond to the administrative complaint pursuant to § 28.20 of this part;

(2) The consequences of the respondent's failure to respond to the administrative complaint by the applicable deadline; and

(3) The applicability of this part to the administrative action initiated against him.

(c) *Service of administrative complaint.* Any authorized Agency employee shall serve the administrative complaint upon the respondent personally or by sending it to the respondent by certified mail, return receipt requested. If the respondent is a corporation, the complainant shall serve the President of the corporation or the corporation's registered agent for service of process. If the respondent is an unincorporated business, a partnership, or any other form of unincorporated association, the complainant shall serve any person authorized by applicable law to receive service of process. If the respondent is a federal agency, State or State agency, or a local unit of government, the complainant shall serve its chief executive officer, or its authorized agent for service of process. Service on the respondent is complete upon acceptance of personal service or when the return receipt is signed by any employee or agent of the respondent who in the ordinary course of business is authorized to sign for certified mail on behalf of the respondent. If personal service is ineffective and if certified mail is refused or unclaimed, the complainant shall serve the respondent by another appropriate means. In such case, service is complete upon the execution of substituted service.

(d) *Notice of administrative complaint.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] No later than the time of proof of service of the administrative complaint, the complainant shall provide a copy of the public notice of an action under this part to the public by providing notice by first class mail to any person who requests such notice and by providing notice to potentially affected persons in a manner reasonably calculated to provide such notice.

(e) *Opening of the administrative record.* Upon issuance of the administrative complaint, the complainant or Agency counsel shall open the administrative record by filing with the Hearing Clerk appropriate documents, which shall include the administrative complaint and attached certificate of service, and which may include any evidence of violations, any information relevant to the assessment of a civil penalty or the imposition of a SDWA compliance remedy by the Regional Administrator, and any anticipatory motions (including motions for summary determination, accelerated decision, and remedy upon default) with any supporting legal arguments and affidavits.

(f) *Anticipatory motions by complainant.* Notwithstanding any other provision of this part, at any time before the respondent's deadline for the response pursuant to § 28.20 (a) or (b) of this part, whichever applies, the complainant may anticipatorily move for a default remedy pursuant to § 28.21(b) of this part, or for summary determination as to liability or an accelerated recommended decision pursuant to § 28.25 of this part.

(g) *Notification of Agency decisionmaker.* Upon issuance of the administrative complaint and upon receipt of proof of service, the Hearing Clerk immediately shall so notify the appropriate Agency decisionmaker.

(h) *Designation of Presiding Officer.* The Regional Administrator shall designate a Presiding Officer for the referenced Agency action no later than twenty days after the date of service of the administrative complaint.

§ 28.17 Availability of documents filed with Hearing Clerk.

The Hearing Clerk shall maintain securely and shall make available at reasonable times for inspection and copying by any person documents filed with the Hearing Clerk pursuant to this part, subject to any:

(a) Provision of law restricting the public disclosure of confidential business information;

(b) Restriction necessary to insure the physical security of the filed documents; and

(c) Agency rule governing the costs of copying Agency records.

§ 28.18 Withdrawal or amendment of administrative complaint.

(a) *Withdrawal of administrative complaint.* The complainant may withdraw the administrative complaint without prejudice:

(1) Unilaterally and as of right at any time before the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner; or

(2) By stipulation with the respondent or by permission of the Presiding Officer at any time after the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner.

(b) *Amendment of administrative complaint.* The complainant may amend the administrative complaint:

(1) Unilaterally and as of right at any time before the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner; or

(2) By stipulation with the respondent or by permission of the Presiding Officer at any time after the deadline prescribed by § 28.20 (a) or (b) of this part (whichever applies), or the date of the respondent's filing of a response in the action, whichever is sooner.

§ 28.19 Consultation with State. [Section 309(g) of the Clean Water Act only]

The complainant shall, within thirty days of the respondent's receipt of the administrative complaint, provide the State agency with the most direct authority over the matters which are the subject of the action under this part an opportunity for consultation on the referenced Agency action.

§ 28.20 Responses to administrative complaint.

(a) *Respondent's deadline.* The respondent shall file with the Hearing Clerk a response within thirty days after receipt of:

(1) The administrative complaint; or,

(2) [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] If applicable, the Regional Administrator's disapproval of a proposed lodged consent order pursuant to § 28.28(b)(2) of this part.

(b) *Extension of respondent's deadline.* For the purpose of engaging in informal settlement negotiations between the complainant and respondent the deadline for the respondent to file a response pursuant to paragraph (a)(1) of this section shall be extended:

(1) For any period stipulated by the complainant and respondent (but in no event for longer than ninety days following such deadline), by filing such stipulation with the Hearing Clerk within thirty days after respondent's receipt of the administrative complaint; or

(2) For thirty days following such deadline in the case of an offer of a penalty settlement by the respondent, by filing notice of the existence of such an offer with the Hearing Clerk within thirty days after the respondent's receipt of the administrative complaint.

(c) *Deadline for public comment and participation.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] Any member of the public may, within thirty days after receipt of the notice provided pursuant to § 28.16(d) of this part:

(1) Submit written comments on the administrative complaint to the Hearing Clerk identified in the notice; or

(2) Become a participant in the action by meeting the requirements of § 28.2(g) of this part.

(d) *Admission.* Each uncontested allegation in the administrative complaint as to liability is deemed admitted by the respondent, whether by the respondent's failure to make a timely response pursuant to paragraph (a) or (b) of this section, whichever applies, or by the respondent's failure in a timely response to deny such allegation included in the administrative complaint.

(e) *Waiver.* If the respondent fails to make a timely response pursuant to paragraph (a) or (b) of this section, whichever applies, the respondent shall have waived its opportunity to appear in the action for any purpose.

(f) *Amendment of response.* A respondent who has timely responded pursuant to paragraph (a) or (b) of this section, whichever applies, may:

(1) As of right amend its response within thirty days following the complainant's amendment of the administrative complaint pursuant to § 28.18 of this part; or

(2) Amend its response no later than thirty days prior to the date set for the

first proceeding on the merits under this part upon stipulation with the complainant or by permission of the Presiding Officer upon a finding of good cause shown and upon a finding that such amendment would not prejudice the complainant.

§ 28.21 Default proceedings.

(a) *Determination of liability.* If the respondent fails timely to respond pursuant to § 28.20 (a) or (b) of this part or the Presiding Officer determines the respondent's conduct warrants imposition of the sanction of default as to liability, the Presiding Officer, on his own initiative, shall immediately determine whether the complainant has stated a cause of action.

(1) If the Presiding Officer determines that the complainant has stated a cause of action, the Presiding Officer shall direct the Hearing Clerk to enter the respondent's default as to liability in the administrative record. Upon entry, the allegations as to liability included in the administrative complaint shall be deemed recommended findings of fact and conclusions of law.

(2) If the Presiding Officer determines that the complainant has not stated a cause of action, the Presiding Officer shall:

(i) Allow the complainant to amend the administrative complaint pursuant to § 28.18(b)(2) of this part; or

(ii) Set forth that determination in a recommended decision to the Regional Administrator pursuant to § 28.27(a)(3) of this part and shall recommend that the Regional Administrator withdraw the administrative complaint.

(b) *Determination of remedy.* In any action under this part in which the Hearing Clerk has entered a default as to liability, the complainant shall submit within thirty days of receipt of the entry of default a written argument (with any supporting documentation) regarding the assessment of an appropriate civil penalty and (in the case of the Safe Drinking Water Act) regarding the requirement for compliance, subject to the following limitations:

(1) [CERCLA, section 309(g) of the Clean Water Act and Section 325(b) of EPCRA only]. The argument shall be limited to the nature, circumstances, extent and gravity of the violation or violations and, with respect to the respondent, ability to pay, any prior history of such violations, the degree of culpability, the economic benefit or savings (if any) respondent enjoyed resulting from the violation, and such other matters as justice may require.

(2) [Section 311(b)(6) of the Clean Water Act only]. The argument shall be limited to the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(3) [Safe Drinking Water Act only]. The argument as to penalty shall be limited to the seriousness of the respondent's violation or violations, the economic benefit (if any) respondent enjoyed resulting from the violation, and any history of such violations, any good faith efforts by the respondent to comply with the applicable requirements, the economic impact of the penalty on the respondent, and such other matters as justice may require. The argument as to compliance shall be limited to the reasonableness of the time required for compliance, if any, and the necessity for any interim requirements, such as reporting requirements, that may be included in any compliance order.

§ 28.22 Consent orders.

(a) *Agreement of parties.* (1) Except as specifically provided by paragraph (b) of this section, at any time before final Agency action, the complainant and a respondent may conclude an action, in whole or in part, by agreeing upon a civil penalty and (in the case of the Safe Drinking Water Act) a compliance remedy which is reasonably related to the respondent's violation of law. The parties shall memorialize such an agreement in the form of an Agency consent order and serve it pursuant to § 28.9(a) of this part. Upon service, a consent order signed by the complainant and a respondent has the force and effect of a unilateral order which has been signed by the Regional Administrator under § 28.28 of this part, except that a signatory respondent may not appeal such a consent order to the appropriate federal court.

(2) If the filing of the consent order with the Hearing Clerk pursuant to paragraph (a)(1) of this section does not wholly conclude the action:

(i) The parties shall inform the Presiding Officer of the issues that remain unresolved; and

(ii) The Presiding Officer shall promptly inform the parties or the remaining parties of the schedule of the remaining proceedings.

(b) *Submission of proposed consent order.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only]. In any action in which a commenter is participating or may participate pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, and in which the parties have reached an agreement on the terms of a consent order pursuant to paragraph (a) of this section:

(1) The parties shall:

(i) Sign a proposed consent order and lodge it with the Hearing Clerk no sooner than the deadline established for public comment and participation pursuant to § 28.20(c) of this part; and

(ii) Upon the request of the Regional Administrator, lodge a written explanation of the legality of the proposed consent order with the Hearing Clerk.

(2) If the parties have complied with the requirements of paragraph (b)(1)(i) of this section, the action shall be suspended until the Regional Administrator approves or disapproves the proposed consent order pursuant to § 28.28(b) of this part.

(3) The complainant shall serve each non-signatory participant in the action with a copy of the proposed consent order at the time the parties lodge the proposed order pursuant to paragraph (b)(1)(i) of this section and notify each non-signatory participant of the suspension of the action occurring pursuant to paragraph (b)(2) of this section and of the provisions of §§ 28.2(p), 28.4(c) and 28.12 of this part which prohibit communication with the Presiding Officer or the Regional Administrator regarding the substance of the proposed order.

(4) Upon receipt of a proposed consent order lodged pursuant to paragraph (b)(1)(i) of this section, the Hearing Clerk shall notify the Presiding Officer of its receipt, transmit the proposed order to the Regional Administrator, and make all documents filed with the Hearing Clerk by the participants available to the Regional Administrator. Upon receipt of a written explanation lodged pursuant to paragraph (b)(1)(ii) of this section, the Hearing Clerk shall transmit the explanation to the Regional Administrator.

(5) Upon approval by the Regional Administrator of a proposed consent order pursuant to § 28.28(b) of this part, all documents that have been filed with the Hearing Clerk by the participants before the time the proposed consent order is lodged and any written explanation of the legality of the proposed order submitted to the Regional Administrator by the parties pursuant to paragraph (b)(1)(ii) of this section are deemed to constitute the administrative record underlying the approved consent order.

(6) Upon disapproval by the Regional Administrator of a proposed consent order pursuant to § 28.28(b) of this part, the Presiding Officer shall promptly reschedule any previously suspended proceedings, and the action shall resume according to the provisions of this part.

§ 28.23 Prehearing conference.

(a) *Time and form of conference.* In any action in which the respondent timely responds pursuant to § 28.20 (a) or (b) of this part, the Presiding Officer shall hold a prehearing conference among all the parties to the action not later than thirty days after such response. The Presiding Officer may conduct the conference in person or by telephone.

(b) *Purposes of conference.* At the prehearing conference the Presiding Officer:

(1) Shall establish a time and place for further proceedings in the action pursuant to the requirements of paragraph (c) of this section;

(2) Shall, upon request of any party, schedule an exchange of information as appropriate, and subject to the limitations of § 28.24 of this part, where appropriate, on his own impose additional limitations on the scope of an exchange of information between the parties;

(3) May attempt to simplify issues and help the parties to stipulate to facts not in dispute;

(4) May explore the necessity or desirability of amendments to the pleadings; and

(5) May discuss any other appropriate subject.

(c) *Time and place of further proceedings.* (1) The Presiding Officer shall schedule a proceeding on the merits of the action and, as may be required, any other proceeding. Except as otherwise provided by paragraph (c)(2) of this section, each proceeding shall be conducted at an appropriate Agency office. The Presiding Officer shall schedule the proceeding on the merits to take place no sooner than thirty days following the date of the prehearing conference conducted pursuant to this section, or no sooner than seven days following the completion of any information exchange scheduled pursuant to § 28.24(c) of this part (exclusive of any supplemental exchange pursuant to § 28.24(c)(1)), whichever is later.

(2) Any party, on the basis of necessity, may request in writing within ten days of receipt of the notice of such proceeding that the Presiding Officer schedule such a proceeding at a time or location other than that initially specified by the Presiding Officer. The Presiding Officer shall promptly grant or deny such a request.

(d) *Prehearing order.* The Presiding Officer shall issue to the participants a prehearing order no later than twenty days following the conference which shall memorialize the rulings of the Presiding Officer made at the prehearing conference. The Presiding Officer may, to aid the efficient administration of justice, modify the prehearing order as necessary, except as limited by § 28.24(c) of this part.

§ 28.24 Information exchange.

(a) *Authority.* Except by stipulation of the parties which is filed with the Hearing Clerk, by the issuance of a subpoena pursuant to § 28.11 of this part, and by authorization of law outside the scope of this part, this section provides exclusive authority for the provision of information by parties and provides such authority only in an action in which the respondent has timely responded to an administrative complaint pursuant to § 28.20 (a) or (b) of this part.

(b) *Scope of exchange.* Subject to paragraph (a) of this section, and subject to any further limitation imposed by the Presiding Officer in a prehearing order issued pursuant to § 28.23(b)(2) of this part:

(1) Each party, upon request by an opposing party, shall provide, in writing, to the requestor only:

(i) The name of each witness it intends to present at any proceeding under § 28.26 of this part, as well as a brief description of the witness' connection to the action, the witness' qualifications (in the case of an expert witness), and the subject matter of the intended testimony; and

(ii) Each document (other than a document to be used solely for purposes of impeachment) it intends to introduce at any proceeding under § 28.25 or § 28.26 of this part and which has not been filed with the Hearing Clerk pursuant to § 28.16(e) of this part; and

(2) Respondent, upon request by complainant, shall provide to the complainant in writing all information requested by the complainant and known to the respondent relating to:

(i) The respondent's inability to pay a civil penalty; and

(ii) The respondent's net profits, delayed or avoided costs, or any other form of economic benefit resulting from any activity or failure to act by the respondent which is alleged in the administrative complaint to be a violation of applicable law.

(c) *Timing of exchange.* (1) The parties shall conduct the exchange of information according to the schedule established by the Presiding Officer pursuant to § 28.23 (b) and (d) of this part, but except as provided for by paragraph (c)(2) of this section and a continuing right to supplement described below, under no circumstance shall such exchange conclude later than sixty days after the date of the prehearing conference. The parties may supplement information requested pursuant to paragraph (b)(1) of this section if such supplementary information becomes known to the requested party after the applicable information response deadline established by the Presiding Officer. Except for good cause shown, the supplementing party shall complete service to the requestor of such supplemental information by no later than seven days prior to the date set for the noticed proceeding.

(2) [Clean Water Act and Safe Drinking Water Act only]. The Presiding Officer may, for good cause shown, extend the deadline for the parties to provide information as required by paragraph (b) of this section for a period not to exceed thirty days. The Presiding Officer may grant, in sequence, subsequent extensions of up to thirty days each upon an individual showing of good cause for each extension.

(d) *Service.* Each party simultaneously shall serve each set of information requests or responses to an information request personally or by first class or certified mail (or any other manner of messengered service that is no less speedy and reliable), with an attached certificate of service, upon the other party and the Presiding Officer. If, pursuant to the requirement of paragraph (a) of this section, the parties have stipulated to any other exchange of information, the parties shall promptly provide such information to the Presiding Officer.

(e) *Sanctions.* (1) Any party that fails timely:

(i) To provide the name and all supporting information required pursuant to paragraph (b)(1)(i) of this section regarding any witness may not present that witness at a proceeding under § 28.26 of this part;

(ii) To produce a document required pursuant to paragraph (b)(1)(ii) of this section may not submit, or have submitted, such a document for the administrative record at a proceeding under § 28.25 or § 28.26 of this part, or otherwise;

(iii) To provide to complainant any information required pursuant to paragraph (b)(2)(i) of this section concerning an inability to pay a civil penalty may not submit, or have submitted, any information for the administrative record concerning its inability to pay the civil penalty requested by complainant; and

(iv) To provide to complainant any information required pursuant to paragraph (b)(2)(ii) of this section concerning net profits, delayed or avoided costs, or any other form of economic benefit resulting from any activity or failure to act by the respondent which is alleged in the administrative complaint to be a violation of applicable law, may not submit, or have submitted, any information for the administrative record on such subject.

(2) Except as specifically provided in paragraph (e)(1) of this section, the Presiding Officer has discretion to impose on any party that fails to comply with the requirements of this section any sanction that is just and proper.

§ 28.25 Summary determination and accelerated recommended decision

(a) *Initiation.* In any action in which a respondent has timely responded to an administrative complaint pursuant to § 28.20 (a) or (b) of this part:

(1) Any party may request, by legal argument with or without supporting affidavits, that the Presiding Officer summarily determine any allegation as to liability being adjudicated on the basis that there is no genuine issue of material fact for determination presented by the administrative record and any exchange of information. Any party may also request, by legal argument with or without supporting affidavits, that the Presiding Officer accelerate his recommended decision on the basis that there is no compelling need for further fact-finding concerning remedy. The requesting party shall serve the request at least thirty days before any date set for a liability hearing, except that upon leave granted by the Presiding Officer for good cause shown, the requesting party may file the request at any time before the close of the liability hearing.

(2) The Presiding Officer, at any time following the initial deadline for the exchange of information under §§ 28.23 and 28.24 of this part and before the commencement of a liability hearing, and upon examination of the entire administrative record and any exchange of information by the parties, may on his own initiative summarily determine that a party is entitled to judgment as to liability as a matter of law.

(3) Upon summarily determining liability pursuant to this section, or upon stipulation by the parties as to liability, the Presiding Officer may on his own initiative and without further fact-finding accelerate the recommended decision. In reaching the recommended decision, the Presiding Officer shall consider the applicable factors set forth in § 28.21(b) of this part and (in the case of a compliance remedy under the Safe Drinking Water Act) shall consider the reasonableness of the remedy.

(b) *Response.* Any party against whom a request for summary determination or accelerated recommended decision has been made shall serve a response to the request or a counter-request no later than twenty days following receipt of the opposing party's request, or thirty days following the service of the administrative complaint, whichever is later, unless the Presiding Officer establishes a different schedule. Any party against whom a counter-request under this subsection has been made may serve a response to the counter-request no later than twenty days following receipt of the counter-request, unless the Presiding Officer establishes a different schedule. A party opposing a request or counter-request for summary determination shall show, by affidavit or by other documentation, that the administrative record and any exchange of information present a genuine issue of material fact as to liability. A party opposing a request for an accelerated recommended decision shall show, by affidavit or by other documentation, that there is a compelling need for the introduction of testimony material to the assessment of a civil penalty or (in the case of the Safe Drinking Water Act) the imposition of a compliance remedy.

(c) *Form and record of argument.* After receipt of all information associated with a request or counter-request under this section from all parties, or pursuant to paragraph (a)(2) or (a)(3) of this section, the Presiding Officer may require oral argument of each participant in order to aid the administration of justice. The Presiding Officer shall not allow argument regarding matters barred from the administrative record by operation of § 28.4(c) (5) or (6) of this part. If the Presiding Officer allows rebuttal argument, such rebuttal shall be allowed only to the parties. The Presiding Officer shall create by written, electronic, or other permanent and reliable means a verbatim record of any oral argument presented pursuant to this section and shall file that record with the Hearing Clerk.

(d) *Basis for ruling.* (1) The Presiding Officer shall rule on a request for summary determination or an accelerated recommended decision under paragraph (a)(1) of this section promptly after he finds, based on the administrative record, any exchange of information, and any arguments of the participants, whether the participants present a genuine issue of material fact as to liability and whether a party is entitled to judgment as to liability as a matter of law. The Presiding Officer shall rule on a request for an accelerated recommended decision based on whether there is a compelling need for further fact-finding. If the Presiding Officer denies a request for an accelerated decision, the Presiding Officer shall promptly schedule an appropriate proceeding pursuant to § 28.26(h) of this part to develop the administrative record regarding an appropriate remedy.

(2) The Presiding Officer shall on his own initiative summarily determine that a party is entitled to judgment as to liability as a matter of law if he finds, based on an examination of the administrative record and any information exchanged by the parties, that the participants present no genuine issue of material fact as to liability and a party is entitled to judgment as to liability as a matter of law.

(e) *Determination of liability.* If the Presiding Officer determines that a party is entitled to judgment as to liability as a matter of law by means of summary determination, the Presiding Officer shall prepare any written recommended finding of fact and any conclusion of law corresponding to such determination. If the Presiding Officer does not accelerate a recommended decision, the Presiding Officer shall promptly serve each participant with a copy of such recommended finding and conclusion of law. If the Presiding Officer accelerates the recommended decision, upon completion of the recommended decision the Presiding Officer shall follow the procedures prescribed by § 28.27 of this part.

(f) *Determination of genuine issue of fact.* The Presiding Officer shall deny a request for summary determination of liability if he finds the administrative record and any exchange of information by the parties present a genuine issue of material fact. If the Presiding Officer denies a request for summary determination, or denies such a request in part, the Presiding Officer shall promptly issue to each participant a written ruling as to the existence of a genuine issue of material fact as to liability and the reasons for the ruling, and the action shall continue on the factual allegations over which the participants have demonstrated the existence of a genuine issue.

(g) *Supplementation of administrative record.* In any action in which the Presiding Officer has on his own initiative determined that a party is entitled to judgment as to liability as a matter of law pursuant to paragraph (a)(2) of this section, and has based that determination in any part on any document provided pursuant to § 28.24 of this part that is not otherwise within the administrative record, the Presiding Officer shall incorporate such document into the administrative record pursuant to § 28.2(b)(15) of this part by filing it with the Hearing Clerk. The Presiding Officer shall not incorporate in the administrative record any document barred from the administrative record by operation of § 28.4(c) (5) or (6) of this part.

Subpart C—Hearing

§ 28.26 Liability hearing.

(a) *Scope of hearing.* Except as otherwise specifically set forth in paragraphs (h), (i) and (k) of this section, the Presiding Officer shall conduct any hearing pursuant to this section necessary to determine the truthfulness of any unresolved allegation of fact (or conclusion of law based on an unresolved question of fact) as to liability which was set forth in the administrative complaint.

(b) *Conduct of hearing.* (1) The Presiding Officer shall conduct a fair and impartial proceeding in which each participant has a reasonable opportunity to be heard and to present evidence.

(2) The Presiding Officer may:

(i) Administer the oath or affirmation of a witness;

(ii) Require the authentication of any written exhibit or statement;

(iii) Examine witnesses to clarify the administrative record; and

(iv) Limit the number of witnesses and the scope and extent of any direct examination or cross-examination under this section as necessary to protect the interests of justice and conduct a reasonably expeditious hearing.

(c) *Testimony.* Each witness shall testify in the form determined by the Presiding Officer to be most efficient in resolving an issue. Forms of testimony include oral testimony provided in person or by other means, and written or otherwise recorded testimony. Testimony shall be limited to facts regarding liability and shall not include issues of law.

(d) *Admission of evidence.* The Presiding Officer shall decide which documents and testimony shall be admitted into evidence. The Presiding Officer shall admit all evidence which is relevant, material, or of significant probative value. The Presiding Officer shall not admit evidence barred from the administrative record by operation of § 28.4(c) (5) or (6) of this part.

(e) *Official notice.* Except as prohibited by § 28.4(c) (5) or (6) of this part, the Presiding Officer may take official notice of matters judicially noticed in the federal courts, of other facts within the specialized knowledge and experience of the Agency, and of matters that are not reasonably in dispute and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking official notice of a matter, the Presiding Officer shall give the parties an opportunity to show cause why such notice should not be taken.

(f) *Cross-examination.* Any opposing party has a right of cross-examination after the introduction of a witness' direct testimony. A party shall not cross-examine regarding a matter that is outside the scope of the direct examination. [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] The Presiding Officer shall not allow a commenter an opportunity to cross-examine a party's witness. Agency counsel has the right to the first cross-examination of a commenter's witness.

(g) *Elements and order of presentation.* The elements of a liability hearing are set forth in paragraphs (g) (1) through (6) of this section. Unless otherwise directed by the Presiding Officer, the order of the hearing shall be as follows:

(1) Agency counsel may summarize the factual bases of the administrative complaint and intended witness testimony.

(2) The respondent may summarize the factual bases of the response and intended witness testimony.

(3) Agency counsel may offer any inculpatory testimonial or other evidence within the scope of the hearing.

(4) Respondent may offer any exculpatory testimonial or other evidence within the scope of the hearing.

(5) [Safe Drinking Water Act and section 309(g) of the Clean Water Act only] Any commenter may introduce testimonial or other evidence within the scope of the hearing under this section if such evidence concerns an allegation identified by the commenter pursuant to §§ 28.2(g) and 28.20(c) of this part, subject to the following limitations:

(i) The commenter may offer into evidence a witness' testimony only if the commenter had notified all other participants at least twenty days prior to the commencement of the liability hearing of the name of the witness, a brief description of the witness' connection to the action, his qualifications (in the case of an expert witness), and the subject matter of the witness' intended testimony.

(ii) The commenter may offer into evidence a document only if the commenter had provided a copy of such document to all other participants at least twenty days prior to the commencement of the liability hearing.

(6) At the discretion of the Presiding Officer, the parties may present rebuttal testimony within the scope of evidence introduced at the hearing, except (in the case of the Safe Drinking Water Act and section 309(g) of the Clean Water Act) the parties shall have the right to present rebuttal testimony in response to any testimony presented by a commenter's witness.

(h) *Remedy issues.* The Presiding Officer has the discretion, based on a compelling need for additional fact-finding on issues material to remedy, to allow the participants to introduce testimony on such issues. The Presiding Officer shall not allow testimony if the issues can be appropriately explored by use of legal argument and affidavits, or by the submission by the participants of written recommended findings of fact and conclusions of law pursuant to paragraph (k) of this section. If the Presiding Officer allows such testimony, he shall conduct such proceeding in the most timely and efficient manner possible. In any such proceeding, the Presiding Officer shall consider any applicable Agency policy (except any Agency policy, or portion thereof, that applies to settlement of a penalty claim) concerning the assessment of an administrative penalty.

(i) *Closing argument.* After all evidence has been presented at the hearing, the Presiding Officer may allow the participants to present an oral closing statement regarding issues of liability and of remedy, and may allow the participants to submit any documentation regarding remedy.

(j) *Hearing record.* The Presiding Officer shall create by written, electronic, or other permanent and reliable means a verbatim record of the hearing and shall file that record with the Hearing Clerk.

(k) *Findings and conclusions.* The Presiding Officer may request the participants to submit, within a reasonable time after the conclusion of the hearing, proposed recommended findings of fact and conclusions of law, as well as any documentation regarding remedy. The Presiding Officer shall, after the conclusion of a hearing and the submission of any documents requested pursuant to this section, follow the procedures prescribed by § 28.27 of this part.

SUBPART D—POST-HEARING

§ 23.27 Recommended decision.

(a) *Preparation and transmission.* Within a reasonable time following any remedy proceeding pursuant to § 28.21(b), § 28.25 or § 28.26(h) of this part, or upon a determination by the Presiding Officer pursuant to § 28.21(a)(2)(ii) or § 28.25 of this part that the complainant has failed to carry its burden of going forward pursuant to the provisions of § 28.10(a) of this part, or upon a determination by the Presiding Officer that the complainant has failed to carry any burden of proof pursuant to §§ 28.10(d) and 28.26 of this part, the Presiding Officer shall:

(1) Certify the administrative record as complete to date and in compliance with all requirements of this part;

(2) Make the administrative record available to the Regional Administrator; and

(3) Prepare and transmit a recommended decision to the Regional Administrator.

(b) *Publication.* The Presiding Officer shall file a copy of the recommended decision with the Hearing Clerk at the time of its transmittal to the Regional Administrator and the Hearing Clerk immediately shall serve each participant with a copy of the recommended decision.

§ 28.28 Decision of the Regional Administrator.

(a) *Contested or default order.* In any action in which the Regional Administrator receives a recommended decision from the Presiding Officer, the Regional Administrator shall:

(1) Base his decision on the administrative record and the applicable law;

(2) Within a reasonable time following receipt of the Presiding Officer's recommended decision:

(i) Withdraw the administrative complaint on the basis that the administrative complaint does not state a cause of action or that the allegations of fact and conclusions of law in the administrative complaint are not supported by the administrative record; or

(ii) Issue an order on the basis that the administrative record and applicable law support such an order; and

(iii) If the Regional Administrator rejects the recommendation of the Presiding Officer in whole or in part, provide a written explanation for that rejection that states each point of disagreement with the recommendation of the Presiding Officer.

(3) Upon issuance of an order pursuant to applicable law, provide a written decision that is supported by clear reasons and the administrative record and includes a statement of the right of judicial review and of the procedures and deadlines for obtaining judicial review. The order shall be comprised of the Regional Administrator's findings of fact which establish the Agency's subject matter jurisdiction and the respondent's violation of any applicable law as alleged in the administrative complaint, conclusions of law, assessment of an appropriate penalty after taking into account all applicable statutory penalty factors, and, if applicable (in the case of the Safe Drinking Water Act), requirement of compliance with applicable requirements. [Section 309(g) of the Clean Water Act only]. In any action in which a commenter is participating pursuant to §§ 28.2(g) and 28.20(c)(2) of this part, the order shall state that the commenter has the right to petition to set aside the order pursuant to § 28.30 of this part.

(b) *Consent order.* [Safe Drinking Water Act and section 309(g) of the Clean Water Act only].

(1) In any action in which the Regional Administrator receives a proposed consent order from the Hearing Clerk pursuant to § 28.22(b)(4) of this part, the Regional Administrator shall determine whether the proposed consent order meets the requirements of this part and applicable law by reviewing the proposed order, the administrative record, and any written explanation of the legality of the order submitted upon his request by the signatory parties.

(2) Within a reasonable time following its receipt, without amendment and by his signature the Regional Administrator shall either approve and issue or disapprove the proposed consent order. If the Regional Administrator disapproves the proposed consent order, he shall provide the signatory parties with a written explanation for the disapproval based on the factors set forth in paragraph (b)(1) of this section.

(c) *Publication.* The Hearing Clerk shall, within seven days of the signing of an order by the Regional Administrator under this section, send a copy of the order:

(1) To the Presiding Officer, each participant, and any defaulted respondent; and

(2) To the Administrator, if the order was issued pursuant to paragraph (a) of this section.

(d) *Completion of administrative record.* The Regional Administrator shall file with the Hearing Clerk the record of any sanction he imposes under § 28.12(c)(2) or § 28.13(c) of this part, any decision he makes regarding a request for an alternate Presiding Officer under § 28.13(b) of this part, any written explanation submitted by the parties pursuant to § 28.22(b)(1)(ii) of this part in support of a consent order that has been approved by the Regional Administrator, any action of the Administrator pursuant to § 28.29 of this part, any written explanation of a rejection of the recommendation of the Presiding Officer pursuant to paragraph (a)(2)(iii) of this section, any order the Regional Administrator issues pursuant to this section, any other significant action he takes in an action under this Part other than a written explanation of his disapproval of a proposed consent order, and (in the case of an action pursuant to section 309[g] of the Clean Water Act) any evidence submitted by a petitioner pursuant to § 28.30 of this part and any decision to grant a petition pursuant to § 28.30(b) of this part.

(e) *Date of issuance.* For purposes of appeal, an order of the Regional Administrator pursuant to this part shall be deemed to be issued five days following the date of mailing of the Regional Administrator's order to respondent.

(f) *Effective date.* Any order issued pursuant to this part becomes effective thirty days following its date of issuance unless before that date:

(1) [Section 309(g) of the Clean Water Act only]. An appeal is taken pursuant to section 309(g)(8) of the Clean Water Act, 33 U.S.C. 1319(g)(8), or a commenter files a timely petition pursuant to § 28.30 of this part. If the Regional Administrator denies such a petition, the order becomes effective thirty days after such denial;

(2) [Section 311(b)(6) of the Clean Water Act only]. An appeal is taken pursuant to section 311(b)(6)(G) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(G);

(3) [Safe Drinking Water Act only]. An appeal is taken pursuant to Section 1423(c)(6) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c)(6);

(4) [CERCLA only]. An appeal is taken pursuant to section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4);

(5) [EPCRA only] An appeal is taken pursuant to section 325(f)(1) of EPCRA, 42 U.S.C. 11045(f)(1); or

(6) The Administrator suspends the implementation of the order pursuant to § 28.29 of this part.

(g) *Final Agency action.* The issuance of an order by the Regional Administrator pursuant to this section constitutes final Agency action on its effective date for purposes of the Administrative Procedure Act, 5 U.S.C. 551.

§ 28.29 Sua sponte review.

The Administrator may, on his own initiative, within thirty days of the date of issuance by the Regional Administrator of a contested or default order under § 28.28(a) of this part, suspend implementation of such order for the purpose of reviewing its conclusions of law or its sufficiency pursuant to § 28.28(a)(3) of this part. The Administrator, after such review, may amend its conclusions of law, withdraw the order, remand the order for appropriate action by the Regional Administrator, or may allow the order to issue unchanged. In any action in which the Administrator acts pursuant to this section, the provisions of § 28.28 of this part shall apply, except that:

(a) The Regional Administrator who issued an order shall be deemed the recommending Presiding Officer for purposes of § 28.28;

(b) Upon suspension of the order, the Administrator who suspended an order shall be deemed the Regional Administrator for purposes of § 28.28;

(c) The Regional Administrator's order, except for its findings of fact, shall be deemed a recommended decision; the Regional Administrator's findings of fact are findings of fact for purposes of this part and not subject to review by the Administrator;

(d) If the Administrator does not amend the Regional Administrator's conclusions of law nor determine that the order is insufficient pursuant to § 28.28(a)(3) of this part, the Regional Administrator's determination of remedy is not subject to review; if the Administrator does amend the Regional Administrator's conclusions of law or determines such insufficiency, the Regional Administrator's determination of remedy shall be remanded by the Administrator to the Regional Administrator for appropriate action, except that if the Administrator determines the respondent is not liable at all under applicable law, the Administrator shall withdraw the administrative complaint and the order of the Regional Administrator without remand;

(e) If the Administrator allows the order to issue unchanged, the requirements of § 28.28(a)(3) of this part shall not apply;

(f) If the Administrator withdraws, amends or remands the order, the requirement of § 28.28(a)(3) of this part to make findings of fact and to order a remedy shall not apply; and

(g) The Administrator's decision to suspend implementation of an order shall not be deemed final Agency action for the purposes of § 28.28(g) of this part or the Administrative Procedure Act, 5 U.S.C. 551.

§ 28.30 Petition to set aside an order. [Section 309(g) of the Clean Water Act only]

(a) *Initiation.* In any action under section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), in which the Regional Administrator has issued an order pursuant to § 28.28 of this part, any commenter participating in that action may, no later than thirty days after the date of issuance of the order under § 28.28(e) of this part, petition the Regional Administrator to set aside the order and to provide a hearing on liability or a proceeding on the penalty if the commenter at the time of petitioning files with the Hearing Clerk material evidence not considered in the issuance of the order and:

(1) The Presiding Officer had failed to afford the commenter an opportunity to present information in a proceeding conducted under § 28.25 or § 28.26 of this part in the referenced Agency action, or in an action concluded by consent order under §§ 28.22(b) and 28.28(b) of this part; or

(2) The Regional Administrator issued the order pursuant to §§ 28.21 and 28.28(a) of this part after the respondent had timely failed to respond to the administrative complaint pursuant to the requirements of § 28.20 of this part or was defaulted by sanction, without the commenter having had an opportunity to present information in a proceeding conducted under § 28.25 or § 28.26 of this part in the referenced Agency action.

(b) *Granting of petition.* The Regional Administrator shall grant the petition and set aside the order if he finds that the petitioner meets the requirements of paragraph (a) of this section. If the Regional Administrator grants the petition, he shall instruct the Presiding Officer to conduct an appropriate proceeding pursuant to § 28.21(b), § 28.25 or § 28.26 of this part.

(c) *Denial of petition.* The Regional Administrator shall deny the petition if he determines that the petitioner has failed to meet the requirements of paragraph (a) of this section. If the Regional Administrator denies the petition, he shall notify the complainant, the petitioner and the respondent by certified mail, return receipt requested, and shall publish notice of such denial in the **Federal Register**, together with his reasons for the denial.

§ 28.31 Payment of assessed penalty.

Except as may be otherwise provided by applicable law and the provisions of any consent order, the respondent shall pay within thirty days of the effective date of the order any civil penalty assessed pursuant to this part by forwarding to the address provided by the complainant a cashier's or certified check, payable to:

(a) [Safe Drinking Water Act, EPCRA and section 309(g) of the Clean Water Act only] "Treasurer, The United States of America."

(b) [Section 311(b)(6) of the Clean Water Act only] "Oil Spill Liability Trust Fund."

(c) [CERCLA only] "EPA Hazardous Substance Superfund."

The respondent shall note on each check in payment the case title and docket number of the administrative action. The respondent shall simultaneously send notice of payment to the Hearing Clerk. The Presiding Officer may waive the requirement of payment by cashier's or certified check for good cause shown. In no case shall the Presiding Officer waive the requirement of payment by certified or cashier's check if such a waiver may endanger the Agency's receipt of funds.

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federal register

Monday
July 1, 1991

Part III

Securities and Exchange Commission

17 CFR Parts 200, et al.

Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 210, 229, 230, 239, 240, 249, 260 and 269

[Release Nos. 33-6902; 34-29354; 39-2267; IC-18210; International Series Release No. 291]

RIN 3235-AC64

Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final Rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is announcing the adoption of rules, forms and schedules intended to facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers. To remove unnecessary impediments to transnational capital formation, this multijurisdictional disclosure system permits Canadian issuers meeting eligibility criteria to satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of Canadian securities regulatory authorities. The multijurisdictional disclosure system also allows certain cash tender and exchange offers for securities of Canadian issuers to proceed in accordance with Canadian and provincial or territorial tender offer requirements instead of in accordance with Commission tender offer requirements.

In connection with the multijurisdictional disclosure system, the Commission also is announcing the adoption of revisions to existing rules and forms to permit registration and reporting under the Securities Act of 1933 and the Securities Exchange Act of 1934 by Canadian foreign private issuers on the same basis as other foreign private issuers.

Concurrently with the publication of this Release, the Canadian Securities Administrators are publishing a National Policy Statement that adopts a largely parallel multijurisdictional disclosure system in Canada. That system permits U.S. issuers to satisfy certain securities registration and reporting requirements in Canada using disclosure documents prepared in accordance with Commission requirements. That National Policy Statement is published as an appendix to this Release.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Office of International Corporate Finance, Division of Corporation Finance at (202) 272-3246; John C. Maguire, Office of Tender Offers, Division of Corporation Finance at (202) 272-3097; Felicia Smith, Office of Chief Counsel, Division of Corporation Finance at (202) 272-2573; Robert Bayless, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Nancy Sanow or George Scargle, Office of Legal Policy and Trading Practices, Division of Market Regulation at (202) 272-2848; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting new Forms F-7, F-8, F-9, F-10 and F-80 under the Securities Act of 1933 (the "Securities Act"); new Form 40-F and new Schedules 14D-1F, 14D-9F and 13E-4F under the Securities Exchange Act of 1934 (the "Exchange Act"); and new Form F-X under the Securities Act, the Exchange Act and the Trust Indenture Act of 1939 (the "Trust Indenture Act"). The Commission further is adopting: New rule 467, revisions to rules 158, 175, 424, 473 and 502 and revisions to Forms S-2, S-3, S-4, S-8, S-11, F-1, F-2, F-3 and F-4 under the Securities Act; new rules 12h-4, 13a-3, 13e-4(g), 14d-1(b), 14e-2(c), 15d-4, and 15d-5(c), revisions to rules 3a12-3(b), 3b-6, 12g-3, 12g3-2, 13a-10, 13a-16, 15d-5(b), 15d-10 and 15d-16, and revisions to Forms 20-F, 6-K and 10-K under the Exchange Act; new rules 4d-9 and 10a-5 and revisions to rules 0-11 and 10a-4 and revisions to Forms T-1 and T-6 under the Trust Indenture Act; revisions to rules 3-01, 3-02, 3-12, and 3-19 of Regulation S-X; revisions to Items 302, 402, 404 and 601 of Regulation S-K; revisions to rules 30-1(f) and 30-3 of the Commission's Rules Delegating Authority to Division Directors; and revisions to rule 24 of the Commission's Rules of Practice.

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I. Executive Summary

The multijurisdictional disclosure system with Canada ("MJDS") being adopted by the Commission is intended to facilitate the free flow of capital. As a result of the MJDS, a securities offering made in two countries will be regulated in only one. Cross-border offerings in the United States and Canada thus can be made more efficiently and at less expense. Offerings of investment grade securities and offerings of equity securities by certain large issuers, rights offerings, exchange offers and business combinations, all may be conducted under the MJDS. Canadian issuers that meet specified eligibility tests may register securities with the Commission through disclosure documents they have prepared for Canadian regulatory authorities. In addition, specified Canadian issuers may use Canadian disclosure documents to satisfy the Commission's periodic disclosure requirements and tender offer regulations. Pursuant to new rules being adopted under the Trust Indenture Act of 1939 (the "Trust Indenture Act"),[1] Canadian institutional trustees may act as sole trustees in MJDS debt offerings, and exemptions from certain Trust Indenture Act provisions are established for indentures governing MJDS debt securities.

The MJDS is not available for securities issued by investment companies that are registered or required to be registered under the Investment Company Act of 1940 (the "Investment Company Act"),[2] but it is available to investment companies exempt from registration under the Investment Company Act.

In conjunction with the MJDS, the Commission is adopting revisions to rules and forms that affect all Canadian issuers. All Canadian foreign private issuers are now eligible to use the forms designed for registration and reporting by foreign companies under the Securities Act of 1933 (the "Securities Act") [3] and the Securities Exchange Act of 1934 (the "Exchange Act").[4] Moreover, all Canadian foreign private issuers are now exempt from the Commission's proxy requirements and from application of the share ownership reporting requirements and short-swing profit recapture provisions of the Exchange Act.

Concurrently with this release, the Canadian Securities Administrators ("CSA") are publishing a National Policy Statement that adopts a multijurisdictional disclosure system for U.S. issuers in Canada.[5] In addition, as a result of coordination by the Commission and Canadian regulators with the North American Securities Administrators Association ("NASAA"), securities regulators at the state level are in the process of adopting rules to accommodate MJDS offerings.[6]

While Canada is the partner of the United States in this inaugural multijurisdictional disclosure initiative, the MJDS is designed with the intention of mitigating on a broader scale the difficulties posed by multinational offerings. Thus, the Commission is continuing its work with securities regulators of other countries with a view toward extending the multijurisdictional disclosure system. In addition, the Commission has proposed rules that would facilitate rights offers and exchange and tender offers relating to foreign securities held in limited amounts in the United States on a similar basis as the MJDS.[7]

[1] 15 U.S.C. 77aaa–77bbbb.

[2] 15 U.S.C. 80a–1 *et seq.*

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] *See infra* section III.J.

[6] *See infra* section VI.

II. Background

In recent years, there has been substantial growth in both U.S. investors' purchases of foreign securities and offerings by U.S. issuers outside the United States.[8] Part of the growth in such transactions has consisted of an increase in the number of offerings made simultaneously in two or more countries, one of which may be the country of the issuer. Such offerings typically are made when the issuer desires to expand the geographic base of its security holders, when the issuer wishes to increase the market for its securities internationally, or when strategic reasons exist (for example, to protect against takeover attempts). In other cases, such offerings are made because the relative cost of financing so dictates, the size of the offering is such that it cannot be absorbed by the issuer's domestic market, or the issuer needs to reach a particular group of securityholders or a broader investor base.

With the increase in U.S. ownership of foreign securities, the unwillingness of foreign issuers to extend rights offers, business combinations, exchange offers or cash tender offers to U.S. shareholders has become increasingly significant. Rather than comply with the requirements of regulators in more than one country, foreign issuers choose at times to exclude jurisdictions such as the United States from their offerings. As a result, U.S. holders are denied the opportunity to realize significant value on their foreign investments.[9]

[7] See Securities Act Release No. 6896 (June 5, 1991) (rights offerings) and Securities Act Release No. 6897 (June 5, 1991) (exchange and tender offers).

[8] In 1990, U.S. investors purchased $130.9 billion and $335.9 billion of foreign equity securities and debt securities, respectively, compared to $24.8 billion and $85.2 billion in 1985. Source: U.S. Treasury Bulletin (various issues). Debt offerings outside the United States by U.S. issuers totalled $20.3 billion in 1990, $19.8 billion in 1989 and $19.8 billion in 1988. Source: IDD Information Services. The value of international offerings of common and preferred stocks in 1989 was $15.7 billion, down from the record total in 1987 of $20.3 billion, but representing an increase over the total in 1983 of $200 million. Source: Euromoney Bondware.

[9] For example, to avoid filing a registration statement in the United States, foreign exchange offerors exclude U.S. shareholders or restrict them to receiving cash. Investors therefore are relegated either to selling into the market at less than the full tender offer consideration, and incurring transactional costs not imposed in the tender offer, or remaining minority shareholders subject to the risk of being "cashed out" in a subsequent merger or arrangement subject to foreign corporate law. In the case of rights offers, U.S. investors may be given cash that amounts to less than the market value of the right or may be excluded entirely.

In light of the growth of multinational offerings and the concerns of U.S. investors wishing to participate in them, the Commission has been making significant efforts to remove impediments to transnational capital formation without unduly disadvantaging U.S. issuers in the U.S. markets or failing to afford the protections intended by the Securities Act and the Exchange Act to those buying securities in the U.S. capital markets. The Commission has accommodated various foreign disclosure policies and business practices, and has special forms available for use by foreign issuers. Nevertheless, when a multinational offering includes a public U.S. tranche, the disclosure requirements established by the Commission may dictate the addition of information to selling documents prepared in accordance with another jurisdiction's rules.[10] In addition, attempting to comply with the requirements of multiple jurisdictions can be expensive not only because of the cost of retaining local accountants and lawyers, but also because of the additional time needed, since conditions advantageous to the issuer may prevail in the capital markets only for a limited period. Also, because registration under the Securities Act brings with it periodic reporting requirements under the Exchange Act, a foreign issuer deciding whether to register securities must consider the burden of ongoing reporting.

On July 24, 1989, the Commission proposed for comment rules, forms, and schedules to provide the foundation for a multijurisdictional disclosure system to facilitate cross-border securities offerings by certain Canadian issuers.[11] Such offerings included rights offerings and exchange offers, as well as offerings of investment grade securities and equity securities by larger issuers. The Ontario Securities Commission ("OSC") and the Commission des valeurs mobilieres du Quebec ("CVMQ") concurrently issued for comment proposals concerning the establishment of a multijurisdictional disclosure

[10] Although separate prospectuses often are used for the United States and for other parts of the world where the offering is conducted, such prospectuses usually are distinguishable only in the descriptions of the offering procedures, the underwriting syndicates and the offering amounts, rather than in substantive content. Although less disclosure may be required in other countries, issuers tend to provide the same disclosure in each market due to liability concerns.

[11] Securities Act Release No. 6841 (July 24, 1989) [54 FR 32226] (the "Original Proposal").

system in Canada for certain U.S. issuers.[12]

After reviewing the comments received on the Original Proposal,[13] which were generally supportive but suggested refinements, the Commission proposed for comment on October 22, 1990 a revised multijurisdictional disclosure system.[14] While many aspects of the system remained the same, the Reproposal reflected refinements to each of the originally proposed forms and broadened the Original Proposal by, *inter alia*, expanding the class of issuers eligible to make rights offerings under the system and expanding the system to cover business combinations. In connection with the Reproposal, the Commission also proposed for the first time in conjunction with the MJDS revised rules and forms to place Canadian foreign private issuers on an equal footing with all other foreign private issuers with respect to registration and reporting. Shortly after publication of the Reproposal, the Canadian Securities Administrators published for comment a revised, largely parallel, multijurisdictional disclosure system in Canada for certain U.S. issuers.[15]

The Commission is adopting the MJDS with limited changes from the Reproposal. Canada is the logical first partner for the United States in such an initiative because of the significant presence of Canadian companies in the U.S. trading markets. More than 100 Canadian issuers are listed on the New York Stock Exchange or the American Stock Exchange or are quoted on the National Association of Securities Dealers' Automated Quotation ("NASDAQ") National Market System. Of the 463 foreign issuers filing periodic reports with the Commission under the Exchange Act, more than 240 are Canadian.[16] Canadian companies also are relatively frequent issuers in the U.S. capital markets. In 1989 and 1990 alone, Canadian private issuers made a total of 54 public offerings in the United States, offering approximately $11.9 billion of securities.[17] The Commission's development of the MJDS with Canada is a first step in meeting the needs of issuers making transnational securities offerings.

III. The Multijurisdictional Disclosure System

A. Overview of the MJDS

To register securities for an offering under the MJDS, a Canadian issuer essentially will take the offering document it prepared under Canadian law and file it with the Commission along with a cover page, certain legends and various exhibits. The Commission finds that permitting certain Canadian issuers to register securities under the MJDS using their home jurisdiction disclosure documents instead of using disclosure documents prepared in accordance with the Securities Act specifications is in the public interest and fully adequate for the protection of U.S. investors.

The MJDS encompasses registration of equity securities and investment grade debt or preferred securities of large Canadian issuers. Registration under the MJDS also is available for specified exchange offers, business combinations and rights offers of a broader class of smaller Canadian issuers. The broader availability of the MJDS for those types of offerings reflects the interests of U. S. investors in not being excluded from transactions that will affect the value of their existing holdings. Where U. S. holders have less than 40 percent of the target shares in the case of an exchange offer and less than 40 percent of the shares of the successor registrant at the close of a business combination, the MJDS may be used to register the securities being offered.

For any type of MJDS offering, the Canadian issuer must have at least a three-year history of reporting with a Canadian securities regulatory authority. Except in the case of rights offerings and offerings of certain non-convertible investment grade securities, an issuer also must satisfy specified size tests of minimum market value and/or public float.

Issuers eligible to rely upon the MJDS include only Canadian "foreign private issuers" [18] and, for specified offerings, Canadian crown corporations. Foreign issuers that do not meet the definition of "foreign private issuer" are in essence U.S. issuers and therefore must use the same forms as U.S. issuers for purposes of registration and reporting under the Securities Act and Exchange Act.[19] Canadian crown corporations are those corporations all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

Two new rules under the Trust Indenture Act are also being adopted for use in connection with MJDS offerings. New Rule 10a–5 permits Canadian institutional trustees subject to supervision or examination by Canadian federal authorities to act as sole indenture trustees in debt offerings under the MJDS. That Rule gives effect to a provision of the Trust Indenture Reform Act of 1990 [20] conditionally permitting the Commission to authorize sole trusteeships by foreign persons. New rule 4d–9 provides an exemption from specified provisions of the Trust Indenture Act for indentures governing debt securities sold under the MJDS where the indentures are subject to similar substantive provisions through the regulatory schemes for trust indentures under the federal law of Canada or the law of Ontario.

The issuer's home jurisdiction periodic reports are used under the MJDS to satisfy reporting requirements under the Exchange Act that arise solely by reason of registering securities offerings on the MJDS forms, or when the issuer of the securities meets certain tests of market value, public float and reporting history. Other than

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[12] See "Multijurisdictional Disclosure System—Request for Comments" at 12 O.S.C.B. 2919 (July 28, 1989) and 20 Q.S.C. Bulletin No. 29 (July 21, 1989).

[13] Thirty-five comment letters on the original proposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–19–89 at the Commission's Public Reference Room in Washington, DC.

[14] Securities Act Release No. 6879 (Oct. 22, 1990) (55 FR 46288) (the "Reproposal"). The Original Proposal and the Reproposal of the MJDS are referred to collectively herein as the "Proposals." Thirty-four comment letters on the Reproposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–19–89 at the Commission's Public Reference Room in Washington, DC.

[15] "Multijurisdictional Disclosure System—Request for Comments" at 13 O.S.C.B. 4573 (Nov. 2, 1990).

[16] The next most numerous groups of reporting issuers are from the United Kingdom (49) and Israel (30)

[17] These figures do not include offerings by Canadian governmental issuers. The figures include securities registered for "flowback," (*i.e.*, not targeted to the United States, but where a substantial U.S. market interest in the issuer's securities indicates that securities are likely to be sold in the United States shortly after issue).

[18] "Foreign private issuer" is defined in rule 3b–4 under the Exchange Act (17 CFR 240. 3b–4) and rule 405 under the Securities Act (17 CFR 230. 405) to include all foreign issuers other than (i) foreign governments, and (ii) foreign issuers that have more than 50 percent of their outstanding voting securities held of record by U. S. residents and that also have: U. S. citizens or residents making up a majority of their executive officers and directors; more than 50 percent of their assets located in the United States; or their business administered principally in the United States.

[19] Contrary to commenters' concerns, the business of a Canadian issuer that is a subsidiary of a U. S. company will not be deemed automatically to be "principally administered in the United States" (as defined in the foreign private issuer definition) by virtue of such parent-subsidiary relationship. The determination of the location of administration of a business will be made in light of all the facts and circumstances in a particular case.

[20] Title IV, Public Law No. 101–550, 1990 U.S. CODE CONG. AND ADMIN. NEWS (104 Stat.) 2713, 2721–32.

requirements relating to English translations, a consent to service of process and, in limited cases, a reconciliation of financial statements, the MJDS disclosure is based on incorporation of the registrant's home jurisdiction documents in their entirety. In addition, a newly adopted exemption eliminates the Commission's reporting obligation that otherwise would arise by reason of Securities Act registration under the MJDS in connection with most rights offers, exchange offers and business combinations.

Financial statements included in MJDS disclosure documents may be audited in accordance with generally accepted auditing standards in Canada.[21] Except in rights offerings,[22] compliance with U.S. auditor independence requirements must commence with the audit report on the financial statements for the most recent fiscal year included in the first MJDS filing and continue for each report thereafter. For prior periods, compliance with Canadian independence standards is sufficient.

Under revisions being adopted to an exemptive provision under the Exchange Act, securities of Canadian foreign private issuers are exempt from the share ownership reporting requirements and short-swing profit recapture provisions of section 16 of the Exchange Act.[23] In addition, securities of Canadian foreign private issuers previously subject to U.S. proxy regulations are now exempt from the requirements of Exchange Act sections 14(a), 14(b), 14(c) and 14(f) under such revised exemption.

The MJDS also extends to Williams Act regulations applicable to third-party and issuer exchange and cash tender offers made for the securities of Canadian issuers in compliance with Canadian tender offer regulations, if less than 40 percent of the target shares are held by U.S. holders. In addition, general exemptions under Exchange Act rules 10b–6 [24] and 10b–13 [25] are provided under the MJDS to permit specified purchases of securities during qualifying tender and exchange offers.[26]

Review of a disclosure document submitted under the MJDS will be that customary in Canada.[27] Thus, except in the unusual case where the Commission staff has reason to believe there is a problem with the filing or the offering, the MJDS registration statements generally will be given a "no review" status by the Commission. Further, the MJDS forms for registration under the Securities Act will be made effective automatically upon filing with the Commission except where no contemporaneous offering is being made in Canada and where preliminary materials are being filed. In the case of offerings not made contemporaneously in Canada, such registration statements will be made effective after the Canadian securities regulator has completed its review.

Issuers using the MJDS continue to be subject to provisions imposing civil or criminal liability for fraud in each jurisdiction where the securities are offered. Issuers are subject to the authority of each such jurisdiction to halt the offering in the public interest and for the protection of investors.

B. Securities Act Registration

1. Offerings by Substantial Issuers

The purpose of the "substantial" designation is to single out issuers whose size is such that there is a large market following for them and the marketplace can be expected to have set a price for their securities based on all publicly available information.[28] The Commission has distinguished for this purpose between investment grade securities and other securities and has provided separate registration forms for each. "Substantial" issuers in the context of convertible investment grade securities [29] are issuers that have a total market value for their equity shares [30] of at least (CN) $180 million and for their public float [31] of at least (CN) $75 million.[32] (For non-convertible investment grade securities, issuers need not meet the "substantial" test.[33]) "Substantial" in the context of registration of all other securities includes those issuers with a market value for their equity shares of at least (CN) $360 million and a public float of (CN) $75 million. The market value of equity shares and public float tests may be measured as of any date within 60 days prior to the date of filing.[34]

a. Offerings of Any Securities by Substantial Issuers (Form F-10). Securities offered for cash or in connection with exchange offers or business combinations may be registered on Form F–10 by substantial Canadian issuers.[35] To be eligible to use Form F–10, the issuer must have been reporting with Canadian securities regulators for the 36 months immediately prior to filing and be in compliance with such regulators' requirements at the time of filing.[36] As

[21] See, *e.g.*, Canadian Institute of Chartered Accountants Auditing Guideline, "Canada-United States reporting conflict with respect to contingencies and going concern considerations" (December 1988).

[22] U. S. auditor independence requirements have been deleted from Form F–7, however, since the Reproposal.

[23] 15 U.S.C. 78p.

[24] 17 CFR 240.10b–6.

[25] 17 CFR 240.10b–13.

[26] See infra Section III.E. In addition to these anti-manipulation rules under the Exchange Act, rules 10b–7 (17 CFR 240.10b–7) and 10b–8 (17 CFR 240.10b–8) thereunder may apply to offers or sales of securities pursuant to transactions covered by the MJDS.

[27] To facilitate such review, home country disclosure documents to be filed with the Commission under the MJDS for a U.S.-only offering nevertheless must be filed with the Canadian securities regulatory authorities.

[28] Compare Securities Act Release No. 6331 (August 6, 1981) (adopting Form S–3) ("Because these registrants are widely followed, the disclosure set forth in the prospectus may appropriately be limited, without the loss of investor protection, to information concerning the offering and material facts which have not been disclosed previously.").

[29] Such securities may be convertible only after one year from the date of issuance.

[30] The term "equity shares" is defined to include common shares, non-voting equity shares, and subordinate or restricted voting equity shares, but does not include preferred shares.

[31] The market value of the "public float" is the market value of all outstanding equity shares owned by non-affiliates. Under the MJDS, Canadian issuers include non-voting common stock in the calculation of public float. As defined under the MJDS, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. Adoption of this definition of "affiliate" for this purpose is neither intended to alter the definition of affiliate otherwise applied under the Securities Act nor to bear upon the interpretation or application of such definition.

[32] These requirements are expressed in terms of Canadian currency, rather than U.S. currency, so that fluctuations in exchange rates do not affect an issuer's eligibility to use the Form.

[33] Similarly, Form 40–F allows satisfaction of reporting obligations in connection with non-convertible Form F–9 eligible securities without reference to a public float or market value test. See General Instruction A. (2) to Form 40–F.

[34] The measurement of market value for purposes of other MJDS forms is accomplished in the same fashion. See, e. g., Forms F–8, F–80 and 40–F.

[35] Unlike the Reproposal, Forms F–10, F–8 and F–80 clarify that the MJDS may not be used for registration of derivative securities except certain warrants, options, rights and convertible securities. Warrants, options and rights may be registered on those Forms only if such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either. Similarly, convertible securities may be registered on those Forms only if convertible into securities of the registrant, its parent or an affiliate of either. Securities such as stock index warrants, currency warrants and debt paying interest calculated on the performance of a stock index therefore are not eligible for registration under the MJDS.

[36] All of the MJDS Securities Act registration forms permit registration by an issuer who is the product of a recent statutory business combination. Such issuers otherwise would be ineligible to register under the MJDS due to the issuer 36-month reporting history requirement. To determine eligibility for such issuers, the reporting history of

Continued

with all other MJDS forms, the issuer of the securities must be a foreign private issuer [37] and must be incorporated or organized under the laws of Canada or any Canadian province or territory.[38]

Form F–10 is available for the registration of debt securities or preferred stock of a Canadian-organized, majority-owned subsidiary. Where a Canadian parent satisfies the three-year reporting history, the (CN) $360 million market value and the (CN) $75 million public float tests, and fully and unconditionally guarantees the securities, the subsidiary as well as the guarantor qualifies to use Form F–10.[39]

the registrant is combined with each of its predecessor companies in turn. If in each case the aggregate reporting history exceeds 36 months, the issuer may use the form. For example, if A had been reporting for 4 years in Canada, and B had been reporting for 2 years in Canada, and A and B in a business combination formed C, which has been reporting for 1 year in Canada, C would be deemed to meet the 36-month reporting history requirement. The one year of reporting by C when added to the reporting history of A and when added to the reporting history of B in each case is 36 months or more. If, however, either A or B had been reporting for under 2 years, C would not be deemed to satisfy the 36-month reporting history test. The reporting history test disregards, however, the reporting history of any predecessor if the reporting histories of other predecessors whose assets and gross revenues would contribute at least 80 percent of the assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years prior to the business combination, each meet the reporting history requirement in combination with the successor. In the case of Forms F–7, F–8 and F–80, the one-year listing history may be satisfied by combining the listing history of the successor with that of its predecessors in a similar manner.

[37] Since no crown corporation would have been able to use the MJDS forms requiring all registrants to have a minimum public float (because all crown corporations have their equity shares wholly owned by the Canadian government, a province or territory), and since crown corporations are not known to make rights offers, Forms F–10, F–8, F–80 and F–7 as adopted do not apply to crown corporations.

[38] As in all other MJDS Securities Act forms, the measurement of eligibility is made at filing. An issuer that becomes ineligible for use of an MJDS form after the effective date of such form will not be precluded from its usage for such offering.

[39] The guarantee must be as to principal and interest (if debt) or liquidation preference, redemption price and dividends (if preferred securities). Similar treatment for registration of guaranteed securities is provided in existing Securities Act forms. See General Instruction I. A. 6. of Form F–3, General Instruction I. C. of Form S–3, and General Instructions I. G. of Forms S–2 and F–2. Registration of the guarantee as well as the subsidiary's securities may be made on Form F–10. If the subsidiary's securities are convertible, the parent's securities into which they may be converted also would be registered on Form F–10.

Such debt securities or preferred stock may be convertible or exchangeable, but only for the securities of the parent company.

If the filing is made prior to July 1, 1993, reconciliation to U. S. GAAP as specified in Item 18 of Commission Form 20–F is required for any financial statements included in Form F–10 pursuant to home jurisdiction requirements.[40] Item 18 requires the full disclosure of information required by Regulation S–X and U. S. GAAP, including segment information and supplemental oil and gas data. Filings on Form F–10 made on or after July 1, 1993 will not be subject to any requirement to reconcile the financial statements to U. S. GAAP, absent future action by the Commission to the contrary.

b. Offerings of Investment Grade Debt and Preferred Stock by Substantial Issuers (Form F–9). Registration on Form F–9 is permitted for offerings of investment grade debt securities or investment grade preferred stock, if such securities are either non-convertible or are convertible only after one year from the date of issuance. Form F–9 securities may only be convertible into another class of securities of the issuer or, in the case of guaranteed securities discussed below, the parent. The issuer must be either a foreign private issuer or a crown corporation, and must be of "substantial" size if the securities are convertible. A foreign private issuer (or, in the case of guaranteed securities, its parent) must have a 36-month reporting history with a Canadian securities regulatory authority and be in compliance with such reporting requirements at the time of filing Form F–9. A crown corporation need only have a 12-month Canadian reporting history to be eligible.[41]

The "investment grade" determination has to be made by a nationally recognized statistical rating organization ("NRSRO").[42] Under the Reproposal, securities would have been deemed "investment grade" if, at the time of effectiveness of the registration statement, at least one NRSRO had rated the security in one of its three

[40] Commission rules do not govern which financial statements must be included in the MJDS Forms. Only those financial statements required in the home country disclosure document will be included, but those included in Form F–10 must be reconciled.

[41] Since only a small percentage of crown corporations are reporting in Canada, the Form as adopted reduces the reporting history requirement from 36 months to 12 months in order to facilitate use by those crown corporations that begin reporting in the future.

[42] NRSRO is used herein as that term is used in rule 15c3–1(c) (2) (vi) (F) under the Exchange Act, 17 CFR 240. 15c3–1(c) (2) (vi) (F).

highest rating categories that signifies investment grade. The Commission indicated in the Reproposal, however, that to the extent the fourth highest rating category is recognized in the future by Canadian regulatory authorities as signifying investment grade under the MJDS, the Commission would give parallel recognition. In light of such subsequent recognition,[43] Form F–9 as adopted refers to registration of securities with the fourth highest rating.

In a parallel fashion to Form F–10, Form F–9 is available for certain issuers of guaranteed securities. A majority-owned Canadian subsidiary issuing investment grade debt or preferred stock does not have to satisfy the 36-month reporting requirement or the market value or public float tests if the securities are fully and unconditionally guaranteed by a parent that is eligible to use Form F–9. Such securities may be convertible or exchangeable, but only after a year from the date of issuance and only for securities of the parent company.[44]

2. Exchange Offers and Business Combinations (Forms F–8 and F–80)

a. Exchange Offer Registration. Form F–8 is available for Securities Act registration in connection with exchange offers [45] for a Canadian issuer's securities in which the securities being registered are all or a portion of the consideration offered.[46] Except for issuer exchange offers, which may be registered without regard to the issuer's public float, Form F–8 registrants must have a public float for their equity shares with a market value that equals or exceeds (CN) $75 million.[47]

Registrants under Form F–8 also must have their securities listed on The Toronto Stock Exchange, The Montreal

[43] See National Policy Statement No. 45.

[44] Registration of the parent's securities for which the subsidiary's securities are convertible or exchangeable may not, however, be made on Form F–9 unless such securities are Form F–9-eligible securities.

[45] "Exchange offers," as the term is used in the MJDS, do not include exchange offers undertaken to accomplish a business combination.

[46] In the case of exchange offers, a decision to extend offers to U.S. investors depends not only on the application of U.S. disclosure requirements, but also on U.S. tender offer regulation. See *infra* section III.D. regarding Williams Act regulation under the MJDS.

[47] Exchange offer securities also may be registered on Form F–9 or F–10 if the offeror is eligible to use such forms, without regard to the percentage of securities held by U.S. holders. Williams Act tender offer requirements in connection with an exchange offer registered on Form F–9 or F–10, however, may not be satisfied by use of MJDS Schedule 14D–1F or 13E–4F if the 40 percent U.S. ownership threshold of such Schedule is met or exceeded.

Exchange or the Senior Board of The Vancouver Stock Exchange for the most recent 12 months prior to filing, and have been reporting with a Canadian securities regulator for the most recent 36 months. The issuer also must be in compliance with such listing and reporting requirements at the time of filing. The combined reporting and listing requirement has replaced the 36-month listing history requirement under the Reproposal in order to provide greater flexibility in use of Form F–8 and in response to comments by Canadian regulators.

The target of the bid, like the registrant, must be a foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory. To prevent discrimination among holders of the class of securities that is the subject of the offer, the bidder is required to offer its securities to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of subject securities.

Under the Reproposal, use of Form F–8 would have been limited to situations in which less than 20 percent of the securities of the target class was held of record by U.S. residents (other than U.S. affiliates) as of the end of such issuer's last quarter. Comment was solicited by the Commission, however, with regard to whether the 20 percent ceiling for U.S. ownership should be increased, and a level of 40 percent was suggested. Commenters largely favored a 40 percent test. As adopted, the MJDS imposes a 40 percent ceiling on ownership of the class of subject securities by U.S. holders.[48] The state securities regulators have expressed a willingness to recognize an increase from 20 percent to 25 percent for purposes of the Uniform Securities Act. Form F–8 has therefore been revised to reflect a 25 percent ceiling on U.S. ownership. The Commission has provided an alternative MJDS registration form (Form F–80) for exchange offers equalling or exceeding the 25 percent ceiling, so that states choosing to review such transactions may do so without reviewing every Form F–8. Form F–80 is identical to Form F–8 except for the use of a 40 percent U.S. ownership ceiling instead of a 25 percent ceiling.[49]

In calculating the U.S. ownership threshold, U.S. affiliates are not excluded as they were under the Reproposal. In measuring the percentage of the class of securities held in the United States, securities convertible into or exchangeable for securities of such class are not included.

Also under the Reproposal, a safe harbor would have afforded third-party bidders commencing an unsolicited exchange offer the benefit of a conclusive presumption, under certain circumstances, that U.S. ownership of the subject class of securities did not equal or exceed the proscribed level.[50] The Commission is retaining that safe harbor substantially as proposed, but extending it to all third-party offers, whether solicited or unsolicited. In addition, because of similar difficulties third parties would encounter, the safe harbor is being extended to the determination of whether the target company is a foreign private issuer. Thus, third-party bidders commencing an exchange offer have the benefit of a conclusive presumption that the target is a foreign private issuer and that U.S. holders hold less than 25 percent (Form F–8) or 40 percent (Form F–80) of the securities, unless: (1) The aggregate trading volume of that class on national securities exchanges in the United States and NASDAQ exceeded the aggregate trading volume of that class on securities exchanges in Canada or the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of the offer (or, if commenced in response to a prior bid, the 12 calendar month period prior to the commencement of the initial offer); [51] (2) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators in Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the securities is not a reporting issuer in any of the above provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold the threshold percentage or more of the subject class of securities; or (3) the offeror has actual knowledge that the level of U.S. ownership as of the operative date equals or exceeds the threshold percentage.

The calculation of the trading volume for purposes of the presumption is based on volume figures published by the exchange(s) on which the security is listed and the published NASDAQ and CDN volume figures. Also, unlike the Reproposal, a third-party bidder availing itself of the safe harbor is not obligated to undertake the burden of searching the public filings of securities authorities in each of the U. S. states, and the Canadian provinces and territories. In addition, a third-party bidder is not required to certify that it has made a reasonable investigation and as a result it believes that less than the threshold amount of the target's securities is held by U. S. holders.

A Canadian offeror making an exchange offer pursuant to the MJDS will file the home country disclosure documents under cover of Form F–8 or F–80 with the Commission. The offer and takeover or issuer bid circular will be distributed by mail in accordance with Canadian law [52] to shareholders in both countries. In the United States an exchange offer cannot commence until a registration statement has become effective.[53] An exchange offer commences under Canadian law, however, immediately upon the mailing to target shareholders of the takeover or issuer bid circular containing the required prospectus disclosure.[54] The Commission has provided, therefore, for immediate effectiveness of filings on Forms F–8 and F–80.

b. Business Combination Registration. Form F–8 and Form F–80 also allow registration in connection with business combinations. When securities are part of the consideration in a business combination, generally an exemption is granted from the prospectus requirements under Canadian law in light of the disclosure provided in the information circular required by Canadian proxy solicitation rules.[55] While, at the time of the Reproposal, Canadian securities regulators had not set forth specific disclosure

[48] "U.S. holders" include any person with a U.S. address on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities. Other than identifying the records to be checked, the definition of U.S. holder is synonymous with the definition of "U.S. resident" in the Reproposal. The "held of record" aspect of the percentage test has been deleted since the Reproposal in favor of identifying the records to be checked for U.S. addresses.

[49] Form F–80 is similarly available for business combinations under the 40 percent U.S. ownership ceiling. See infra section III.B.2.b.

[50] See Reproposal, supra n. 14 at 46295.

[51] The Commission has proposed revisions to Regulation S–K. (17 CFR 229. 10 *et seq.*), Form 20–F (17 CFR 249. 220f) and Rule 12g3–2(b) (17 CFR 240. 12g3–2(b)) to require foreign private issuers using such forms or rule to disclose on at least an annual basis the extent to which their equity securities are held by U.S. holders. Securities Act Release No. 6898 (June 6, 1991). It is anticipated that if these revisions are adopted, the safe harbor will be revised to eliminate the need for third-party bidders commencing an offer to determine the target company's trading volume in the United States and Canada.

[52] See CBCA 198; OSA 97, 99; QSA 128 and Schedule XI.

[53] See section 8 of the Securities Act; rule 467(a) (17 CFR 230. 467(a)).

[54] See OSA 88, 94; QSA 113, 128.

[55] See OSA 71(1) (i) and 85.

requirements for such circular,[56] Canadian securities regulators subsequently have taken action to require prospectus-level disclosure in information circulars used for such business combinations.[57] Thus, the Commission is allowing use of Form F-8 or Form F-80 (or Form F-10 where the requirements are satisfied) to satisfy Securities Act registration requirements in such cases.[58] All information circulars and other disclosure documents used by companies participating in business combinations to solicit securityholders' votes in connection therewith must be filed under cover of Form F-8 or F-80 and delivered to securityholders in the United States.

To be eligible for use of Form F-8 or F-80 in connection with business combinations, each company participating in the business combination must be incorporated or organized in a Canadian jurisdiction and be a foreign private issuer. Each company participating in the business combination, other than the successor registrant, is required to have had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of The Vancouver Stock Exchange for the 12 months immediately prior to filing the Form, and have been reporting with a Canadian securities regulatory authority for the 36 months immediately prior to filing of the Form. Such companies also must be in compliance with such listing and reporting requirements at the time of filing Form F-8 or F-80. Each participating company, other than the successor registrant, also is required to have a public float of at least (CN) $75 million.

In order not to preclude use of the MJDS when a smaller participant is participating in a business combination, Forms F-8 and F-80 do not impose a public float or reporting or listing requirement on any participating company if such requirements are met by other participating companies whose assets and gross revenues from continuing operations, respectively, would contribute at least 80 percent of the successor registrant's total assets and gross revenues from continuing operations, as measured based on pro forma combination of the participating companies' most recently completed fiscal years.

As in the case of exchange offers on Form F-8 or F-80, the securities to be registered in connection with a business combination must be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of securities of the participating company.

Form F-8 or F-80 also may be used for second-step business combinations occurring within twelve months after an exchange offer or cash tender offer. In that case, if the securities offered in the exchange offer or cash tender offer were registered or could have been registered on Form F-8, F-9, F-10 or F-80, or if Schedule 13E-4F or 14D-1F were filed or could have been filed in connection therewith, the issuer will be deemed to satisfy the public float test of Form F-8 or F-80 for the business combination if such test would have been satisfied by such company immediately prior to commencement of the exchange offer or cash tender offer.[59] Otherwise, the reduction in such participating company's public float resulting from the prior offer might prevent the satisfaction of the public float test for purposes of the second-step business combination.

Eligibility for Form F-8 or F-80 in terms of U.S. shareholdings is assessed on the basis of securities of the successor registrant that will be distributed to participants. Form F-8 is available where less than 25 percent of the class of securities of the successor registrant would be held by U. S. holders, as if measured upon completion of the business combination. Form F-80 is available where less than 40 percent of such class of securities would be held by U.S. holders upon completion of the business combination. As is the case with exchange offers, U. S. affiliates are not excluded from the calculation of U.S. shareholdings as they were under the Reproposal. The calculation of U.S. holders is made as of a participant's last fiscal quarter or, if such quarter ended within the last 60 days, as of the participant's preceding quarter.

Registrants participating in business combinations who are ineligible to use Form F-8 or F-80 because, for example, the threshold for securities held by U.S. holders is equalled or exceeded, may register on Form F-10 if participants accounting for at least 80 percent of total assets and gross revenues from continuing operations of the successor registrant meet the Form F-10 eligibility requirements. Form F-10 thus accommodates business combinations as well as exchange offers.[60]

3. Rights Offers (Form F-7)

Form F-7 may be used by Canadian issuers making rights offerings in the United States.[61] To be eligible to use Form F-7, the issuer has to have a class of securities listed on The Toronto Stock Exchange, The Montreal Exchange or the Senior Board of The Vancouver Stock Exchange for the 12 months immediately preceding use of the Form, and be reporting with a Canadian securities regulator for the 36 months immediately preceding use of the Form. The issuer also must be in compliance with requirements arising from such listing and reporting at the time of filing Form F-7. Unlike the Reproposal, requirements that the exercise period of the rights not exceed 90 days and the rights be exercisable immediately upon issuance are not included in Form F-7 as adopted. Also unlike the Reproposal, the 25 percent limitation on the increase in the number of the outstanding securities

[56] Ontario, for example, required the transaction to be described "in sufficient detail to permit security holders to form a reasoned judgment concerning the matter." Such rules referred to prospectus and takeover bid forms for guidance as to materiality. See OSC Form 30, Item 11. See also QSA 50.

[57] O.S.C. Policy No. 5. 1, as amended.

[58] Reliance on the MJDS to satisfy the Securities Act registration obligations in connection with business combinations does not eliminate an issuer's obligation to file a Schedule 13E-3, if such business combination involves a "going private" effect within the meaning of rule 13e-3, or its obligation to satisfy other Exchange Act requirements. See infra sections III.D.-III.E. Also, rule 10b-6 under the Exchange Act continues to apply to an offer and sale of securities pursuant to a business combination "that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods." Rule 10b-6(c)(5), 17 CFR 240.10b-6(c)(5). See Securities Exchange Release No. 19565 (March 4, 1983) [48 FR 10628]. See infra section III.E.

[59] The amount of time allowed between the exchange offer and the subsequent business combination has been increased from six months in the Reproposal to twelve months. Also, second-step business combinations following cash tender offers are now contemplated. In addition, the use of the MJDS for a second-step business combination is no longer predicated on use of the MJDS forms for the exchange offer or cash tender offer. If the securities offered in the exchange offer would have been eligible for registration under the MJDS, or if schedule 13E-4F or 14D-1F could have been used, the subsequent business combination may be conducted under the MJDS. Regardless of that change, compliance with the provisions of rule 13e-3 under the Exchange Act may be required in connection with the second-step business combination.

[60] A reconciliation of both historical and pro forma statements to U.S. GAAP, however, is required by Form F-10 if filed prior to July 1, 1993. Form F-10 similarly may be used in connection with second-step business combinations. See supra n. 59.

[61] The securities that may be registered on Form F-7 are those issued upon the exercise of rights. Securities that could have been purchased by existing securityholders by exercise of rights but were not and are then sold to other persons after the exercise period ends are not deemed to be registered under Form F-7. The rights themselves generally are not required to be registered based on a "no-sale" theory. *Cf.* Securities Act Release No. 929 (July 29, 1936) [11 FR 10957]. If the rights are required to be registered, the issuer is permitted to register them on Form F-7.

of the class to be issued upon exercise of the rights has been deleted from the Form F–7 eligibility requirements. Upon reconsideration, the limitation was judged unnecessary for, and in some cases inconsistent with, U.S. investors' interests.

To preclude its use by issuers ineligible to make an MJDS offering to new investors, Form F–7 provides that the rights issued may not be transferable except outside the United States in accordance with Regulation S under the Securities Act.[62] The securities purchased by existing securityholders upon exercise of rights, however, are transferable in the United States.

4. Disclosure Supplementing Home Jurisdiction Requirements

In light of the absence of requirements for such disclosure under Canadian law, information regarding indemnification provisions relating to directors, officers or controlling persons of the registrant is required to be disclosed in Forms F–8, F–80, F–9 and F–10.[63] A statement regarding the Commission's opinion that indemnification against Securities Act liabilities is against public policy and is therefore unenforceable also is required.

5. Application of Securities Act Rules

The Securities Act rules in Regulation C mandating standards for the preparation and form of prospectuses are inapplicable under the MJDS, unless otherwise specified in the MJDS forms.[64] Other Securities Act rules regarding the offer and sale of securities in the United States generally do apply unless the MJDS form specifies otherwise or the rule, by its terms, is inapplicable. For example, U.S. requirements for prospectus delivery [65] apply to MJDS offerings in the United States, as do safe harbor provisions relating to advertisements and other notices regarding MJDS offerings.[66] In addition, publication of recommendations, opinions or other information with respect to a MJDS registrant or its securities is permitted to the extent provided by Securities Act safe harbor rules.[67] Where appropriate, Securities Act rules have been amended to apply to MJDS forms.[68]

C. Exchange Act Registration and Reporting

Canadian issuers that make a registered offering of securities in the United States or have a certain number of shareholders of record resident in the United States and have a threshold amount of assets are subject to registration and reporting requirements under the Exchange Act.[69] Similarly, Canadian issuers listing securities on a national securities exchange or having them quoted on NASDAQ are subject to such Exchange Act requirements.[70] A chart of such reporting obligations and the forms available to Canadians to satisfy them is included as appendix C to this Release.

1. Section 15(d) Obligations

Absent an exemption, section 15(d) of the Exchange Act [71] requires each issuer that has filed a Securities Act registration statement that has become effective to file periodic reports thereafter.[72] While under the Reproposal registration on any of the MJDS Securities Act forms would have resulted in subsequent Exchange Act reporting, the MJDS as adopted provides that securities registered on MJDS Form F–7, F–8 or F–80 are exempt from the section 15(d) requirement to file subsequent reports with the Commission, provided the issuer is furnishing its home country disclosure documents under the rule 12g3–2(b) exemption from the Commission's reporting obligations under section 12(g).[73]

Any section 15(d) reporting obligation resulting solely from registration on MJDS Form F–9 or F–10 (or Forms F–8, F–80 or F–7 where the issuer does not satisfy the Rule 12g3–2(b) condition) may be satisfied by the Canadian issuer filing its home jurisdiction periodic disclosure documents under cover of Commission Forms 40–F and 6–K.[74] Those documents will include Annual Information Forms, audited annual and unaudited interim financial statements and material change reports. Issuers reporting as a result of using Form F–10 (unless they could have registered the securities on Form F–9) also must include a reconciliation of their annual financial statements to U.S. GAAP as required by item 17 of Form 20–F if the Form 40–F is filed prior to July 1, 1993. Forms filed on such date or thereafter will not be subject to such reconciliation requirement, absent future Commission action to the contrary. Further, Canadian issuers that are eligible to use Form F–10 (but not Form F–9), but have registered or choose to register securities on the Commission's non-MJDS Securities Act forms, also may satisfy their reporting obligations by filing their home jurisdiction periodic disclosure documents, together with an item 17 reconciliation if the filing is made prior to July 1, 1993. Similarly, a Canadian issuer eligible to use Form F–9 that has registered or chooses to register Form F–9–eligible securities on non-MJDS forms may file its home jurisdiction periodic disclosure documents on Form 40–F, in which case no reconciliation is required.

All other Canadian issuers must use either Form 20–F and Form 6–K reports or, at their option, the 10–K, 10–Q and 8–K reports to satisfy their Section 15(d) reporting obligations.[75]

2. Stock Exchange and NASDAQ-Related Obligations

Section 13(a) of the Exchange Act requires each issuer that has registered securities under that Act to file periodic

[62] 17 CFR 230.901–230.904 (including Preliminary Notes). Resales otherwise made in compliance with rule 904 may be executed in, on or through the facilities of The Montreal Exchange, The Toronto Stock Exchange and The Vancouver Stock Exchange, among other markets.

[63] The indemnification disclosure is based on the requirements of Item 510 of Regulation S–K, 17 CFR 229.510. Unlike the Reproposal, disclosure regarding such indemnification provisions is not required in Form F–7 as adopted.

[64] Exceptions to the waiver of rules under Regulation C have been noted in the MJDS forms.

[65] See rule 174, 17 CFR 230.174. See also rule 15c2–8 under the Exchange Act, 17 CFR 240.15c2–8.

[66] See rules 134, 135 and 135A, 17 CFR 230.134, 230.135 and 230.135A.

[67] See rules 138 and 139, 17 CFR 230.138 and 230.139.

[68] See, *e.g.*, revised rules 158 and 175, 17 CFR 230.158 and 230.175. Exchange Act and Trust Indenture Act rules also have been amended to apply to MJDS forms, as appropriate. See, *e.g.*, revised rule 3b–6 under the Exchange Act, 17 CFR 240.3b–6; and revised rule 0–11 under the Trust Indenture Act, 17 CFR 260.0–11.

[69] See sections 12(g), 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78*l*(g), 78m(a), 78*o*(d).

[70] See section 13(a) of the Exchange Act, 15 U.S.C. 78m(a).

[71] 15 U.S.C. 78*o*(d). See also Regulation 15D, 17 CFR 240.15d–1 through 240.15d–21.

[72] This requirement applies in the first year after making a Securities Act registration and any subsequent year in which the class of securities registered are held by 300 or more persons. Section 15(d) filing requirements are suspended so long as the issuer has a class of securities registered under section 12.

[73] See rule 12h–4, 17 CFR 240.12–4. Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) exempts from Section 12(g) issuers that furnish to the Commission the documents that they either are required to or actually do make public, file with the home regulatory agency, or distribute to their securityholders.

[74] As revised today, rule 12g3–2 provides that a section 15(d) obligation arising out of registration on Form F–7, F–8, F–9, F–10 or F–80 does not prevent continued reliance on the rule with respect to such issuer. See rule 12g3–2(d)(1), 17 CFR 240.12g3–2(d)(1). The filing of Forms 40–F and 6–K will suffice for submissions required by the same issuer under rule 12g3–2(b).

[75] By virtue of revisions adopted today, Form 20–F and Form 6–K are being made available for Exchange Act registration and periodic reporting to all Canadian foreign private issuers. Canadian issuers also may choose to register securities on Form 10 and report on the Forms designed for domestic issuers.

reports.[76] The Exchange Act requires registration of any class of securities, whether debt or equity, that is listed on a national securities exchange.[77] Exchange Act registration is also required for securities quoted on NASDAQ.[78] Issuers eligible to use MJDS Form F–10, and issuers eligible to use MJDS Form F–9 that are having Form F–9-eligible securities so listed or quoted, may comply with such reporting obligations by filing their home jurisdiction disclosure documents.[79]

3. Forms 40–F and 6–K

Forms 40–F and 6–K will be available for eligible Canadian issuers that are registering securities under the Exchange Act or satisfying their Exchange Act reporting obligations by filing home jurisdiction disclosure. Form 40–F is used as a wraparound for the filing of home jurisdiction information material to an investment decision that the issuer has made public, filed with a stock exchange or distributed to securityholders.[80] For an issuer registering securities under the Exchange Act, Form 40–F specifically requires the issuer to file that portion of its home jurisdiction documents containing a description of the securities being registered.[81]

Documents filed under Form 40–F to satisfy reporting obligations must be filed with the Commission the same day they are filed with a Canadian securities regulatory authority. Documents required by Form 6–K must be furnished to the Commission promptly after they are made public, filed or distributed as noted above. Disclosure documents filed with the Commission on Form 40–F or 6–K are subject to antifraud liability, but only the documents filed on Form 40–F are subject to section 18 liability.

Documents filed under cover of Form 40–F must be in English. If documents in a foreign language are furnished under Form 6–K, English versions or summaries need only be provided if such documents are distributed directly to securityholders of a class to which a reporting obligation under the Exchange Act relates or if such documents are in the form of a press release.

Regulations 12B, 13A and 15D do not apply to registrants using Form 40–F.[82] Unless specified therein, all other Exchange Act rules apply to Form 40–F. Exchange Act rules regarding fees, amendments and effectiveness of registration statements apply.

D. Tender Offer Regulation Under the MJDS

The Commission also is incorporating into the MJDS certain provisions for compliance with the U.S. regulatory scheme relating to tender offers in connection with cash and exchange offers for Canadian companies. Pursuant to amendments being adopted to the Commission's tender offer rules, regulations and schedules, third-party and issuer tender offer filings in connection with offers made in both jurisdictions for a class of securities of a Canadian issuer may proceed in the United States in accordance with all relevant Canadian federal, provincial and territorial rules and regulations. Such offers must be extended to all holders of the class of securities in the United States and Canada upon terms and conditions not less favorable than those offered to any other holder of the same class of securities, and the transaction itself must be covered by and not exempt from substantive provisions of Canadian law governing the terms and conditions of the offer. In addition, U.S. holders must hold less than 40 percent of the subject securities.

Commenters addressing the tender offer issues in the Proposals focused primarily on the appropriateness of the proposed 20 percent ceiling to be imposed on U.S. record ownership, the method for calculating this percentage ownership, the safe harbor for third-party bidders, and the effect of discretionary exemptive orders granted by Canadian securities regulators. Upon consideration of the comments submitted, the following modifications are being adopted.

The ceiling for U.S. ownership has been raised to 40 percent with respect to compliance with the Williams Act and Commission rules thereunder in connection with cash and exchange offers, which increase was largely endorsed by commenters. As noted, the ceiling on U.S. ownership for registering an exchange offer under the Securities Act on Form F–8 is 25 percent and on Form F–80 is 40 percent. As with Forms F–8 and F–80, the percentage limitation set forth in the MJDS tender offer rules and schedules [83] is calculated by reference to securities held by persons with U.S. addresses in the records of the issuer and other specified records.[84] Like those Forms, U.S. affiliates are not excluded from the calculation of the U.S. ownership ceiling as they would have been under the Reproposal.

The operative date for calculating U.S. ownership for the purpose of determining eligibility for MJDS is the end of the subject company's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the subject company's preceding quarter.[85] The rules, as adopted, provide that the date of the initial bid, in the case of competing bids, is used for determining MJDS eligibility for all subsequent competing bids. Subsequent competing bids are able to look back to the initial commencement date, so long as the initial offer was eligible to use MJDS, regardless of whether the initial offer took advantage of MJDS. In addition, as in Forms F–8 and F–80, third-party bidders whether solicited or unsolicited are able to rely upon a conclusive presumption that less than the threshold percentage of the class of subject securities is held by U.S. holders and that the target is a foreign private issuer, absent published trading volume data, disclosure in public filings or actual knowledge to the contrary.[86]

An important condition to use the MJDS to effect cross-border tender and exchange offers is that the offer be subject to a Canadian regulatory scheme

[76] 15 U.S.C. 78m(a). The Commission has implemented the requirements of this section through Regulation 13A (17 CFR 240.13a–1 through 240.13a–17).

[77] Section 12(b), 15 U.S.C. 78*l*(b).

[78] Section 12(g), 15 U.S.C. 78*l*(g). Section 12(g) does not apply to debt securities.

[79] Such issuers also may file their home jurisdiction documents to satisfy any reporting obligation arising from section 12(g) under the Exchange Act, 15 U.S.C. 78*l*(g), as supplemented by rule 12g–1, 17 CFR 240.12g–1. For filings prior to July 1, 1993, Form F–10-eligible issuers that are not having Form F–9 eligible securities listed or quoted are required to reconcile the home jurisdiction annual financial statements provided under Form 40–F, as required by Item 17 of Form 20–F. Form F–9–eligible issuers that are having Form F–9–eligible securities listed or quoted are not required to reconcile such reports. Item 17 requires quantitative reconciliation of net income and material balance sheet items, but other disclosures prescribed by U.S. GAAP and Regulation S–X are not required.

[80] A Canadian issuer using the Form 40–F to register its securities must file information of that type made public, filed or distributed since the beginning of its last full fiscal year. A Canadian issuer using Forms 40–F and 6–K to satisfy its continuous reporting obligations must file its home jurisdiction Annual Information Form, and its home jurisdiction audited annual financial statements and accompanying management's discussion and analysis under cover of Form 40–F and furnish all other material home jurisdiction information under cover of Form 6–K.

[81] See, *e. g.*, OSC Form 12, Items 17–19; OSC Form 13; OSC Form 14; Toronto Stock Exchange Listing Application, Item 5. In contrast, the Reproposal would have required the description of the securities being registered to be made in accordance with Commission item 202 of Regulation S–K under the Securities Act, 17 CFR 229. 202.

[82] See rules 13a–3 (17 CFR 240.13a–3) and 15d–4 (17 CFR 240.15d–4), which clarify that Regulations 13A and 15D are deemed satisfied by an issuer that reports in accordance with Forms 40–F and 6–K.

[83] Rules 14d–1(b), 13e–4(g) and General Instruction I.A. to Schedules 14D–1F and 13E–4F.

[84] See *supra* n. 48.

[85] See Original Proposal *supra* n.11 at 32239.

[86] See *supra* text accompanying n.51.

governing the conduct of tender offers. Accordingly, transactions that are not subject to Canadian tender offer regulation, such as offers for non-convertible debt securities and non-convertible, non-voting preferred stock, would not be eligible for the MJDS. Offers exempted from Canadian tender offer regulation likewise would not qualify. By way of illustration, the Commission noted in the Original Proposal that an exempt takeover or issuer bid conducted on The Toronto Stock Exchange or The Montreal Exchange would be governed by the Williams Act and the rules thereunder, since such a bid would not be regulated by any Canadian federal, provincial or territorial regulatory scheme governing tender offers.[87] The MJDS is available regardless of whether the offering person is eligible for an exemption, so long as it does not take advantage of such eligibility. Therefore, if a bidder chose to make an offer subject to Canadian takeover bid regulation, the transaction would not be ineligible for the MJDS merely because a blanket exemption was otherwise available to the bidder. Furthermore, even if the bidder takes advantage of a blanket exemption in one or more Canadian jurisdictions, the transaction would not be ineligible for the MJDS so long as the offer remains fully subject to the laws or regulations governing takeover bids of Canada or any one of its provinces or territories.

In addition, a limited grant of exemptive relief to a Canadian bidder or issuer from applicable Canadian take-over bid rules, rather than a blanket exemption, will not necessarily preclude a bidder or issuer from proceeding with a tender or exchange offer in the United States under the MJDS. The MJDS will not be available if the Canadian regulators granted relief from Canadian regulatory provisions mandating tender offer protections otherwise called for by the Williams Act and Commission rules such that the transaction would no longer be subject to such protections pursuant to the laws or regulations of Canada or any one of its provinces or territories. Persons seeking to use the MJDS despite the entry of such an exemptive order implicating Williams Act requirements, could seek relief from the Commission which could allow the offer to proceed under the MJDS either conditioned upon compliance with the relevant Williams Act provisions with respect to U.S. holders or unconditionally. All requests for entry of such orders would be resolved on an expedited basis. Exemptive relief by Canadian authorities from Canadian requirements relating to such matters as distribution of offering materials in French, post-bid and pre-bid integration of purchases into the offer, valuation and minority voting requirements in insider bids, and collateral benefits normally would not result in the loss of MJDS eligibility, and therefore normally would not require relief from the Commission. Nevertheless, the Commission should be provided with a copy of all requests for relief from Canadian authorities at the time the request is made and any orders granting such relief should be filed as an exhibit to the Schedule 13E–4F or 14D–1F. If the Commission's staff believes that a particular form of relief would implicate Williams Act protections, and thus in the staff's view would cause the loss of MJDS eligibility, the requesting party and the Canadian regulators would be advised by the staff of its view that an application for relief to the Commission would be necessary before the transaction could proceed under the MJDS. The Commission is adopting amendments to its rules to provide for delegation of this authority to the Division of Corporation Finance and the Division of Market Regulation.[88]

If the request to proceed under the MJDS is not granted, the offer may nevertheless proceed using the MJDS, with respect to the use of Canadian disclosure documents, although the U.S. portion of the offer will have to comply with all or certain of the provisions of the Williams Act, as specified by the order, even though exempted from a comparable provision in Canada.

E. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers

Rule 10b–6 generally prohibits a person participating in a securities distribution from, directly or indirectly, bidding for or purchasing, or inducing others to purchase, the securities in distribution or any security of the same class and series or any right to purchase such security ("related securities"), until the participant's role in the distribution has terminated.[89] Rule 10b–13 prohibits a person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including any extensions thereof. The rule is designed to "protect shareholders in the tender offer from the harmful effects of purchases or arrangements made outside, and on terms or conditions different from, the tender offer, and to protect the integrity of the tender offer process by proscribing side deals that could render the tender offer a sham." [90]

Canadian provisions permit participants in transactions contemplated by Forms F–8, F–80, F–9 and F–10 and Schedules 14D–1F and 13E–4F to engage in certain activities that are prohibited by rules 10b–6 and 10b–13. For example, Canadian provisions permit, in limited circumstances, purchases by an offeror during a third-party bid, or by an issuer during an issuer bid.[91] Such purchases

[87] See Original Proposal *supra* n.11 at n 195 and accompanying text.

[88] Rules 30–1(f) and 30–3(a)(35) [17 CFR 200.30–1(f) and 200. 30–3(a) (35)] (rules delegating authority to Division directors).

[89] During an exchange offer, the offeror's securities would be in distribution and the distribution participants would be prohibited from bidding for or purchasing those securities or any related securities until the exchange offer ended. See also QSA 252.1; OSC Policy Statement 9.3(C) (Dec. 24, 1982) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–903 (concerning stock exchange bids). The target's securities in an exchange offer are considered "rights to purchase" the securities in distribution; accordingly, distribution participants also would be prohibited from purchasing those securities during the exchange offer. See Exchange Act Release No. 19565 (March 4, 1983) (48 FR 10628, 10636 n. 58). To a degree, Rule 10b–13 [17 CFR 240.10b–13] contains a similar prohibition on the purchase of target securities. *See Piper* v. *Chris Craft Industries, Inc.*, 430 U.S. 1, 43 n.30 (1977).

[90] Brief of the Securities and Exchange Commission, *Amicus Curiae* at 2, *Texaco Inc.* v. *Pennzoil Co.*, No. C–6432 (Sup. Ct. Tex., July 1987). It should be noted that rule 14e–4 under the Exchange Act (17 CFR 240.14e–4) may apply to tender or exchange offers undertaken pursuant to the MJDS.

[91] See CBCA § 197(f) ; OSA 93 (3)–(7) ; QSA 120, 142. However, various other provisions of Canadian law proscribe transactions before and after the tender offer period and afford protections similar to those contained in rule 10b–13. See, *e.g.*, OSA 93(5) (integrating pre-bid private transactions by an offeror with formal bid purchases and requiring the offeror, *inter alia*, to offer consideration for securities deposited under the bid at least equal to the highest consideration paid on a per security basis in any such prior transaction) ; OSA 93(6) (proscribing purchases by an offeror of the securities that were the subject of the bid for a period of 20 days after the expiration of the bid on terms not generally available to holders of that class of securities). The restrictions of OSA §§ 93 (5) and (6) do not apply to trades effected in the normal course on a published market, subject to certain conditions. See also OSC Policy Statement 9.3 (Dec. 24, 1982) (as amended), reprinted in, 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–903.

are permitted from the third business day following the date of the bid until its termination. Purchases are conditioned upon limiting the amount of securities acquired to five percent of the outstanding securities as of the date of the bid, disclosing the intention to make such purchases in the third-party or issuer bid circular, and issuing and filing a press release with the relevant exchange or regulatory commission at the close of each day on which securities have been purchased.[92]

In connection with the MJDS, the Commission is granting exemptions with respect to rules 10b–6 and 10b–13.[93] The exemptions apply solely to tender and exchange offers made in reliance on rule 13e–4(g) or 14d–1(b). The exemptions permit: (1) With respect to cash tender offers, purchases of the securities that are the subject of the offer and any other security that is immediately convertible into or exchangeable for such security ("target securities"); and (2) with respect to exchange offers, purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"), and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities").[94] The exemptions are available to offerors that: (1) Disclose in the Form F–8, F–80, F–9 or F–10, or in Schedules 13E–4F and 14D–1F, or, in the case of a cash tender offer where no filing is required to be made in the United States, in the offering materials disseminated to U. S. securityholders, the possibility of, or the intent to make, purchases of subject securities as permitted by applicable Canadian regulations; and (2) disclose in the United States information regarding purchases of subject securities on the same basis as it is required to be disclosed or otherwise is disclosed pursuant to Canadian statutory and regulatory requirements.[95]

The Commission's exemptions with respect to rules 10b–6 and 10b–13 represent an appropriate accommodation that recognizes that Canadian procedures applicable to tender and exchange offers afford a large measure of the protections provided by rules 10b–6 and 10b–13.[96]

F. Mechanics of the MJDS

1. Offerings of Securities

An issuer using the MJDS will prepare a disclosure document according to Canadian requirements and use that document for securities offerings in the United States, subject to minimal additions set forth in the MJDS forms.[97] Of course, if no Canadian takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared with respect to an offering because an exemption from such requirements is being relied upon by the issuer, the offering is not eligible to be made using MJDS forms regardless of whether the eligibility tests are satisfied.[98] Where an offering on Form F–9 or F–10 is being made only in the United States, however, the MJDS is available so long as the home jurisdiction disclosure document is prepared and filed with the Canadian securities regulator in the review jurisdiction.

Review of the disclosure document will be undertaken by Canadian securities authorities and generally will be that customary in Canada. Thus, except in the unusual case where the Commission's staff has reason to believe there is a problem with the filing or the offering, the documents generally will be given a "no review" status by the Commission. For the most part, since the MJDS Securities Act forms become effective upon filing, any Commission review would be undertaken after effectiveness.

The MJDS forms distinguish between the disclosure document required to be given to each investor and the documents to be filed with the Commission. Participating Canadian issuers will provide investors in the United States generally with the same information delivered to investors in Canada. A prospectus used in the United States, however, need not contain any disclosure applicable solely to Canadian offerees or purchasers that is not material to U.S. offerees or purchasers. All the forms and schedules also expressly require that the issuer add to the prospectus or circular legends notifying investors that the investment may have tax consequences in the issuer's jurisdiction, that investors may have to pursue remedies for any securities law violation against persons and assets located in the issuer's jurisdiction, and that any financial statements are prepared in accordance with Canadian accounting standards. Information incorporated by reference into the Canadian registration statement or prospectus that is not required to be delivered to securityholders in the issuer's home jurisdiction is not required to be included in the MJDS prospectus, but must be filed with the Commission as an exhibit to the applicable form. Other documents required by home jurisdiction law to be made publicly available in connection with the transaction, or required to be filed with the Canadian securities regulator concurrently with the Canadian prospectus, also must be filed with the Commission as exhibits to the registration statement or schedule. The rules require the issuer to provide such information to the investor upon request. Such information also will be available in the public files of the Commission. Documents previously filed with the Commission or furnished by the issuer to the Commission pursuant to the rule 12g3–2(b) exemption may be incorporated by reference and need not be filed again.[99] Experts' consents also

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[92] OSA § 93(3) and Reg. § 169; QSA § 142. The press release is required to disclose the purchaser, the number of shares purchased, the highest price paid on that day, the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the bid, and the total number of securities owned by the purchaser as of the close of business of the stock exchange on that day. See QSA 142; OSA Reg. 169.

[93] See Exchange Act Release No. 29355 (June 21, 1991).

[94] All exemptions with respect to Rules 10b–6 and 10b–13 are premised upon the condition that none of the transactions thereby permitted is engaged in for a manipulative purpose. See Rule 10b–6(a)(4); *Jaffee & Co. v. SEC*, 446 F.2d 391 (2d Cir. 1977); *Bruns, Nordeman & Co.*, 40 S.E.C. 652, 660 (1961).

[95] Canadian regulatory officials and broker-dealers have advised the staff that it would not be a significant burden to provide this additional disclosure.

[96] In connection with offerings of certain Canadian issuers, the Commission intends to issue exemptions from rules 10b–6, 10b–7, and 10b–8 to permit "passive market making" on The Toronto Stock Exchange and The Montreal Exchange, and to provide that purchases by Canadian issuers and the non-dealer affiliates of distribution participants be regulated by Canadian rules.

[97] Like other Securities Act registration statements, those filed under cover of MJDS forms are subject to the requirement of rule 408 under the Securities Act (17 CFR 230.408) to include other material information necessary to make the required statements not misleading in light of the circumstances under which they are made.

[98] The MJDS may be used in the case of business combinations exempt from registration requirements in Canada since the information circulars must be prepared with prospectus level disclosure. The Commission understands that offerings in connection with dividend reinvestment plans are exempt from the prospectus requirements under Canadian law. Securities offered in such circumstances will not qualify for registration under the MJDS. Under revisions to Form F–3 being adopted, however, such offerings will be eligible for registration on Form F–3 by eligible Canadian issuers reporting on MJDS Forms 40–F and 6–K. The Commission also has proposed revisions to broaden Form F–3 to allow issuers not meeting the public float requirement therein to use such Form in connection with dividend reinvestment plans and rights offerings. See Securities Act Release No. 6896 (June 5, 1991).

[99] See revised rule 24 of the Commission's Rules of Practice (17 CFR 201.24).

must be filed with the Commission as a part of the MJDS registration statement and are required to indicate clearly that the consent to use the experts' statements and consents extends to all the documents being filed with the Commission which attribute a report or opinion to the expert.[100]

2. Incorporation by Reference

Information filed under cover of Form 40–F or furnished on Form 6–K in connection with the MJDS may be incorporated by reference into certain Securities Act registration statements. Forms F–2, F–3, F–4 and S–8 allow such incorporation by reference on the same basis that Form 20–F information may be so incorporated, provided the registrant is eligible to use Form F–10 or, if the securities being registered on Form F–2, F–3, F–4 or S–8 are Form F–9-eligible securities, the registrant is eligible to use Form F–9. In addition, Forms F–2, F–3 and F–4 allow incorporation of Forms 10–K, 10–Q and 8–K information by Canadian issuers who have been reporting under such forms. To maintain the integrity of the issuer distinctions made in the MJDS registration forms, incorporation by reference of Form 40–F information is limited to issuers eligible to use Form F–10, or Form F–9 (with regard to Form F–9-eligible securities).

3. Form F–X

The Securities Act registration forms (other than Form F–7) and Williams Act schedules (if filed by non-U.S. persons) must be accompanied upon filing by a Form F–X, which includes a consent to service of process and appointment of a U.S. person as agent for process, and a consent to service of an administrative subpoena and an undertaking to assist the Commission in responding to inquiries made by the Commission staff. In addition, Form F–X is required to be filed by any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.[101] A Canadian issuer registering securities on Form 40–F must file a Form F–X with its Form 40–F. Also, issuers that have not filed a Form F–X with the Commission previously in connection with securities to which a reporting obligation relates, are required to file one at the time they file periodic reports on Form 40–F.

Form F–X has been revised from the version under the Reproposal to include a reference to a specific period during which a successor agent for service of process must be appointed if the agent resigns, is dismissed or is unable to continue serving as such. In the case of issuers filing Form F–X in connection with Form F–9, F–10 or 40–F, or Schedules 13E–4F, 14D–1F or 14D–9F such requirement extends for six years following the date the issuer of the securities to which such Form or Schedules relates ceases filing reports under the Exchange Act. Because issuers using Form F–8 or F–80 will not necessarily be reporting under the Exchange Act, the obligation to appoint successor agents is limited to a period of six years following the effective date of the latest amendment to such Form F–8 or F–80.[102] For trustees filing Form F–X, the obligation continues so long as any of the securities subject to the indenture remain outstanding. Each form and schedule being adopted contains a requirement that the Commission be advised promptly by amendment to Form F–X of any change to the name or address of an agent.

4. Time of Filing Securities Act Forms

Although the MJDS Securities Act registration forms need not be filed with the Commission on the same day they are filed with the Canadian securities regulators, offers may not be made in the United States until such forms are filed. Moreover, sales may not be made in the United States until such forms have been declared effective.[103] The Commission understands that in certain circumstances Canadian law allows underwriters to solicit expressions of interest from potential investors within two business days prior to filing a preliminary prospectus with Canadian securities regulators. Such "bought deals" could continue to be conducted in Canada in connection with the MJDS so long as no solicitations of interest are made in the United States prior to the filing of the applicable Securities Act registration statement with the Commission.

5. Effective Date

Under the Reproposal, the effective date for registration of securities on Forms F–7 and F–8 (and for securities offered in an exchange offer or business combination on Form F–9 or F–10) would have been the date of written or oral notification of the Commission by the registrant or the applicable Canadian securities regulators that the securities legally may be sold in Ontario and Quebec (or, if the securities are being offered in only one of such provinces, that such securities legally may be sold in Ontario or Quebec). Forms F–9 and F–10 for offerings not in connection with exchange offers or business combinations would have become effective upon written or oral notification of the Commission by the registrant or the applicable Canadian securities regulator that the securities legally may be sold in the designated principal jurisdiction.

Under the MJDS as adopted, Forms F–7, F–8 and F–80 (and any amendments thereto) will become effective upon filing.[104] Forms F–9 and F–10 (and any amendments thereto) also will become effective upon filing, if they relate to offerings of securities being made contemporaneously in Canada and the United States, and they do not include a designation on the cover page that they are preliminary materials.[105] In the case of a U. S.-only offering on Form F–9 or Form F–10, the registration statement (and any amendments thereto) will be made effective on the date specified by the registrant, if such date is more than seven days after the date filed with the Commission. The seven-day period will provide adequate time for Canadian authorities reviewing such documents to advise the Commission of any regulatory concerns and will minimize the potential for the MJDS to encourage Canadian issuers to forego registration in Canada. Such seven-day period need not elapse prior to effectiveness with the Commission, however, if the Canadian securities regulator in the review jurisdiction issues a receipt or notification of clearance with respect to the registration statement (or amendment) prior thereto. In that case, the effective date will be as soon as practicable after written notification of the Commission that such receipt or clearance was issued.[106] Either the issuer or the applicable Canadian securities regulator may make such written notification.

6. Shelf Offerings and Post-Effective Pricing Procedures

Since the date of the Reproposal, Canadian regulatory authorities have adopted rules for shelf prospectus offerings and for pricing of offerings after the final prospectus is

[100] See Securities Act Rules 436–439 (17 CFR 230.436–230.439).

[101] See *infra* section III.H. See also rule 10a–5 under the Trust Indenture Act.

[102] If no amendments to such Forms are filed, the six-year period would be measured from the effective date of the original Form.

[103] See Section 5 of the Securities Act, 15 U.S.C. 77e.

[104] See rule 467(a).

[105] See rule 467(a).

[106] See rule 467(b). Written notification may be made by mailing it to the Office of International Corporate Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

receipted.[107] Canadian MJDS issuers may rely only upon such home jurisdiction shelf prospectus offering and pricing procedures in connection with MJDS offerings. MJDS registration statements used in connection with such pricing procedures therefore will become effective with the Commission prior to pricing to the same extent they do in Canada. Supplements to the home jurisdiction disclosure documents in connection therewith will be filed with the Commission within one business day after they are filed with the relevant Canadian jurisdiction, but will not be deemed amendments to the Commission registration statement. Similarly, under the Canadian MJDS for U. S. issuers, the Commission's shelf and pricing procedures will apply.[108] In connection therewith, U. S. issuers must file a supplement with the Commission whenever a tranche is not being sold in the United States under the Canadian MJDS.[109]

G. Exclusion of Investment Companies

The MJDS forms are not available to Canadian registrants that are investment companies, as defined in section 3 of the Investment Company Act of 1940, if they are registered or required to be registered under the Investment Company Act. In the case of exchange offers, the issuer of the subject securities also may not fall within that category. Canadian issuers within the definition of "investment company" but exempted from registration either in reliance on an individual exemptive order or on an exemptive rule may take advantage of the MJDS. [110]

The Commission has published for comment amendments to Rule 6c–9 under the Investment Company Act.[111] Rule 6c–9 currently provides an exemption from the registration provisions of that Act for foreign banks offering their debt securities and non-voting preferred stock within the United States, either directly or through finance subsidiaries. The proposed amendments would expand the exemption to foreign banks offering equity securities and foreign insurance companies and finance subsidiaries of foreign banks and insurance companies offering their securities. Canadian trust companies and loan companies would be specifically included within the definition of "foreign bank." The comment period relating to such proposal has expired and the Commission is considering what further action may be appropriate.

H. Trust Indenture Act

The Proposals included rules and forms designed to provide exemptions under Section 304(d) of the Trust Indenture Act [112] from the required appointment of a U. S. trustee under a qualified indenture.[113] Proposed rules and forms would have allowed a Canadian institutional trustee to act as sole trustee under a qualified indenture if the securities under the indenture were eligible for registration on Form F–7, F–8, F–9 or F–10, and if the indenture provided for a Canadian institutional trustee authorized by law to exercise trust powers and subject to supervision or examination by governmental authority.[114] The Trust Indenture Reform Act of 1990 (the "Reform Act"), which has been enacted by Congress, eliminates the need for such proposed rules and forms under the Trust Indenture Act.

In accordance with the expanded authority granted to the Commission by the Reform Act amendments to the Trust Indenture Act, the Commission recently proposed for comment two rules to facilitate multijurisdictional and cross-border offerings of debt securities by Canadian issuers.[115] As proposed, rule 10a–5 under section 310(a)(1) [116] of the Trust Indenture Act would have permitted persons authorized to exercise corporate trust powers and subject to federal supervision or examination under the Trust Companies Act (Canada),[117] or the Canada Deposit Insurance Corporation Act [118] to act as sole indenture trustee for offerings under the MJDS. As proposed, rule 4d–9 under section 304(d) [119] of the Trust Indenture Act would have provided an exemption for trust indentures subject to the Canada Business Corporations Act [120] or the Business Corporations Act, 1982 (Ontario) [121] from the operation of paragraphs (a)(3) and (a)(4) of section 310,[122] sections 310(b) through 316(a),[123] and sections 316(c) through 318(a) [124] of the Trust Indenture Act for offerings of debt securities made under the MJDS.

The Commission is adopting rule 10a–5 as proposed with one modification. Although British Columbia authorities have advised that legislative action is contemplated that would enable United States trustees to act as sole indenture trustees for offerings made in British Columbia, British Columbia law [125] presently would not permit a U.S. trustee to act as sole trustee for such offerings.[126] Accordingly, in view of the residency requirements for trustees under indentures subject to British Columbia law, rule 10a–5 as adopted would not permit appointment of a trust company incorporated or continued and regulated as a trust company under British Columbia law. In addition, the rule as adopted will preclude the appointment of Canadian trustees as sole trustees under trust indentures of obligors incorporated or continued under the Company Act that are to be used for MJDS offerings in the United States.

The Commission is adopting rule 4d–9 as proposed with two modifications. Canadian authorities have advised that the trust indentures of banks issuing debentures are subject to the requirements of the Bank Act.[127] Upon examination of the provisions of the Bank Act applicable to indenture securities and indenture trustees, the Commission has determined that the Bank Act, which is similar to the CBCA, offers investor protection that is comparable to that provided by the Trust Indenture Act. Accordingly, rule 4d–9 as adopted also provides an exemption for trust indentures of obligors that are subject to the Bank Act.

As previously noted, the Company Act does not include exemptive authority in respect of trust indentures prepared in accordance with regulations governing trust indentures in other

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[107] See National Policy Statement No. 44, 14 O.S.C.B. 1844 (May 3, 1991).

[108] See rules 415 and 430A, 17 CFR 230. 415 and 230. 430A.

[109] See revised rule 424, 17 CFR 230. 424.

[110] 15 U.S.C. 80a–3.

[111] See Investment Company Act Release No. 17682 (Aug. 17, 1990) (55 FR 34569).

[112] 15 U. S. C. 77ddd(d).

[113] Section 310(a) (1), 15 U. S. C. 77jjj(a) (1).

[114] See proposed rules 4d–1 to 4d–8 and proposed Form T–5.

[115] Securities Act Release No. 6889 (Mar. 22, 1991) (56 FR 12679) ("Trust Indenture Proposing Release"). Three comment letters on such proposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–19–89 at the Commission's Public Reference Room in Washington, DC.

[116] 15 U.S.C. 77jjj(a)(1).

[117] Trust Companies Act (Canada), R.S.C. 1985.

[118] Canada Deposit Insurance Corporation Act, R.S.C. 1985.

[119] 15 U.S.C. 77ddd(d).

[120] Canada Business Corporations Act, R.S.C. 1985 sections 82–93 ("CBCA").

[121] Business Corporations Act, 1982 (Ontario), S.O. 1982 46–52.

[122] 15 U.S.C. 77jjj(a)(3) and (a)(4).

[123] 15 U.S.C. 77jjj(b)–77ppp(a).

[124] 15 U.S.C. 77ppp(c)–77rrr(a).

[125] Company Act, R.S.B.C. 1979, c. 59 ("Company Act").

[126] Trust Indenture Proposing Release at 15 (56 FR 12682).

[127] The Bank Act, R.S.C. 1985, c. B–1 sections 133–144.

jurisdictions.[128] Thus, a United States obligor making an offering in British Columbia would be precluded from making the offering with an indenture qualified only under the Trust Indenture Act. While British Columbia authorities have advised that legislative changes will be sought in order to exempt the trust indentures of United States obligors that comply with the Trust Indenture Act from the requirements of the Company Act, it is unclear when such changes will be effected. Under the circumstances, the rule has been revised to exclude its availability for offerings made by obligors incorporated or continued under the Company Act. British Columbia obligors making offerings of debt securities in the United States would be required to do so pursuant to an indenture that is qualified under the Trust Indenture Act, including the requirement for a United States institutional trustee.

Under new rules 4d–7 and 10a–5, offerings of debt securities under the MJDS would be made by filing the MJDS registration statement, the Canadian trust indenture, and Form F–X with the Commission. The Canadian trustee would not be required to file a Form T–1 in respect of its indenture trusteeship.

I. Liability

Canadian issuers filing documents with the Commission under the MJDS are subject to civil liability and antifraud provisions of the U.S. securities laws.[129] In addition, MJDS registration statements are subject to the authority of the Commission to suspend their effectiveness.[130]

Commenters have expressed concern that an offering document prepared under applicable Canadian rules in accordance with MJDS forms will be considered misleading solely because information required by other existing Commission forms is omitted. By adopting the MJDS, the Commission in essence is adopting as its own requirements the disclosure requirements of Canadian forms. The effect is the same as if the Commission had set forth each Canadian requirement within the MJDS forms. Moreover, different disclosure is required under Commission registration and reporting forms available to different categories of issuers under present Commission practice. Separate sets of forms for foreign and U.S. issuers have long existed under the Securities Act and the Exchange Act. Accordingly, good faith compliance with the disclosure requirements of the home jurisdiction, as construed by Canadian regulatory authorities, will constitute compliance with the applicable U.S. federal securities disclosure requirements, even if such compliance results in the omission of information which might otherwise have been required as a line item in registration statements filed by U.S. issuers on the Commission's other registration forms.

Further, violation of a home jurisdiction disclosure requirement with respect to an MJDS document will not automatically disqualify the issuer from use of the MJDS with respect to that transaction or report. Instead, the issuer will have violated both a home jurisdiction requirement and an identical Commission disclosure requirement with respect to that document.

J. The Canadian Multijurisdictional Disclosure System

The Canadian MJDS for U.S. issuers is largely parallel in scope to the MJDS for Canadian issuers being adopted by the Commission. Like the MJDS for Canadian issuers, securities registration for rights offerings, exchange offers, business combinations [131] and offerings of investment grade securities, among others, may be made by U.S. issuers under the Canadian MJDS. Under the MJDS as it will operate in Canada, U.S. issuers are able to make public offerings of securities in all provinces and territories of Canada on the basis of prospectuses prepared in accordance with U.S. law. Such prospectus disclosure will be updated in accordance with U.S. requirements, and U.S. documents will be used to comply with continuous reporting requirements. U.S. issuers making shelf offerings must comply with U.S. shelf requirements. Tender offers for securities of U.S. issuers meeting eligibility criteria similar to those set forth in this release will be deemed to comply with applicable Canadian regulations if they are conducted in accordance with the provisions of the Williams Act. In addition, tender offers for securities of U.S. issuers with 20 percent or more Canadian holders must comply with certain Canadian substantive rules applicable to integration of pre-bid purchases with the offer and to valuation requirements in the case of issuer and insider bids.

The Canadian MJDS for U.S. issuers will be implemented in Canada through publication of a national policy statement by the Canadian Securities Administrators ("CSA"), together with the issuance of blanket orders and rulings by the securities regulatory authority of each Canadian province and territory. National Policy Statement No. 45, which sets out the rules governing the use of the Canadian MJDS, is attached as appendix D to this release and will become effective on the same date as the MJDS set forth in this release.[132]

K. Monitoring Efforts in Connection With the MJDS

The CSA has considered the potential impact that the MJDS may have on the Canadian capital markets. The CSA believes the MJDS will benefit the Canadian capital markets.

However, there is a Canadian concern that the U.S. Glass-Steagall Act puts bank-owned dealers at a disadvantage in competing for underwriting assignments when Canadian issuers use the MJDS to finance in the United States. As a result of the Glass-Steagall Act, bank-owned dealers currently are subject to various restrictions on their U.S. underwriting activities, including, most importantly, a limit on the dollar volume of U.S. underwritings. The bank-owned dealers are particularly concerned about the effect the MJDS may have on their equity underwriting business.

Given the importance to the CSA of having a strong dealer community knowledgeable of and committed to the Canadian capital markets, the CSA believes the MJDS should include a "safety valve" that is available if the MJDS does prove to harm the Canadian dealer community substantially. The CSA will monitor the effect of the MJDS and obtain input from Canadian dealers and otherwise monitor the effects of the MJDS on the Canadian dealer community. In addition, the securities regulators in Canada will, if appropriate, hold hearings after an initial period of not more than two years following the

[128] Trust Indenture Proposing Release at 28 (56 FR 12684).

[129] Sections 11, 12(2) and 17(a) of the Securities Act; sections 9, 10(b), 14(e) and 18 of the Exchange Act, and rules 10b–5, 13e–4(b)(1) and 14e–3 under such Act. In essence, the Commission is adopting the disclosure provisions of the Canadian forms, and omission of information otherwise generally included in Commission forms will not violate U.S. disclosure requirements. However, an antifraud action could be brought alleging that the document was misleading because information had been omitted.

[130] See section 8 of the Securities Act (15 U.S.C. 77h).

[131] Business combinations involving U.S. issuers that qualify as "significant asset transactions" under Canadian law, however, may be subject to additional Canadian substantive rules.

[132] Copies of such policy statement also will be made available in Canada and at the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549.

implementation of the MJDS to review the MJDS, including its impact on bank-owned dealers. If the hearings demonstrate that the MJDS has had and will continue to have a material adverse effect on the Canadian dealer community, the CSA and the Commission will commence rulemaking proceedings to seek comment on such changes to the MJDS as are needed to alleviate such adverse effect on the dealers and to ensure that the MJDS achieves its policy goals.

IV. Modifications to the Current Registration and Reporting System for all Canadian Issuers

As noted in the Reproposal, while non-Canadian foreign private issuers have been provided a special registration and reporting system under the Securities Act and Exchange Act,[133] certain Canadian foreign private issuers have been required to use the registration and reporting forms applicable to U.S. companies. Such treatment reflected the inter-relationship of U.S. and Canadian capital markets and the geographical proximity of the two countries. The Commission has reevaluated the policy of distinguishing Canadian issuers from other foreign issuers.[134]

Consequently, pursuant to revisions being adopted,[135] any Canadian foreign private issuer may use Form 20–F as a registration statement or as an annual report under the Exchange Act.[136] Canadian foreign private issuers are also eligible to use the Securities Act registration forms designed for foreign issuers.[137] Thus, Canadian issuers have the same access to Commission forms as other foreign issuers.[138]

The adopted revisions also affect the application of the Commission's proxy rules and share ownership reporting requirements and short-swing profit recapture rules to Canadian issuers. As revised, rule 3a12–3 under the Exchange Act [139] exempts foreign private issuers, including Canadians, from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Exchange Act.[140]

Despite the revisions being adopted, Canadian foreign private issuers continue to be eligible to use forms prescribed for U.S. companies, if they so elect. A Canadian foreign private issuer who chooses to report or register on forms designed for U.S. companies does not thereby become ineligible to rely on the exemption from the Commission's proxy, share ownership and short-swing profit provisions noted above. While Canadian issuers using Form 10–K are accustomed to satisfying certain disclosure item requirements by incorporating sections of their proxy statements filed with the Commission, Canadian issuers relying on the exemption will be unable to do so. In that case, such 10–K item requirements must be satisfied by directly supplying the information within the Form.[141]

V. Transition From One Registration and Reporting System to Another

Since revisions being adopted will allow certain Canadian issuers to register and report on forms for which they were previously ineligible, it is to be expected that Canadian issuers will be switching from the integrated disclosure system designed for U.S. companies to the integrated disclosure system designed for foreign companies. In addition, Canadian foreign private issuers that have been filing their proxy materials can be expected to stop doing so in reliance upon the rule 3a12–3 exemption. Similarly, persons who have been filing reports under section 16 with regard to their ownership of securities of certain Canadian issuers will also be able to discontinue doing so where the securities will be exempt from that section by virtue of that rule.

Although none of the new forms or rules described in this Release may be relied upon prior to the effective date, commenters on the Proposals raised questions regarding their use after the effective date. Persons wishing to make the transition from the existing rules and forms to the adopted rules and forms should abide by the following procedures. First, any Canadian issuer that currently is filing annual reports under the Exchange Act on Form 10–K but becomes eligible to use Forms 20–F or 40–F may use the latter forms for any fiscal year that ends after the effective date of this Release. If such an issuer completes its fiscal year prior to the effective date, but its annual report on Form 10–K would be due on or after the effective date, that issuer may use Form 10–K, 20–F or 40–F but must comply with the due date applicable to the Form chosen. If such an issuer completes its fiscal year and its Form 10–K is due before the effective date, it should file such Form 10–K.

With respect to quarterly reports by a Form 10–K filer, a Canadian issuer switching to the 20–F or 40–F system of reporting need only continue filing reports on Form 10–Q for those quarters completed prior to the effective date of this Release if the due date for such 10–Q is also before the effective date. When the due date for a 10–Q is on or after the effective date, quarterly results announced by Canadian issuers for quarters ending before then may, however, have to be provided under cover of Form 6–K.

Canadian issuers are not expected to monitor on a continuous basis whether or not they continue to be eligible to use a particular system of Exchange Act forms for reporting. An issuer who is eligible to file a Form 40–F at the end of a fiscal year will be presumed to be eligible to use it at the date of filing and to be eligible to use Form 6–K in connection therewith until the end of its next fiscal year.

With respect to proxy requirements, no Canadian issuer newly eligible for the exemption provided by rule 3a12–3 need file any proxy material pursuant to section 14 on or after the effective date specified in this Release. Issuers who have filed proxy materials with the Commission prior to the effective date

[133] Forms 20–F and 6–K under the Exchange Act, together with Forms F–1, F–2, F–3 and F–4 under the Securities Act, constitute the basic framework of the Commission's registration and reporting system for foreign companies.

[134] See, *e. g.*, Securities Act Release No. 6779, (June 10, 1988) (53 FR 22661, 22665 n. 64) (Regulation S initial proposing release) ; Securities Act Release No. 6863, (May 2, 1990) (55 FR 18306, 18308 n. 21) (Regulation S adopting release).

[135] The revisions reflecting the removal of restrictions on Canadian issuers have been made under the Exchange Act and the Securities Act, including Regulations S–X and S–K. See rules 3a12–3 (17 CFR 240. 3a12–3), 12g–3 (17 CFR 240. 12g–3), 13a–10 (17 CFR 240. 13a–10), 13a–16 (17 CFR 240. 13a–16), 15d–5 (17 CFR 240. 15d–5), 15d–10 (17 CFR 240. 15d–10), and 15d–16 (17 CFR 240. 15d–16) under the Exchange Act; rule 502 (17 CFR 230. 502) and Forms S–4 (17 CFR 239. 25), S–8 (17 CFR 239. 16b), S–11 (17 CFR 239. 18), F–1 (17 CFR 239. 31), F–2 (17 CFR 239. 32), F–3 (17 CFR 239. 33), and F–4 (17 CFR 239. 34) under the Securities Act; rules 3–01 (17 CFR 210. 3–01), 3–02 (17 CFR 210. 3–02), 3–12 (17 CFR 210. 3–12), and 3–19 (17 CFR 210. 3–19) of Regulation S–X; and Items 302 (17 CFR 229. 302), 402 (17 CFR 229. 402), 404 (17 CFR 229. 404) and 601 (17 CFR 229. 601) of Regulation S–K.

[136] See 17 CFR 249. 220f. Form 6–K is now available for other periodic reports by such issuers.

[137] Eligibility of Canadian issuers to use Form S–18 or rely upon Regulation A, however, is not affected by the revisions adopted today.

[138] Canadian issuers who do not meet the definition of "foreign private issuer" under rule 405 will be required, along with other foreign issuers unable to meet such definition, to register and report on forms designed for domestic issuers. In connection therewith, Forms S–2 and S–3 have been revised in this Release to clarify that such "non-foreign private issuers" may use them. See revised Instruction I.E. of Form S–2 and revised Instruction I.A.5. of Form S–3.

[139] 17 CFR 240. 3a12–3.

[140] 15 U.S.C. 78n(a), 78n(b), 78n(c), 78n(f) and 78p. Where the underlying security is exempt from section 16 pursuant to rule 3a12–3, any derivative security relating thereto is similarly exempt.

[141] See Form 10–K, revised General Instruction G.(3).

but have not begun their proxy solicitations prior thereto may choose to conduct such solicitation pursuant to Canadian law rather than pursuant to section 14.

Persons ceasing to be required to report under section 16 with respect to a class of securities because of the adoption of the revised rule 3a12–3 exemption should file no later than July 10, 1991 a Form 4 disclosing all reportable transactions taking place prior to the effective date that have not been reported previously.[142] Otherwise, those persons ceasing to have to report due to the exemption being adopted will have no reporting obligations on or after the effective date.

Finally, Canadian issuers that have filed registration statements under the Securities Act on Commission forms but become eligible for MJDS forms following the effective date of this Release may by amendment transform those registration statements from one form to another.[143] For effective registration statements, the issuer should file a post-effective amendment with home jurisdiction disclosure using the MJDS form for which it is newly eligible and clearly identify on the cover thereof that by filing such an amendment it is switching from the previously filed form to the MJDS form. For registration statements that have not become effective, a pre-effective amendment of the same nature should be filed.[144]

VI. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to state securities laws (including the District of Columbia and Puerto Rico) of those jurisdictions where offers and sales are made. Generally, those laws require registration of securities offered to persons in the state. In most jurisdictions, the registration statement filed with the Commission also will satisfy the state filing requirements. The filings are subject to review by each of the states, as to the adequacy of the disclosure and, in many states, for compliance with additional substantive standards.

State laws provide several exemptions from registration provisions; the two existing exemptions most relevant to the MJDS are for sales to existing securityholders of the issuer, including rights offerings, and for securities traded in specified marketplaces. The former exemption is for sales to existing securityholders (including holders of convertible securities or certain warrants) where no commission or other remuneration (other than a standby commission) is paid for solicitation of any securityholders in the state. The marketplace exemptions generally apply to securities listed on the New York and American Stock Exchanges or quoted on the NASDAQ National Market System, and in some states on specified regional exchanges. Securities of the same issuer which are senior to securities listed or quoted on an exempt marketplace generally are also exempt.

The specific requirements for offering and selling securities in any state are governed by that jurisdiction's statutes, rules and policies. Nevertheless, the North American Securities Administrators Association ("NASAA"), which represents all state securities regulators as well as Canadian provincial regulators and the securities authorities of Mexico, proposes uniform guidelines and procedures which are frequently adopted by many of its member states. In April 1989, NASAA adopted a Statement on Internationalization of the Securities Markets, in which it urged securities regulators to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." NASAA also passed a resolution on September 14, 1989 endorsing the MJDS as originally proposed. The NASAA resolution called upon its membership to take any action necessary to accommodate MJDS offerings within state securities laws. NASAA also formed a special task force to work with the Commission and Canadian regulators to determine what accommodations would be appropriate at the state level.

NASAA thereafter conducted a survey of securities administrators in all states, Puerto Rico and the District of Columbia to gather information regarding how such administrators planned to accommodate MJDS offerings in their jurisdictions and the number of state exemptions from registration that may be available to MJDS issuers.[145] Based upon the information obtained from the survey, on August 30, 1990 NASAA adopted four Model Rules to the Uniform Securities Act (1956) and recommended their adoption, where necessary, to the membership. The Model Rules provide, *inter alia*, for: (a) Harmonization of state review periods with Canadian seven-day review periods; (b) acceptance of MJDS Form F–7 in lieu of any state form that may be required to claim an exemption from registration for a rights offering to existing security holders; (c) acceptance of financial information presented in the registration statement in conformity with Canadian generally accepted accounting principles to the extent permitted under the MJDS; and (d) an exemption from registration for secondary trading of securities which are the subject of an MJDS offering and for which a registration statement on Form F–8, F–9 or F–10 has become effective with the Commission. Because Form F–80 was not intended to be part of the Model Rules, some states may not incorporate Form F–80 into their state laws.

Some states already have adopted those rules or similar measures necessary to produce such results. It is anticipated by NASAA that similar action will be taken by substantially all states within the immediate future. Some states are required by their administrative procedures acts to wait for Commission action before formally adopting the changes.

VII. Cost-Benefit Analysis

The Commission is not aware of any additional costs that will result from the MJDS, but as eligible issuers will be able to avoid expenses associated with the preparation of more than one disclosure document, benefits are expected to result for such issuers. With respect to the revisions to existing rules and forms to treat Canadian foreign private issuers like all other foreign private issuers, additional costs are also not anticipated. Since use of the foreign integrated disclosure system will be voluntary for Canadian issuers currently using Commission forms, the costs of converting from one system to the other are not mandated. In fact, in light of the expansion of the exemption from the proxy rules and the operation of section 16, some benefit can be expected to result. A few Canadian issuers commenting on the Reproposal stated that they would expect to experience

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[142] Persons makeing such filing should check the exit box on Form 4. No Form 5 need be filed after the effective date by persons ceasing to be required to report due to adoption of the revised rule 3a12–3 exemption.

[143] See rule 401 of Regulation S–K, 17 CFR 230.401.

[144] A Canadian issuer that reports under the Exchange Act solely because of its Securities Act registration also will be eligible to change its Exchange Act reports if, by virtue of switching its Securities Act form as described above to an MJDS form, it thereafter becomes eligible to use another Exchange Act reporting system.

[145] Results of the survey may be obtained from NASAA at suite 750, 555 New Jersey Avenue NW., Washington, DC 20006.

cost savings if the reproposed system were adopted. U.S. issuers are unaffected by such changes.

With respect to the new rules under the Trust Indenture Act, the benefit to designated Canadian obligors and Canadian trustees (the only entities eligible for exemption under the rules) of permitting appointment of Canadian trustees for offerings made in the United States by Canadian obligors, and exempting trust indentures of such obligors from the operation of specified provisions of the Trust Indenture Act, greatly outweighs any burden. Any impact on such entities is expected to be minimal. The rules also will benefit public securityholders by facilitating the expansion of investment opportunities for U.S. citizens by removing barriers to public issuances of debt securities by Canadian registrants in the United States.

VIII. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the adoption of the MJDS and the revisions to the registration and reporting procedures for Canadian issuers will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix B.

IX. Effective Date

The MJDS shall be effective on July 1, 1991, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d) (1) and (3). It is necessary for the MJDS to become effective on July 1, 1991 in order to coordinate the effectiveness with the MJDS's counterpart being adopted by Canadian provinces and territories on that date.

X. Table of Contents of Rules, Forms and Schedules

1. 17 CFR part 200—Authority
   Rule 30–1(f) of Rules on Delegating Authority to Division Directors
   Rule 30–3(a)(35) of Rules on Delegating Authority to Division Directors
2. 17 CFR part 201—Authority
   Rule 24
3. 17 CFR part 210—Authority
   Rules 3–01, 3–02, 3–12 and 3–19 of Regulation S–X
4. 17 CFR part 229—Authority
   Items 302, 402, 404 and 601 of Regulation S–K

Securities Act

5. 17 CFR part 230—Authority
6. Rule 158—Definitions for Section 11(a)
7. Rule 175—Liability for Certain Statements by Issuers
8. Rule 424—Filing of Prospectuses, Number of Copies
9. Rule 467—Effectiveness of Registration Statements and Amendments thereto on Forms F–7, F–8, F–9 and F–10
10. Rule 473—Delaying Amendments
11. Rule 502—General Conditions to be Met
12. 17 CFR part 239—Authority
13. Form S–2—General Instruction I.E.
14. Form S–3—General Instruction I.A.5.
15. Form S–4—Instruction F
16. Form S–8—General Instructions C, G and Items 3, 9
17. Form S–11—General Instruction E
18. Form F–1—General Instruction I.A.
19. Form F–2—General Instructions I.A., I.D., I.E. and I.G. and Items 11 and 12 and Instructions
20. Form F–3—General Instructions I.A.1., I.A.6., I.B.1. and I.B.3. and Items 11 and 12
21. Form F–4—General Instructions A.1. and C.1. and Items 10, 11, 12, 13, and 17
22. Description of New Forms:
    Form F–7—Registration Statement
    Form F–8—Registration Statement
    Form F–9—Registration Statement
    Form F–10—Registration Statement
    Form F–80—Registration Statement
    Form F–X—Appointment of Agent

Exchange Act

23. 17 CFR part 240—Authority
24. Rule 3a12–3—Exemptions from Sections 14(a), 14(b), 14(c) and 14(f) and Section 16
25. Rule 3b–6—Liability for Certain Statements by Issuers
26. Rule 12g–3—Registration of Securities of Successor Issuers
27. Rule 12g3–2—Exemption for ADRs and Certain Foreign Securities
28. Rule 12h–4—Exemption from Duty to File Reports Under Section 15(d)
29. Rule 13a–3—Reporting by Form 40–F Registrant
30. Rule 13a–10—Transition Reports
31. Rule 13a–16—Reports of Foreign Private Issuers on Form 6–K
32. Rule 13e–4—Tender Offers by Issuers
33. Schedule 13E–4F—Tender Offer Statement
34. Rule 14d–1—Scope of and Definitions Applicable to Regulations 14D and 14E
35. Schedule 14D–1F—Tender Offer Statement
36. Schedule 14D–9F—Recommendation of Subject Company
37. Rule 14e–2—Position of Subject Company
38. Rule 15d–4—Reporting by Form 40–F Registrants
39. Rule 15d–5—Reporting by Successor Issuers
40. Rule 15d–10—Transition Reports
41. Rule 15d–16—Reports of Foreign Private Issuers on Form 6–K
42. 17 CFR Part 249—Authority
43. Form 20–F—Registration of Foreign Private Issuers
44. Form 40–F—Registration of Securities of Certain Canadian Issuers
45. Form F–X—Appointment of Agent for Service of Process
46. Form 6–K—Report of Foreign Private Issuers
47. Form 10–K—Annual and Transition Reports

Trust Indenture Act

48. 17 CFR part 260—Authority
49. Rule 0–11—Liability for Certain Statements by Issuers
50. Rule 4d–9—Exemption for Canadian Trust Indentures
51. Rule 10a–4—Consent of Trustee to Service of Process
52. Rule 10a–5—Eligibility of Canadian Trustees
53. 17 CFR part 269—Authority
54. Form F–X—Appointment of Agent for Service of Process
55. Form T–1—Statement of Eligibility
56. Form T–6—Application under Section 310(a)(1)

XI. Statutory Basis of Rules, Forms and Schedules and Rule and Form Revisions

These revisions are being adopted pursuant to sections 7, 8, 10 and 19 of the Securities Act,[146] sections 3(b), 4A, 12, 13, 14, 15, 16, and 23 of the Exchange Act,[147] and sections 304, 305, 307, 308, 310, 314 and 319 of the Trust Indenture Act.[148]

List of Subjects in 17 CFR Parts 200, 201, 210, 229, 230, 239, 240, 249, 260 and 269

Authority delegations (Government agencies), Accounting, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

XII. Text of Rules, Forms and Schedules and Rule and Form Revisions

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A is revised to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b) 78*l*, 78m, 78n, 78*o*(d). Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k–1, 78s, 78q, 78eee, 79d.

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[146] 15 U.S.C. 77g, 77h, 77j, and 77s.

[147] 15 U.S.C. 78*l*, 78m, 78n, 78*o*, 78p, and 78w.

[148] 15 U.S.C. 77ddd 77eee, 77ggg, 77hhh, 77jjj, 77nnn, and 77sss.

2. The authority citations following §§ 200.30–1 and 200.30–3 are removed.

3. By amending paragraph (f) of § 200.30–1 to add paragraph (f) (14) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(f) * * *

(14) To determine with respect to a tender or exchange offer otherwise eligible to be made pursuant to rule 14d–1(h) (§ 240.14d–1(b) of this chapter) whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority, application of certain or all of the provisions of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and rule 14e–1 of Regulation 14E, to such offer is necessary or appropriate in the public interest.

* * * * *

4. By revising paragraph (a)(35) of § 200.30–3 to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(35)(i) To grant exemptions from rule 13e–4 (§ 240.13e–4 of this chapter) pursuant to rule 13e–4(h)(7) (§ 240.13e–4(h)(7) of this chapter);

(ii) To determine with respect to a tender or exchange offer otherwise eligible to be made pursuant to rule 13e–4(g) (§ 240.13e–4(g) of this chapter) whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority, application of certain or all of the provisions of section 13(e)(1) and rule 13e–4 and Schedule 13E–4 thereunder to such offer is necessary or appropriate in the public interest.

* * * * *

PART 201—RULES OF PRACTICE

5. The authority citation for part 201 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

Section 201.6 is also issued under 15 U.S.C. 77h, 77ttt, 78d–1, 78v, 79s, 80a–40, 80b–12.

Section 201.23(e) is also issued under 28 U.S.C. 2112(a).

Section 201.24 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(d), 78*l*, 78m, 78n, 78*o*(d).

6. The authority citation following § 201.24 is removed.

7. By revising the first sentence of the introductory text of § 201.24 to read as follows:

§ 201.24 Incorporation by reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted.* * *

* * * * *

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

8. The authority citation for part 210 is revised to read:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78*o*, 78w(a), 79e(a) (b), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

Section 210.3–02 is also issued under 15 U.S.C. 79n, 79t(a).

Section 210.3–19 is also issued under 15 U.S.C. 80b–11.

9. The authority citations following §§ 210.3–01, 210.3–02, 210.3–12 and 210.3–19 are removed.

10. By revising paragraph (h) of § 210.3–01 to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(h) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by § 210.3–19 in lieu of the financial statements specified in this rule.

11. By revising paragraph (d) of § 210.3–02 to read as follows:

§ 210.3–02 Consolidated statements of income and changes in financial position.

* * * * *

(d) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by § 210.3–19 in lieu of the financial statements specified in this rule.

12. By revising paragraph (f) of § 210.3–12 to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(f) Any foreign private issuer may file financial statements whose age is specified in § 210.3–19.

13. By revising paragraph (a) of § 210.3–19 to read as follows:

§ 210.3–19 Special provisions as to financial statements for foreign private issuers.

(a) A foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), other than a registered management investment company or an employee plan, shall include the following financial statements for the registrant and its subsidiaries consolidated and, where appropriate, its predecessors:

(1) Audited balance sheets as of the end of each of the two most recent fiscal years.

(2) Audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

14. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78*o*, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

Section 229.302 is also issued under 15 U.S.C. 79e, 79n, 79t.

Section 229.404 is also issued under 15 U.S.C. 77nn(25) and 77nn(26).

15. The authority citations following §§ 229.302 and 229.404 are removed.

16. By revising the introductory text of paragraph (a)(5) of § 229.302 to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) * * *

(5) This paragraph (a) applies to any registrant, except a foreign private issuer, that meets both of the following tests:

* * * * *

17. By revising General Instruction 1. to § 229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

General Instructions to Item 402

1. *Foreign private issuers.* A foreign private issuer may respond to all of Item 402 by indicating the aggregate payments or benefits paid or to be paid to all executive officers as a group unless such registrants disclose to

their security holders or otherwise make public the information specified in this section for individually named executive officers, in which case such information also shall be disclosed.

* * * * *

18. By revising Instruction 3 to § 229.404 to read as follows:

§ 229.404 (Item 404) Certain relationships and related transactions.

* * * * *

Instructions to Item 404

* * * * *

3. A foreign private issuer may respond to Item 404 only to the extent that the registrant discloses to its security holders or otherwise makes public the information specified in that Item.

19. By revising paragraph (b)(10)(iii)(B)(*5*) of § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(10) * * *

(iii) * * *

(B) * * *

(*5*) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information on an aggregate basis as permitted by General Instruction 1 to Item 402 (§ 229.402) or by Item 11 of Form 20–F.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

20. The authority citation for part 230 is revised to read:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 79t, and 80a–37, unless otherwise noted.

Section 230.473 is also issued under 15 U.S.C. 79(t).

Section 230.502 is also issued under 15 U.S.C. 80a–8, 80a–29, 80a–30.

21. The authority citations following §§ 230.158, 230.175, 230.473, and 230.502 are removed.

22. By revising paragraphs (a) and (b) of § 230.158 to read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).

(a) An "earning statement" made generally available to securityholders of the registrant pursuant to the last paragraph of section 11(a) of the Act shall be sufficient for the purposes of such paragraph if:

(1) There is included the information required for statements of income contained either:

(i) In Item 8 of Form 10–K (§ 249.310 of this chapter), part I, Item 1 of Form 10–Q (§ 249.308a of this chapter), or rule 14a–3(b) (§ 240.14a–3(b) of this chapter) under the Securities Exchange Act of 1934;

(ii) In Item 17 of Form 20–F (§ 249.220f of this chapter), if appropriate; or

(iii) In Form 40–F (§ 249.240f of this chapter); and

(2) The information specified in the last paragraph of section 11(a) is contained in one report or any combination of reports either:

(i) On Form 10–K, Form 10–Q, Form 8–K (§ 249.308 of this chapter), or in the annual report to securityholders pursuant to rule 14a–3 under the Securities Exchange Act of 1934; or

(ii) On Form 20–F, Form 40–F or Form 6–K (§ 249.306 of this chapter).

A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of this paragraph if the parent's income statements satisfy the criteria of this paragraph and information respecting the subsidiary is included to the same extent as was presented in the registration statement. An "earning statement" not meeting the requirements of this paragraph may otherwise be sufficient for purposes of the last paragraph of section 11(a).

(b) For purposes of the last paragraph of section 11(a) only, the "earning statement" contemplated by paragraph (a) of this section shall be deemed to be "made generally available to its securityholders" if the registrant:

(1) Is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and

(2) Has filed its report or reports on Form 10–K, Form 10–Q, Form 8–K, Form 20–F, Form 40–F, or Form 6–K, or has supplied to the Commission copies of the annual report sent to securityholders pursuant to rule 14a–3(c), containing such information.

A registrant may use other methods to make an earning statement "generally available to its securityholders" for purposes of the last paragraph of section 11(a).

* * * * *

23. By revising paragraph (b)(1)(i) of § 230.175 to read as follows:

§ 230.175 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K, Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Act or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

24. By revising paragraph (b)(3) and by adding a new paragraph (b)(6) to § 230.424 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * *

(3) A form of prospectus that reflects facts or events other than those covered in paragraphs (b) (1), (2) and (6) of this section that constitute a substantive change from or addition to the information set forth in the last form of prospectus filed with the Commission under this section or as part of a registration statement under the Securities Act shall be filed with the Commission no later than the fifth business day after the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

(6) A form of prospectus used in connection with an offering of securities under Canada's National Policy Statement No. 45 pursuant to rule 415 under the Securities Act (§ 230.415 of this chapter) that is not made in the United States shall be filed with the Commission no later than the date it is first used in Canada, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

25. By adding § 230.467 to read as follows:

§ 230.467 Effectiveness of registration statements and post-effective amendments thereto made on Forms F–7, F–8, F–9, F–10 and F–80.

(a) A registration statement on Form F–7, Form F–8 or Form F–80 (§ 239.37, § 239.38 or § 239.41 of this chapter), and any amendment thereto, shall become effective upon filing with the Commission. A registration statement on Form F–9 or Form F–10 (§ 239.39 or § 239.40 of this chapter), and any amendment thereto, relating to an offering being made contemporaneously in the United States and Canada shall become effective upon filing with the

Commission, unless designated as preliminary material on the Form.

(b) Where no contemporaneous offering is being made in Canada, a registrant filing on Form F–9 or Form F–10 may designate on the facing page of the registration statement, or any amendment thereto, a date and time for such filing to become effective that is not earlier than seven calendar days after the date of filing with the Commission, and such registration statement or amendment shall become effective in accordance with such designation; *provided, however,* That such registration statement or amendment may become effective prior to seven calendar days after the date of filing with the Commission if the securities regulatory authority in the review jurisdiction issues a receipt or notification of clearance with respect thereto before such time elapses, in which case the registration statement or amendment shall become effective by order of the Commission as soon as practicable after receipt of written notification by the Commission from the registrant or the applicable Canadian securities regulatory authority of the issuance of such receipt or notification of clearance.

26. By revising paragraph (d) of § 240.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form F–7, F–8 or F–80 (§ 239.37, § 239.38 or § 239.41 of this chapter); on Form F–9 or F–10 (§ 239.39 or § 239.40 of this chapter) relating to an offering being made contemporaneously in the United States and the registrant's home jurisdiction; on Form S–8 (§ 239.16b of this chapter) ; on Form S–3, F–2 or F–3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

27. By revising paragraphs (b)(2)(i)(D) and (b)(2)(ii)(D) of § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) If the issuer is a foreign private issuer, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i) (B) or (C) of this section, as appropriate.

(ii) * * *

(D) If the issuer is a foreign private issuer, the issuer may provide in lieu of the information specified in paragraph (b)(2)(ii) (A) or (B) of this section, the information contained in its most recent filing on Form 20–F or Form F–1 (§ 239.31 of the chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

28. The authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

Sections 239.31, 239.32 and 239.33 are also issued under 15 U.S.C. 78*l*, 78m, 78*o*, 78w, 80a–8, 80a–29, 80a–30, 80a–37 and 12 U.S.C. 241.

29. The authority citations following §§ 239.31, 239.32 and 239.33 are removed.

30. By revising paragraph (e) of § 239.12 and revising General Instruction I.E. of Form S–2 to read as follows:

§ 239.12 Form S-2, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

(e) A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in paragraph (a) of this section relating to organization and principal business shall be deemed to have met these registration eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (c) of this section.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–2

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–2

* * * * *

E. A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in I.A. relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to I.C. above.

* * * * *

31. By revising paragraph (a)(5) of § 239.13 and revising General Instruction I.A.5. of Form S–3 to read as follows:

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(5) A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in paragraph (a)(1) of this section relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (a)(3) of this section.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. * * *

5. A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in I.A.1. relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under Section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to I.A.3. above.

* * * * *

32. By revising General Instruction F to Form S–4 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

F. Transactions Involving Foreign Private Issuers

If a U. S. registrant is acquiring a foreign private issuer, as defined by rule 405 (§ 230.405 of this chapter), such registrant may use this Form and may present information about the foreign private issuer pursuant to Form F–4. If the registrant is a foreign private issuer, such registrant may use Form F–4 and

1. If the company being acquired is a foreign private issuer, may present information about such foreign company pursuant to Form F-4 or

2. If the company being acquired is a U.S. company, may present information about such company pursuant to this Form.

* * * * *

33. By revising General Instructions C.1., C.2.(a) and G(2), paragraph (a) of item 3, and Note (2) to item 9 of Form S-8 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S-8

* * * * *

General Instructions

* * * * *

C. Reoffers and Resales

1. *Securities.* Reoffers and resales of the following securities may be made on a continuous or delayed basis in the future, as provided by rule 415 (§ 230.415), pursuant to a registration statement on this form by means of a separate prospectus ("reoffer prospectus"), which is prepared in accordance with the requirements of part I of Form S-3 (or, if the registrant is a foreign private issuer, in accordance with part I of Form F-3), filed with the registration statement on Form S-8 or, in the case of control securities, a post-effective amendment thereto:

(a) *Control securities,* which are defined for purposes of this General Instruction C as securities acquired under a Securities Act registration statement held by affiliates of the registrant as defined in rule 405 (§ 230.405). Control securities may be included in a reoffer prospectus only if they have been or will be acquired by the selling securityholder pursuant to an employee benefit plan; or

(b) *Restricted securities,* which are defined for purposes of this General Instruction C as securities issued under any employee benefit plan of the registrant meeting the definition of "restricted securities" in rule 144(a)(3) (§ 230.144(a)(3)), whether or not held by affiliates of the registrant. Restricted securities may be included in a reoffer prospectus only if they have been acquired by the selling securityholder prior to the filing of the registration statement.

2. *Limitations.* * * *

(a) If the registrant, at the time of filing such prospectus, satisfies the registrant requirements for use of Form S-3 (or if the registrant is a foreign private issuer, the registrant requirements for use of Form F-3), then control and restricted securities may be registered for reoffer and resale without any limitations.

* * * * *

G. Updating. * * *

(2) Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement and the section 10(a) prospectus. Any material changes in the registrant's affairs required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report shall be reported on Form 8-K (§ 249.308) pursuant to item 5 thereof (or, if the registrant is a foreign private issuer, on Form 6-K (§ 249.306)).

* * * * *

Item 3. Incorporation of Documents by Reference

* * * * *

(a) The registrant's latest annual report, and where interests in the plan are being registered, the plan's latest annual report, filed pursuant to section 13(a) or 15(d) of the Exchange Act, or in the case of the registrant either: (1) The latest prospectus filed pursuant to rule 424(b) under the Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, or (2) the registrant's effective registration statement on Form 10, Form 20-F or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F filed under the Exchange Act containing audited financial statements for the registrant's latest fiscal year.

* * * * *

Item 9. Undertakings

* * * * *

Notes to Item 9: * * *

(2) With respect to registration statements filed on this form, foreign private issuers are not required to furnish the item 512(a)(4) undertaking.

* * * * *

34. By revising General Instruction E to Form S-11 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S-11

* * * * *

General Instructions

* * * * *

E. Foreign Issuers.

A foreign private issuer may comply with items 19, 20, 21, 22 and 26 of this Form by furnishing the information specified in items 3, 4, 10, 11, and 18, respectively, of Form 20-F (§ 249.220f of this chapter).

* * * * *

35. By revising paragraph (a) of § 239.31 and revising General Instruction I. A. of Form F-1 to read as follows:

§ 239.31 Form F-1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

(a) Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers, as defined in rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form F-1

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F-1

A. Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers as defined in rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * * * *

36. By revising paragraphs (a), (b)(2), (d), (e) and (g) of § 239.32, revising General Instructions I. A., I. D., I. E. and I. G of Form F-2, and revising paragraphs (a) and (b)(2) of item 11, item 12 and Instructions 1 and 4 thereto of Form F-2 to read as follows:

§ 239.32 Form F-2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(a) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F (§ 249.220f of this chapter), on Form 10-K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40-F, on Form 40-F (§ 249.240f of this chapter) under the Exchange Act.

(b) * * *

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if:

(i) The aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $300 million or more, or if non-convertible debt securities that are "investment grade debt securities," as defined below, are being registered and

(ii) The registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed.

* * * * *

(d) The financial statements in the registrant's latest filing on Form 20-F, Form 40-F or Form 10-K comply with item 18 of Form 20-F.

(e) The provisions of paragraphs (b)(1)(i) and (d) of this section do not apply if the Registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed and if the only securities being registered are to be offered:

(1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing

securityholders of the class of securities to which the rights attach;

(2) Pursuant to a dividend or interest reinvestment plan; or

(3) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The exemptions in this paragraph (e) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

* * * * *

(g) If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest.

Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–2 (§ 239.12 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–2

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–2

* * * * *

A. The Registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F (§ 249.220f of this chapter), on Form 10–K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

B. The financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 thereof.

E. The provisions of paragraphs (B)(1)(a) and (D) do not apply if the Registrant has filed at least one Form 20–F, Form 40–F or Form 10–K that is the latest required to have been filed and if the only securities being registered are to be offered: (1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants, issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The exemptions in this paragraph (E) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

* * * * *

G. If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest.

Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–2 (§ 239.12 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest filing on Form 20–F, Form 40–F or Form 10–K under the Exchange Act.

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus or in an amended Form 20–F, Form 40–F or Form 10–K.

* * * * *

Item 12. Information with Respect to the Registrant.

The registrant shall incorporate by reference and deliver with the prospectus the latest Form 20–F, Form 40–F or Form 10–K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to have been filed and any report on Form 10–Q or Form 8–K filed since the end of the fiscal year covered by such annual report. The registrant may incorporate by reference and deliver with the prospectus any other Form 10–Q or Form 8–K, and any Form 6–K containing information meeting the requirements of this Form.

Instructions

1. Reference is made to General Instruction I.D. that, in some cases, requires the financial statements in the Form 20–F, Form 40–F or Form 10–K to comply with Item 18 of Form 20–F as a condition for eligibility to use Form F–2.

* * * * *

4. The Form 20–F, Form 40–F or Form 10–K shall be delivered with the preliminary prospectus but need not be redelivered with the final prospectus to a recipient that had previously received the Form 20–F, Form 40–F or Form 10–K with the preliminary prospectus.

* * * * *

37. By revising paragraphs (a)(1) and (a)(6)(iii), the Note following (a)(6)(iii), paragraphs (b)(1) and (b)(3) of § 239.33, and revising General Instructions I.A.1., I.A.6. (iii), the Note following I.A.6. (iii), I.B.1. and I.B.3., and paragraphs (a) and (b)(2) of Item 11 and paragraphs (a) and (b) of Item 12 of Form F–3 to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F, on Form 10–K (§ 240.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

(6) *Majority owned Subsidiaries.* * * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in paragraphs (a)(6) (i), (ii), and (iii) of this section, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3 (§ 239.13 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

(b) *Transaction requirements.* * * *

(1) *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter) if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registrant Requirements

* * * * *

1. The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F (§ 249.220f of this chapter), on Form 10–K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

6. *Majority owned Subsidiaries.* * * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirements and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in (i), (ii) and (iii) above, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3 (§ 239.13 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

B. *Transaction Requirements* * * *

1. *Primary Offerings by Certain Registrants*

Securities to be offered for cash by or on behalf of a registrant; if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with item 18 of Form 20–F.

* * * * *

3. *Transactions involving Secondary Offerings*

Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter) if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest filing on Form 20–F, Form 40–F or Form 10–K under the Exchange Act.

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with item 12 are not sufficiently current to comply with the requirements of rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus or in an amended Form 20–F, Form 40–F or Form 10–K in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

Item 12. Incorporation of Certain Information by Reference

(a) The registrant's latest Form 20–F, Form 40–F or Form 10–K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to have been filed and any report on Form 10–Q or Form 8–K filed since the end of the fiscal year covered by such annual report shall be incorporated by reference. If capital stock is to be registered and securities of the same class are registered under section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description shall be incorporated by reference.

Instruction

If the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K is amended to include the information specified in Item 18 of Form 20–F, the prospectus shall state that the Form 20–F, Form 40–F or Form 10–K has been so amended. Reference is made to the Transaction Requirements in General Instruction I.B. that, in some cases, require the financial statements in the Form 20–F, Form 40–F or Form 10–K to comply with Item 18 of Form 20–F as a condition for eligibility to use Form F–3.

(b) The prospectus also shall state that all subsequent filings on Form 20–F, Form 40–F, Form 10–K, Form 10–Q or Form 8–K filed by the registrant pursuant to the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

* * * * *

38. By revising § 239.34 and revising General Instructions A.1. and C.1.(d); paragraphs (a) and (b) of Item 10; paragraph (a)(1), Instructions 1. and 2. following paragraph (a)(3) and paragraph (b) of Item 11; Item 12; Item 13; and paragraph (b)(2) of Item 17 of Form F–4 to read as follows:

§ 239.34 Form F–4, for registration of securities of foreign private issuers issued in certain business combination transactions.

This form may be used by any foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of rule 145 (§ 230.145 of this chapter);

(b) In a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement; or

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) of this section registered on one registration statement.

Note: The Forms do not appear in the Code of Federal Regulations.

Form F-4

* * * * *

General Instructions

A. Rule as to Use of Form F-4.

1. This Form may be used by any foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued: (1) In a transaction of the type specified in paragraph (a) of rule 145 (§ 230.145 of this chapter); (2) in a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired; (3) in an exchange offer for securities of the issuer or another entity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

* * * * *

C. Information With Respect to the Company Being Acquired.

1. * * *

(d) If the company to be acquired is a U.S. company, the registrant shall present information about such other company pursuant to Instructions C and F of Form S-4 (§ 239.25 of this chapter).

* * * * *

Item 10. Information With Respect to F-3 Companies

* * * * *

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report on Form 20-F, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F and that have not been described in a report on Form 6-K (§ 249.306 of this chapter), Form 10-Q (§ 249.308a of this chapter) or Form 8-K (§ 249.308 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference from the registrant's latest Form 20-F, Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, Form 40-F in accordance with Item 11 are not sufficiently current to comply with the requirements of rule 3-19 of Regulation S-X (§ 210.3-19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20-F, Form 40-F or Form 10-K, in which case the prospectus shall disclose that the Form 20-F, Form 40-F or Form 10-K has been so amended, or in a Form 6-K, Form 10-Q or Form 8-K; and

* * * * *

Item 11. Incorporation of Certain Information by Reference

* * * * *

(a) * * *

(1) The registrant's latest annual report on Form 20-F, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20-F, Form 40-F or Form 10-K was required to be filed;

* * * * *

Instructions

1. All annual reports on Form 20-F, on Form 10-K or on Form 40-F filed by the registrant applicable to items 11 (a) and (b) herein shall contain financial statements that comply with item 18 of Form 20-F except that financial statements of the registrants may comply with item 17 of Form 20-F if the only securities being registered are investment grade debt as defined in the General Instructions to Form F-3.

2. Where common equity securities are being issued, the information required by item 5 of Form 20-F, nature of trading markets, should be updated, to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3-19 to Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, Form 10-K or, in the case of registrants described in General Instruction A. (2) of Form 40-F, Form 40-F, or in a Form 6-K, Form 10-Q or Form 8-K, as applicable.

* * * * *

(b) The prospectus also shall state that all annual reports on Form 20-F, on Form 10-K or, in the case of registrants described in General Instruction A. (2) of Form 40-F, on Form 40-F and all Forms 10-Q and 8-K, and any Form 6-K so designated, subsequently filed by the registrant pursuant to sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of securityholders is to be held, the date on which such meeting is held;

(2) If a meeting of securityholders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the termination of the offering; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the termination of such reoffering.

Instruction

Attention is directed to rule 439 (§ 230.439 of this chapter) regarding consent to the use of material incorporated by reference.

Item 12. Information with Respect to F-2 or F-3 Registrants

If the registrant meets the requirements for use of Form F-2 or F-3 and elects to comply with this item, furnish the information required by either paragraph (a) or (b) of this item. *However,* the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this item if the financial statements in the registrant's latest annual report on Form 20-F, on Form 10-K or, in the case of registrants described in General Instruction A. (2) of Form 40-F, on Form 40-F do not reflect: (1) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to rule 11-01(b) of Regulation S-X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report on Form 20-F, on Form 10-K or, in the case of registrants described in General Instruction A. (2) of Form 40-F, on Form 40-F, or a complete and legible facsimile of such Form 20-F, Form 10-K or Form 40-F:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report on Form 20-F, Form 10-K or Form 40-F.

(2) If the financial statements incorporated by reference from the registrant's latest Form 20-F, Form 10-K or Form 40-F in accordance with item 13 are not sufficiently current to comply with the requirements of item 3-19 of Regulation S-X, provide the information required by rule 10-01 of Regulation S-X and item 9 of Form 20-F by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to whom a prospectus is delivered a copy of the registrant's Form 10-Q, Form 8-K or Form 6-K report that contains such later information; or

(iii) In an amended Form 20-F, Form 40-F or Form 10-K in which case the prospectus shall disclose that the Form 20-F, Form 40-F or Form 10-K has been so amended.

(3) If not reflected on the registrant's latest Form 20-F, Form 10-K or Form 40-F annual report, provide information required by rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements

were included in the latest filing on Form 20–F, Form 10–K or Form 40–F and that have not been described in a report on Form 6–K, Form 10–Q or Form 8–K delivered with the prospectus in accordance with paragraph (2)(ii) of this item.

(5) Where common equity securities are being issued, the information required by item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K.

(b) If the registrant does not elect to deliver its latest Form 20–F, Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, Form 40–F annual report to the securityholders of the company to be acquired:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year based on the requirements of items 1 and 2 of Form 20–F. The description shall also take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by item 18 of Form 20–F. In addition, provide:

(i) The interim financial information as required by rule 10–01 of Regulation S–X sufficient to meet the requirements of rule 3–19 of Regulation S–X;

(ii) Financial information required by rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to rule 11–01(b) of Regulation S–X; and

(v) Any financial information required because of a material disposition of assets outside the normal course of business.

Instruction

Reference is made to item 4–01(a)(2) of Regulation S–X.

(3) Furnish the information required by the following:

(i) Items 1 (a)(3) and (a)(4) of Form 20–F, principal products, principal markets, methods of distribution, sales and revenues by categories of activity and into geographical markets;

(ii) Item 2 of Form 20–F, properties if the registrant is engaged significantly in extractive industries;

(iii) Item 6 of Form 20–F, exchange controls and other limitations on securityholders;

(iv) Item 7 of Form 20–F, taxation;

(v) Item 8 of Form 20–F, selected financial data;

(vi) Item 9 of Form 20–F, management's discussion and analysis of financial condition and results of operations;

(vii) Financial statements required by item 18 of Form 20–F (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to item 17(a) of this Form), and financial information required by rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued; and

(viii) Where common equity securities are being issued, item 5 of Form 20–F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to comply with rule 3–19 of Regulation S–X.

Item 13. Incorporation of Certain Information by Reference

If the registrant meets the requirements of Form F–2 or F–3 and elects to furnish information in accordance with the provisions of item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, and deliver with the prospectus the documents listed in paragraphs (1) and, if applicable, (2) below:

(1) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed; and

(2) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this item.

Instructions

1. All annual reports on Form 20–F, Form 10–K or Form 40–F filed by the registrant applicable to item 13 (a) or (b) herein shall contain financial statements that comply with item 18 of Form 20–F.

2. Where common equity securities are being issued, the information required by item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6–K, Form 10–Q or Form 8–K containing information meeting the requirements of Form F–2. See rules 4–01(a)(2) and 10–01 of Regulation S–X and item 18 of Form 20–F.

4. Attention is directed to rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual reports on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F, or reports on Form 6–K, Form 10–Q or Form 8–K are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–2 or F–3 Companies

* * * * *

(b) * * *

(2) Where common equity securities are being issued, the information required by item 5 of Form 20–F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or, in the case of registrants described in General Instruction A. (2) of Form 40–F, Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K;

* * * * *

39. By adding §§ 239.37, 239.38, 239.39, 239.40, 239.41 and 239.42 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 239.37 Form F-7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders.

(a) Form F–7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of the registrant's securities offered for cash upon the exercise of rights to purchase or subscribe for such securities that are granted to its existing securityholders in proportion to the number of securities held by them as of the record date for the rights offer.

(b) Form F–7 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer; and

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has

been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting.

Instruction

For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

(c) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) The rights in connection with the transaction granted to securityholders that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction

For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the registrant, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the registrant as being located in the United States.

(e) This Form shall not be used if the registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(f) Any non-U.S. person acting as trustee with respect to the securities being registered shall file a Form F–X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.38 Form F–8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F–8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements. (c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(d) In the case of an exchange offer, Form F–8 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied it the issuer of the securities to be exchanged is also the registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(e) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the "subject securities") for the securities of the registrant.

(f) In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (d)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 25 percent of the class of subject securities outstanding shall be held by U. S. holders.

Instructions

1. For purposes of exchange offers, the term "U. S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with rule 14d-1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 25 percent of such outstanding securities, *unless* (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN) ; (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U. S. holders hold 25 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U. S. ownership equals or exceeds 25 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E-4F, Schedule 14D-1F, and/or Form F-8 or Form F-80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U. S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

(h) In the case of a business combination, Form F-8 is available if:

(1) Each company participating in the business combination, including the successor registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however*, that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than the successor registrant is (CN) $75 million or more; *provided, however*, that any such participating company shall not be required to meet such public float requirement if other participating

companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-9, Form F-10 or Form F-80, or a tender offer in connection with which Schedule 13E-4F or 14D-1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

(i) In the case of a business combination, less than 25 percent of the class of securities to be offered by the successor registrant shall be held by U.S. holders as if measured immediately after completion of the business combination.

Instructions

1. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U.S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

(j) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities, is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.39 Form F-9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

(a) Form F-9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or investment grade preferred securities that are:

(1) Offered for cash or in connection with an exchange offer; and

(2) Either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in paragraph (e) of this section, are thereafter only convertible into a security of another class of the issuer.

Instruction

Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

(b) Form F-9 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form, and is currently in compliance with such obligations;

(4) Has an aggregate market value of its outstanding equity shares of (CN) $180 million or more; and

(5) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that the requirements set forth in paragraphs (b)(4) and (b)(5) of this section shall not apply if the securities being registered on this Form are not convertible into another security.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(c) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the "subject securities") for the securities of the registrant.

(d) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

Instructions

1. For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

(e) If the registrant is a majority-owned subsidiary offering debt securities or preferred shares, it shall be deemed to meet the requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (b) of this section, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

(f) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the 36-month reporting requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(h) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(i) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F–X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.40 Form F–10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

(a) Form F–10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act"), including securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination").

(b) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(c) Form F–10 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations, *provided, however,* that in the case of a business combination, each participating company other than the successor registrant must meet such 36-month reporting obligation, except that any such participating company shall not be required to meet such reporting requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting requirement;

(4) Has an aggregate market value of its outstanding equity shares of (CN) $360 million or more, *provided, however,* that in the case of a business combination, the aggregate market value of the outstanding shares of each participating company other than the successor registrant is (CN) $360 million or more, except that any such participating company shall not be required to meet such market value requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such market value requirement; and

(5) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor registrant is (CN) $75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and *provided further,* that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(d) In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

(e) In the case of a business combination, each participating company shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

(f) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the subject securities.

(g) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

3. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

(h) With respect to registration of debt securities or preferred securities on this Form, if the registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of paragraphs (c)(3), (c)(4) and (c)(5) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (c) of this section and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares); *provided, however*, that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

(i) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the 36-month reporting requirement of paragraph (c)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(j) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F–X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.41 Form F–80, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F–80 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(d) In the case of an exchange offer, Form F–80 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(e) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the "subject securities") for the securities of the registrant.

(f) In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (d) (3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 40 percent of the class of subject securities outstanding shall be held by U.S. holders.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8 or Form F–80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

(h) In the case of a business combination, Form F–80 is available if:

(1) Each company participating in the business combination, including the successor registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however,* that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than the successor registrant is (CN) $75 million or more; *provided, however,* that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-9, Form F-10 or Form F-80, or a tender offer in connection with which Schedule 13E-4F or 14D-1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

(i) In the case of a business combination, less than 40 percent of the class of securities to be offered by the successor registrant shall be held by U.S. holders, as if measured immediately after completion of the business combination.

Instructions

1. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U.S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

(j) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

§ 239.42 Form F-X, for appointment of agent for service of process by issuers registering securities on Form F-8, F-9, F-10 or F-80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F (§§ 240.13e-102, 240.14d-102 or 240.14d-103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 239.37 of this chapter), F-8, F-9, F-10 or F-80.

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Form F-8, F-9, F-10 or F-80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40-F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10 or F-80.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

40. The authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 79q, 79t, 80a-29, 80a-37, unless otherwise noted.

Section 240.3b-6 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.12g-3 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.12g3-2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.14d-1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 79t, 80a-37.

Section 240.14e-2 is also issued under 15 U.S.C. 77g, 77h, 77s(a), 77sss, 79t, 80a-37(a).

Section 240.15d-5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.15d-10 is also issued under 15 U.S.C. 80a-20(a), 80a-37(a).

41. The authority citations following §§ 240.3a12-3, 240.3b-6, 240.12g-3, 240.12g3-2, 240.13a-16, 240.13e-4, 240.14d-1, 240.14e-2, 240.15d-5 and 240.15d-16 are removed.

42. By revising paragraph (b) to § 240.3a12-3 to read as follows:

§ 240.3a12-3 Exemptions from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

* * * * *

(b) Securities registered by a foreign private issuer, as defined in Rule 3b-4 (§ 240.3b-4 of this chapter), shall be exempt from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Act.

43. By revising paragraph (b)(1)(i) of § 240.3b-6 to read as follows:

§ 240.3b-6 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10–K or Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

44. By revising paragraphs (a), (b) and (c)(2) and removing paragraph (c)(3) to § 240.12g–3 to read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 but for this section.

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12 but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file a registration statement pursuant to section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 or Form F–80 and following the succession the successor would not be required to register such class of securities under section 12 but for this section.

(c) * * *

(2) A foreign private issuer shall be eligible to file on Form 20–F and to use the exemption in Rule 3a12–3.

* * * * *

45. By revising paragraphs (b)(4), (d)(1) and (d)(2) of § 240.12g3–2 to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(b) * * *

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to securityholders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared, English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter. Any information or document previously sent to the Commission under cover of Form 40–F or Form 6–K need not be furnished under paragraph (b)(1) of this section.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9, F–10 or F–80);

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F–8, F–9, F–10 or F–80) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

* * * * *

46. By adding § 240.12h–4 to read as follows:

§ 240.12h–4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F–7, Form F–8 or Form F–80, provided that the issuer is exempt from the obligations of Section 12(g) of the Act pursuant to Rule 12g3–2(b).

47. By adding § 240.13a–3 to read as follows:

§ 240.13a–3 Reporting by Form 40–F registrant.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 13A (§§ 240.13a–1 through 240.13a–17 of this chapter).

48. By revising paragraph (g)(1) and the Note following paragraph (i) to § 240.13a–10 to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

* * * * *

(i) * * *

Note.—In addition to the report or reports to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B. 1. to that form.

49. By revising paragraph (a) of § 240.13a–16 to read as follows:

§ 240.13a–16 Reports of foreign private issuers on Form 6–K (17 CFR 249.306).

(a) Every foreign private issuer which is subject to Rule 13a–1 [17 CFR 240.13a–1] shall make reports on Form 6–K, except that this rule shall not apply to:

(1) Investment companies required to file reports pursuant to Rule 30b1–1 [17 CFR 270.30b1–1]; or

(2) Issuers of American depositary receipts for securities of any foreign issuer.

* * * * *

50. By amending § 240.13e–4 to redesignate paragraph (g) as (h) and to

add a new paragraph (g) to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(g) The requirements of section 13(e)(1) of the Act and Rule 13e-4 and Schedule 13E-4 thereunder shall be deemed satisfied with respect to any issuer tender offer, including any exchange offer, where the issuer is incorporated or organized under the laws of Canada or any Canadian province or territory, is a foreign private issuer, and is not an investment company registered or required to be registered under the Investment Company Act of 1940, if less than 40 percent of the class of securities that is the subject of the tender offer is held by U. S. holders, and the tender offer is subject to, and the issuer complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer (unless the issuer has received an exemption(s) from, and the issuer tender offer does not comply with, requirements that otherwise would be prescribed by this section), *provided that:*

(1) Where the consideration for an issuer tender offer subject to this paragraph consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 13E-4F (§ 240.13e-102) and disseminated to shareholders residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for an issuer tender offer subject to this paragraph includes securities to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 13E-4F referred to in paragraph (g)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the issuer residing in the United States in accordance with such Canadian laws, regulations and policies.

Note: Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions imposing requirements that otherwise would be prescribed by this section, the issuer tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

* * * * *

51. By adding § 240.13e-102 to read as follows:

§ 240.13e-102 Schedule 13E-4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.

Securities and Exchange Commission
Washington, DC 20549
Schedule 13E-4F
Issuer Tender Offer Statement Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934
[Amendment No. ____]

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's Name into English (if applicable))

(Jurisdiction of Issuer's Incorporation or Organization)

(Name(s) of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities) (if applicable)

(Name, address (including zip code) and telephone number (including area code) of person authorized to receive notices and communications on behalf of the person(s) filing statement)

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee *
Transaction Valuation
Amount of Filing Fee

* Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[ ] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: ________
Registration No.: ________
Filing Party:

Form: ________Date Filed: ________

General Instructions

I. Eligibility Requirements for Use of Schedule 13E-4F

A. Schedule 13E-4F may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada or any Canadian province or territory; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The calculation of securities held by U.S. holders shall be made as of the end of the issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer as being located in the United States.

3. If this Schedule is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to this offer that was commenced or was eligible to be commenced on Schedule 14D-1F and/or Form F-8 or Form F-80, the date for calculation of U.S. ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any issuer using this Schedule must extend the cash tender or exchange offer to U.S. holders of the class of securities subject to the offer upon terms and conditions not less favorable than those extended to any other holder of the same class of such securities, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the issuer is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Filing Instructions and Fees

A. Five copies of this Schedule and any amendment thereto (see part I, Item 1.(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time of filing this Schedule with the Commission, the issuer shall pay to the Commission in accordance with Rule 0–11 of the Exchange Act, a fee in U.S. dollars in the amount prescribed by section 13(e)(3) of the Exchange Act. See also Rule 0–9 of the Exchange Act.

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them, calculated into U.S. dollars.

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based on the market value of the securities to be acquired by the issuer as established in accordance with paragraph (3) of this section.

(3) When the fee is based upon the market value of the securities, such market value shall be established by either the average of the high and low prices reported on the consolidated reporting system (for exchange-traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the Schedule. If there is no market for the securities to be acquired by the issuer, the value shall be based upon the book value of such securities computed as of the latest practicable date prior to the date of filing of the Schedule, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English. If any other part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a foreign language, it shall be accompanied by a substantive summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

III. Compliance with the Exchange Act

A. Pursuant to Rule 13e–4(g) under the Exchange Act, the issuer shall be deemed to comply with the requirements of section 13(e)(1) of the Exchange Act and Rule 13e–4 and Schedule 13E–4 thereunder in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule, *provided that*, if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be prescribed by Rule 13e–4, the issuer (absent an order from the Commission) shall comply with the provisions of section 13(e)(1) and Rule 13e–4 and Schedule 13E–4 thereunder.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, section 13(e)(1) of the Exchange Act and Rule 13e–4(b)(1) thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" for purposes of section 18 of the Exchange Act.

C. The issuer's attention is directed to Rule 10b–6 under the Exchange Act, in the case of an issuer exchange offer, and Rule 10b–13 under the Exchange Act, in the case of an issuer cash tender offer or issuer exchange offer. [*See* Exchange Act Release No. 29355 (June 21, 1991) containing exemptions from Rules 10b–6 and 10b–13.]

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the Canadian jurisdiction in which the issuer is incorporated or organized, and any other Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Schedule need not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made by the issuer to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the issuer have been or are to be offered or cancelled in the transaction, such securities shall be registered on forms promulgated by the Commission under the Securities Act of 1933 including, where available, the Commission's Form F–8 or F–80 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two-points leaded:

"This tender offer is made by a foreign issuer for its own securities, and while the offer is subject to disclosure requirements of the country in which the issuer is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

"Investors should be aware that the issuer or its affiliates, directly or indirectly, may bid for or make purchases of the securities of the issuer subject to the offer, or of its related securities, during the period of the issuer tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be lettered or numbered appropriately for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the issuer in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

The Schedule shall set forth the following undertakings of the issuer:

(a) The issuer undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

(b) The issuer also undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities in connection with the cash tender or exchange offer covered by this Schedule. Such information shall be set forth in amendments to this Schedule.

2. Consent to Service of Process

(a) At the time of filing this Schedule, the issuer shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be filed with the Schedule.

B. The name of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the person(s) filing the Schedule consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 13E–4F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

52. By amending § 240.14d–1 to redesignate paragraph (b) as (c) and to add a new paragraph (b) and Notes thereto to read as follows:

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(b) The requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and Rule 14e–1 of Regulation 14E under the Act, shall be deemed satisfied with respect to any tender offer, including any exchange offer, for the securities of an issuer incorporated or organized under the laws of Canada or any Canadian province or territory, if such issuer is a foreign private issuer and is not an investment company registered or required to be registered under the Investment Company Act of 1940, if less than 40 percent of the class of securities outstanding that is the subject of the tender offer is held by U.S. holders, and the tender offer is subject to, and the bidder complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer (unless the bidder has received an exemption(s) from, and the tender offer does not comply with, requirements that otherwise would be prescribed by Regulation 14D or 14E), *provided that:*

(1) In the case of tender offers subject to section 14(d)(1) of the Act, where the consideration for a tender offer subject to this section consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 14D–1F (§ 240.14d–102) and disseminated to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for a tender offer subject to this section includes securities of the bidder to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 14D–1F referred to in paragraph (b)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies.

Notes: 1. For purposes of any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Act, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to the commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

2. Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions imposing requirements that otherwise would be prescribed by Regulation 14D or 14E, the tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

* * * * *

53. By adding § 240.14d–102 to read as follows:

§ 240.14d-102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d–1(b) under the Securities Exchange Act of 1934.

Securities and Exchange Commission

Washington, DC

Schedule 14D–1F

Tender Offer Statement Pursuant to Rule 14d–1(b) Under the Securities Exchange Act of 1934

[Amendment No. ______]

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of bidder)

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee*

Transaction Valuation

Amount of Filing Fee

* Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a) (2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: __________

Registration No.: __________

Filing Party: ______________

Form: ______________

Date Filed: ______________

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–1F

A. Schedule 14D–1F may be used by any person making a cash tender or exchange offer (the "bidder") for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40 percent of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. The calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "U. S. holder" shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer as being located in the United States.

3. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN) ; (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U. S. holders hold 40 percent or more of the subject class of securities; or (c) the offeror has actual knowledge that the level of U. S. ownership equals or exceeds 40 percent of such securities.

4. If this Schedule is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to this offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F and/or Form F–8 or Form F–80, the date for calculation of U. S. ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

5. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any bidder using this Schedule must extend the cash tender or exchange offer to U. S. holders of securities of the subject company upon terms and conditions not less favorable than those extended to any other holder of such securities, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the subject company is an investment company registered or required to be registered under the Investment Company Act of 1940.

D. This Schedule shall not be used to comply with the reporting requirements of section 13(d) of the Exchange Act. Persons using this Schedule are reminded of their obligation to file or update a Schedule 13D where required by section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. Filing Instructions and Fee

A. Five copies of this Schedule and any amendment thereto (see part I, item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time of filing this Schedule with the Commission, the bidder shall pay to the Commission in accordance with Rule 0–11 of the Exchange Act, a fee in U. S. dollars in the amount prescribed by section 14(a)(3) of the Exchange Act. See also Rule 0–9 under the Exchange Act.

(1) Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration shall be based on the market value of the securities to be received by the bidder as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the bidder, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English. If any other part of this Schedule, or any exhibit or other paper or document filed as part of the Schedule, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

III. Compliance With the Exchange Act

A. Pursuant to Rule 14d–1(b) under the Exchange Act, the bidder shall be deemed to comply with the requirements of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E of the Exchange Act, in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule; *provided that,* if an exemption has been granted from requirements of Canadian federal, provincial, and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be prescribed by Regulation 14D or 14E, the bidder (absent an order from the Commission) shall comply with the provisions of sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" for purposes of section 18 of the Exchange Act.

C. The bidder's attention is directed to Rule 10b–6 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. [See Exchange Act Release No. 29355 (June 21, 1991) containing exemptions from Rules 10b–6 and 10b–13.]

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have been or are to be offered or cancelled in the transaction, such securities shall be registered on forms promulgated by the Commission under the Securities Act of 1933 including, where available, the Commission's Form F–8 or F–80 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home-jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which the subject company is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the subject company is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

"Investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

In the case of an exchange offer:

"Investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer or of the issuer's related securities, or of the bidder's securities to be distributed or of the bidder's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

PART II—Information Not Required to be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the bidder is signed pursuant to a power of attorney, certified copies of the bidder's board of directors authorizing such signature also shall be filed.

PART III—Undertakings and Consent to Service of Process

1. *Undertakings*

The Schedule shall set forth the following undertakings of the bidder:

a. The bidder undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

b. The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities in connection with the cash tender or exchange offer covered by this Schedule. Such information shall be set forth in amendments to this Schedule.

c. In the case of an exchange offer:

The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, or otherwise discloses, information regarding purchases of the issuer's or bidder's securities in connection with the offer.

2. *Consent to Service of Process*

(a) At the time of filing this Schedule, the bidder (if a non-U. S. person) shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the bidder consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 14D–1F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

54. By adding § 240.14d–103 to read as follows:

§ 240.14d–103 Schedule 14D–9F. Solicitation/recommendation statement pursuant to section 14(d)(4) of the Securities Exchange Act of 1934 and rules 14d–1(b) and 14e–2(c) thereunder.

Securities and Exchange Commission
Washington, DC 20549
Schedule 14D–9F
Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934 and Rules 14d–1(b) and 14e–2(c) Thereunder
[Amendment No. ___]

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] Name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Name(s) of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of the person(s) filing statement)

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–9F

A. Schedule 14D–9F is used by any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer (the "subject company"), or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of its securities filed on Schedule 14D–1F.

For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

B. Any person(s) using this Schedule must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to a recommendation by the subject issuer's board of directors, or any director or officer thereof, with respect to the offer.

II. Filing Instructions

A. Five copies of this Schedule and any amendment thereto (see part I, Item 1.(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English. If any other part of this Schedule, or any exhibit or other paper or document filed as part of this Schedule, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

D. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

III. Compliance with the Exchange Act

A. Pursuant to Rule 14e–2(c) under the Securities Exchange Act of 1934 (the "Exchange Act"), this Schedule shall be filed by an issuer, a class of the securities of which is the subject of a cash tender or exchange offer filed on Schedule 14D–1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a cash tender or exchange offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" with the Commission for purposes of section 18 of the Exchange Act.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which the subject issuer is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country."

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, or regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the person(s) filing this Schedule in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. *Undertaking*

The Schedule shall set forth the following undertaking of the person filing it:

The person(s) filing this Schedule undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

2. *Consent to Service of Process.*

(a) At the time of filing this Schedule, the person(s) (if a non-U. S. person) so filing shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the persons signing consent without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with filing on this Schedule 14D–9F or any purchases or sales of any security in connection therewith, may be commenced against them in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

55. By adding paragraph (c) to § 240.14e-2 to read as follows:

§ 240.14e-2 Position of subject company with respect to a tender offer.

* * * * *

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D–1F and conducted in reliance upon and in conformity with Rule 14d–1(b) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d–9 under the Act, shall file with the Commission on Schedule 14D–9F the entire disclosure document(s) required to be furnished to holders of securities of the subject issuer by the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in the United States in accordance with such laws, regulations and policies.

56. By adding § 240.15d–4 to read as follows:

§ 240.15d-4 Reporting by Form 40–F Registrants.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 15D (§§ 240.15d–1 through 240.15d–21 of this chapter).

57. By revising paragraph (b) of § 240.15d–5 and adding paragraph (c) to § 240.15d–5 to read as follows:

§ 240.15d-5 Reporting by successor issuers.

* * * * *

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 240.220f of this chapter).

(2) A foreign private issuer shall be eligible to file on Form 20–F.

(c) The provisions of paragraph (a) of this section shall not apply to an issuer of securities in connection with a succession that was registered on Form F–8 (§ 239.38 of this chapter), Form F–10 (§ 239.40 of this chapter) or Form F–80 (§ 239.41 of this chapter).

58. By revising paragraph (g)(1) and the Note following paragraph (i) of § 240.15d–10 to read as follows:

§ 240.15d-10 Transition reports.

* * * * *

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

* * * * *

(i) * * *

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

59. By amending § 240.15d–16 to remove existing paragraph (a)(2) and to redesignate existing paragraph (a)(3) as (a)(2).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

60. The authority citation for part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Section 249.310 is also issued under 15 U.S.C. 78m, 78*o*(d), and 78w(a).

61. The authority citation following § 249.310 is removed.

62. By revising paragraph (a), removing existing paragraph (b), redesignating existing paragraphs (c) as (b) and (d) as (c) of § 249.220f; and revising General Instruction A.(a), removing existing General Instruction A.(b), redesignating existing General Instructions A.(c) as A.(b) and A.(d) as A.(c) to Form 20–F to read as follows:

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

A. Rule as to Use of Form 20–F

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

* * * * *

63. By adding §§ 249.240f and 249.250 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to section 12(b) or (g) and for reports pursuant to section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

(a) Form 40–F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d–4 (17 CFR 240.15d–4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of their having filed a registration statement on Form F–7, F–8, F–9, F–10 or F–80 under the Securities Act of 1933 (the "Securities Act").

Note: No reporting obligation arises under section 15(d) of the Securities Act from the registration of securities on Form F–7, F–8 or F–80 if the issuer, at the time of filing such Form, is exempt from the requirements of section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b). See Rule 12h–4 under the Exchange Act.

(b) Form 40–F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 (17 CFR 240.13a–3) thereunder, and to file reports with the Commission pursuant to section 15(d) of the Exchange Act if:

(1) The registrant is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) The registrant is a foreign private issuer or a crown corporation;

(3) The registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form and is currently in compliance with such obligations;

(4) The aggregate market value of the outstanding equity shares of the registrant is:

(i) (CN) $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F–9-eligible issuer that would be eligible for registration under the Securities Act on Form F–9; or

(ii) (CN) $360 million or more in all other cases; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9; and

(5) The aggregate market value of the public float of such equity shares is (CN) $75 million or more; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, an "affiliate" of a person is anyone who beneficially owns directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(c) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the 36-month reporting requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) This Form shall not be used if the registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(e) Registrants registering securities on this Form, and registrants filing annual reports on this Form who have not previously filed a Form F–X (§ 249.250 of this chapter) in connection with the class of securities in relation to which the obligation to file this report arises, shall file a Form F–X with the Commission together with this Form.

§ 249.250 Form F-X, for appointment of agent for service of process by issuers registering securities on Form F-8, F-9, F-10 or F-80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F (§§ 240.13e-102, 240.14d-102 or 240.14d-103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 249.37 of this chapter), F-8, F-9, F-10 or F-80.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

64. By revising General Instructions A and B and revising the cover page of Form 6–K to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form 6–K

* * * * *

General Instructions

A. Rule as to Use of Form 6–K.

This form shall be used by foreign private issuers which are required to furnish reports pursuant to Rule 13a–16 or 15d–16 under the Securities Exchange Act of 1934.

B. Information and Document Required to be Furnished.

Subject to General Instruction D herein, an issuer furnishing a report on this form shall furnish whatever information, not required to be furnished on Form 40–F or previously furnished, such issuer (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute to its securityholders.

The information required to be furnished pursuant to (i), (ii) or (iii) above is that which is material with respect to the issuer and its subsidiaries concerning: changes in business; changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in registrant's certifying accountants; the financial condition and results of operations; material legal proceedings; changes in securities or in the security for registered securities; defaults upon senior securities; material increases or decreases in the amount outstanding of securities or indebtedness; the results of the submission of matters to a vote of securityholders; transactions with directors, officers or principal securityholders; the granting of options or payment of other compensation to directors or officers; and any other information which the registrant deems of material importance to securityholders.

This report is required to be furnished promptly after the material contained in the report is made public as described above. The information and documents furnished in this report shall not be deemed to be "filed" for the purposes of section 18 of the Act or otherwise subject to the liabilities of that section.

If a report furnished on this form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and furnished with the form.

* * * * *

Form 6–K
Report of Foreign Private Issuer
Pursuant to Rule 13a–16 or 15d–16 of the Securities Exchange Act of 1934
For the month of ________, 19___

(Translation of Registrant's name into English)

(Address of principal executive office)

[Indicate by check mark whether the registrant files or will file annual reports under cover Form 20–F or Form 40–F.
Form 20–F ___ Form 40–F ___

[Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934.
Yes ___ No ___

[If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3–2(b) : 82–______]
Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)
By____________________

(Signature)*
Date ______

* Print the name and title under the signature of the signing officer.

65. By revising General Instruction G. (3) of Form 10–K to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form 10–K

* * * * *

General Instructions

* * * * *

G. Information to be Incorporated by Reference.

* * * * *

(3) The information required by part III (Items 10, 11, 12 and 13) may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A) or definitive information statement (filed or to be filed pursuant to Regulation 14C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10–K. However, if such definitive proxy statement or information statement is not filed with the Commission in the 120-day period or is not required to be filed with the Commission, the Items comprising the part III information must be filed as part of the Form 10–K, or as an amendment to the Form 10–K under cover of Form 8, not later than the end of the 120-day period. It should be noted that the information regarding executive officers required by Item 401 of Regulation S–K (§ 229.401 of this chapter) may be included in part I of Form 10–K under an appropriate caption. See Instruction 3 to Item 401(b) of Regulation S–K (§ 229.401(b) of this chapter).

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

66. The authority citation for part 260 continues to read as follows:

Authority: 15 U. S. C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss.

67. By revising paragraph (b)(1)(i) of § 260.0–11 to read as follows:

§ 260.0–11 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K or Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

68. By adding new § 260.4d–9 to read as follows:

§ 260.4d–9 Exemption for Canadian Trust Indentures from Specified Provisions of the Act.

(a) Subject to paragraph (b) of this section [17 CFR 260.4d–9], any trust indenture filed in connection with offerings on a registration statement on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter] shall be exempt from the operation of sections 310(a)(3) and 310(a)(4) , sections 310(b) through 316(a), and sections 316(c) through 318(a) of the Act; *provided that* the trust indenture is subject to

(1) the Canada Business Corporations Act, R. S. C. 1985;

(2) the Bank Act, R. S. C. 1985; or

(3) the Business Corporations Act, 1982 (Ontario), S. O. 1982.

(b) Any trust indenture filed by obligors incorporated or continued under the Company Act, R. S. B. C. 1979, c. 59 shall be ineligible for exemption pursuant to paragraph (a) of this section [17 CFR 260.4d–9].

69. By revising § 260.10a–4 to read as follows:

§ 260.10a–4 Consent of trustee to service of process.

At the time of filing an application pursuant to Rule 10a–1 [§ 260.10a–1 of this chapter] and at such time as it files a statement of eligibility to act as trustee under an indenture qualified under the Act, an indenture trustee organized and doing business under the laws of a foreign government shall furnish to the Commission on Form F–X [§ 249.250 of this chapter] a written consent of the trustee and power of attorney designating a U. S. person with an address in the United States as agent upon whom may be served any process, pleadings, subpoenas or other papers in any Commission investigation or administrative proceeding and any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in relation to which the indenture trustee proposes to act as trustee pursuant to any rule or order under section 310(a) of the Act and stipulates and agrees that any such suit, action or proceeding may be commenced by the service of process upon said agent for service of process, and that such service shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

70. By adding new § 260.10a–5 to read as follows:

§ 260.10a–5 Eligibility of Canadian Trustees.

(a) Subject to paragraphs (b), (c) and (d) of this section [17 CFR 260.10a–5], any trust company, acting as trustee under an indenture qualified or to be qualified under the Act and filed in connection with offerings on a registration statement on Form F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter] that is incorporated and regulated as a trust company under the laws of Canada or any of its political subdivisions and that is subject to supervision or examination pursuant to the Trust Companies Act (Canada), R.S.C. 1985, or the Canada Deposit Insurance Corporation Act, R.S.C. 1985 shall not be subject to the requirement of domicile in the United States under section 310(a) of the Act (15 U.S.C. 77jjj(a)).

(b) Any trust company that is incorporated and regulated as a trust company under the laws of the province of British Columbia shall be ineligible for appointment pursuant to paragraph (a) of this section (17 CFR 260.10a–5).

(c) Any obligor incorporated or continued under the Company Act, R.S.B.C. 1979, c. 59 shall be ineligible to appoint a Canadian trustee to act as sole trustee under an indenture qualified or to be qualified under the Act pursuant to paragraph (a) of this section (17 CFR 260.10a–5).

(d) Each trustee eligible for appointment under this section (17 CFR 260.10a–5) shall file as part of the registration statement for the securities to which the trusteeship relates a consent to service of process and power of attorney on Form F–X [§ 269.5 of this chapter].

Part 269—Forms Prescribed Under the Trust Indenture Act of 1939

71. The authority citation for part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss.

72. By redesignating existing §§ 269.5, 269.6 and 269.7 as 269.6, 269.7 and 269.8; and adding a new § 269.5 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 269.5 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249. 240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239. 37 of this chapter), F–8, F–9, F–10 or F–80.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

73. By revising Item 16 of Form T–1 (§ 269. 1) to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form T–1

* * * * *

Item 16. List of exhibits.

List below all exhibits filed as a part of this statement of eligibility.

Instruction. Subject to Rule 7a–29 permitting incorporation of exhibits by reference, the following exhibits are to be filed as a part of the statement of eligibility of the trustee. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 16. If the certificate of authority to commence business (Exhibit 2) and/or the certificate to exercise corporate trust powers (Exhibit 3) is contained in another exhibit, a statement to that effect shall be made, identifying the exhibit in which such certificates are included. If an applicable exhibit is not in English, a translation in English shall also be filed. In response to Exhibit 7, foreign trustees shall provide financial information sufficient to provide the information required by Section 310(a) (2) of the Act.

1. A copy of the articles of association of the trustee as now in effect.
2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.
3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.
4. A copy of the existing bylaws of the trustee, or instruments corresponding thereto.
5. A copy of each indenture referred to in Item 4, if the obligor is in default.
6. The consents of United States institutional trustees required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
8. A copy of any order pursuant to which the foreign trustee is authorized to act as sole trustee under indentures qualified or to be qualified under the Act.
9. Foreign trustees are required to file a consent to service of process on Form F–X (§ 269. 5 of this chapter).

* * * * *

74. By revising Item 16 of Form T–6 (§ 269.9) to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form T–6

* * * * *

Item 16. List of exhibits.

List below all exhibits filed as a part of this statement of eligibility.

Instruction. Subject to Rule 7a–29 permitting incorporation of exhibits by reference, the following exhibits are to be filed as a part of the statement of eligibility of the trustee. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 16. If the certificate of authority to commence business (Exhibit 2) and/or the certificate to exercise corporate trust powers (Exhibit 3) is contained in another exhibit, a statement to that effect shall be made, identifying the exhibit in which such certificates are included. If the applicable exhibit is not in English, a translation in English shall also be filed. In response to Exhibit 7, foreign trustees should provide financial information sufficient to provide the information required by section 310(a)(2) of the Act.

1. A copy of the articles of association of the trustee as now in effect.
2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.
3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.
4. A copy of the existing bylaws of the trustee, or instruments corresponding thereto.
5. A copy of each indenture referred to in Item 4, if the obligor is in default.
6. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
7. Trustee's consent to service of process on Form F–X [§ 269. 5 of this chapter].
8. Copies of applicable statutes, rules, regulations, and the administrative interpretations of those provisions affecting (a) substantial equivalency of regulation with respect to supervision or examination of the trustee in the foreign jurisdiction to that of trustees subject to

the jurisdiction of the laws of the United States, any State, Territory, or the District of Columbia; and (b) eligibility of United States persons to act as sole indenture trustees in the foreign jurisdiction.

* * * * *

By the Commission.

Dated: June 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

Note: These Appendices will not appear in the Code of Federal Regulations.

APPENDIX A—New Forms Under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939

FORM F–7
FORM F–8
FORM F–9
FORM F–10
FORM F–80
FORM 40–F
FORM F–X

Securities and Exchange Commission
Washington, DC 20549

Form F–7

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I. R. S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public

---

This registration statement and any amendment thereto shall become effective upon filing with the Commission in accordance with Rule 467(a).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securities to be registered

Amount to be registered

Proposed maximum offering price per unit

Proposed maximum aggregrate offering price

Amount of registration fee

* See General Instruction II. F. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. Eligibility Requirements for Use of Form F–7

A. Form F–7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of the Registrant's securities offered for cash upon the exercise of rights to purchase or subscribe for such securities that are granted to its existing securityholders in proportion to the number of securities held by them as of the record date for the rights offer.

B. Form F–7 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer; and

(3) has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting.

Instruction. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

C. If the Registrant is a successor Registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of I. B. (3) above if: (1) The time the successor Registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; (2) the time the successor Registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfy such 12-month listing requirement; and (3) the successor Registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

D. The rights in connection with the transaction granted to securityholders that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the Registrant, any voting trustee, any depositary, any share transfer agent or any person acting on behalf of the Registrant as being located in the United States.

E. This Form shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Application of General Rules and Regulations

A. The Rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in this Form. Instead, the rules and regulations applicable in the home jurisdiction regarding form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a posteffective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file number[s] of previous registration statement[s]]. "

E. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

The registration fee is to be calculated at the price at which the rights may be exercised if known at the time of filing the registration statement, or, if not known, at the market value of outstanding securities of the same class included in the registration statement. If the fee is to be calculated upon the basis of the price at which the rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they may be exercised.

Instruction The market value of the Registrant's outstanding securities shall be the average of the high and low prices reported or the average of the bid and asked price of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

G. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

H. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

I. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf prospectus offering procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with any Canadian jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.I. of Form F-7; File No. 33-[insert number of the registration statement]. "

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf prospectus offering procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

III. Compliance with Exchange Act

A. Pursuant to Rule 12h-4 under the Securities Exchange Act of 1934 (the "Exchange Act"), a Registrant shall be exempt from reporting obligations under section 15(d) of the Exchange Act if such reporting obligations would have arisen solely from registration of securities on this Form. The Registrant's attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6, 10b-7 and 10b-8 under the Exchange Act.

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, shall not apply to auditor reports on financial statements included in this registration statement.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents used to offer the rights and underlying securities to holders in any Canadian jurisdiction. Such disclosure document(s) shall include all information used to make such offers, without regard to whether such information has previously been provided to shareholders. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

Such prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into disclosure documents used in Canada and not required to be delivered to securityholders pursuant to Canadian law.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and are subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 4. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the Registrant, must be made publicly available in connection with the transaction.

(2) Copies of any documents incorporated by reference into the registration statement, and any publicly available documents filed with any other Canadian regulatory authority concurrently with the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(4) If any name is signed to the registration statement or amendment pursuant to a power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(5) A copy of any indenture relating to the registered securities.

Part III—Consent to Service of Process

(a) At the time of filing Form F–7, any non-U.S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of the agent for service of the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–7 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of_____, Country of_____, on_____ (date), ____.

Registrant ____________________

By (Signature and Title)____________________

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

____

(Signature)

____

(Name and Title)

____

(Date)

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its comptroller 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. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

Securities and Exchange Commission
Washington, DC 20549
Form F–8
Registration Statement Under the Securities Act of 1933

____

(Exact name of Registrant as specified in its charter)

____

(Translation of Registrant's name into English (if applicable))

____

(Province or other jurisdiction of incorporation or organization)

____

(Primary Standard Industrial Classification Code Number (if applicable))

____

(I.R.S. Employer Identification Number (if applicable))

____

(Address and telephone number of Registrant's principal executive offices)

____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public_____.

This registration statement and any amendment thereto shall become effective upon filing with the Commission in accordance with Rule 467(a).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee *

Title of each class of securities to be registered
Amount to be registered
Proposed maximum offering price per unit
Proposed maximum aggregate offering price
Amount of registration fee

* See General Instructions IV.F.–IV.H. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. General Eligibility Requirements for Use of Form F–8

A. Form F–8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

B. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

C. This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the Registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the Registrant, its parent or an affiliate of either.

Instruction For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

D. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of securities to be exchanged (the "subject securities") for securities of the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Eligibility Requirements for Exchange Offers

A. In the case of an exchange offer, Form F–8 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer;

(3) has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the Registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

B. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the subject securities.

C. In the case of an exchange offer, if the Registrant is a successor Registrant subsisting after a business combination, the Registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of II. A. (3) above if: (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; (2) the time the successor Registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfy such 12-month listing requirement; and (3) the successor Registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

D. In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 25 percent of the class of subject securities outstanding shall be held by U. S. holders.

Instructions

1. For purposes of exchange offers, the term "U. S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 25 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges, NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 25 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S.

ownership equals or exceeds 25 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8 or Form F–80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U. S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

III. Eligibility Requirements for Business Combinations

A. In the case of a business combination, Form F–8 is available if:

(1) Each company participating in the business combination, including the successor Registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor Registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however,* that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than the successor Registrant is (CN) $75 million or more; *provided, however,* that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last 12 months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

B. In the case of a business combination, less than 25 percent of the class of securities to be offered by the successor Registrant shall be held by U. S. holders, as if measured immediately after completion of the business combination.

Instructions

1. For purposes of business combinations, the term "U. S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U. S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

C. In the case of a business combination, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

IV. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

E. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act, a fee in U.S. dollars in the amount prescribed by section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

G. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with

securities registered pursuant to Form F–8 or to transactions in said securities.

(b) In the case of an exchange offer, Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchases of the Registrant's securities or of the subject issuer's securities during the exchange offer. Such information shall be set forth in amendments to this Form.

Item 2. Consent to Service of Process

(a) At the time of filing Form F–8, the Registrant shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) At the time of filing Form F–8, any non-U. S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ______, Country of ______, on ____ (date), ____.

Registrant—

By (Signature and Title)—

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Name and Title)

(Date)

Instructions

A. The registration statement shall be signed by the Registrant, 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. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–8 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission
Washington, DC 20549
Form F–9
Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public ______

(Principal jurisdiction regulating this offering)

It is proposed that this filing shall become effective (check appropriate box)

A. [ ] upon filing with the Commission pursuant to Rule 467(a) (if in connection with an offering being made contemporaneously in the United States and Canada).

B. [ ] at some future date (check the appropriate box below)

1. [ ] pursuant to Rule 467(b) on ______ (date) at ______ (time) (designate a time not sooner than 7 calendar days after filing).
2. [ ] pursuant to Rule 467(b) on ______ date) at ______ (time) (designate a time 7 calendar days or sooner after filing) because the securities regulatory authority in the review jurisdiction has issued a receipt or notification of clearance on ______ (date).
3. [ ] pursuant to Rule 467(b) as soon as practicable after notification of the Commission by the Registrant or the Canadian securities regulatory authority of the review jurisdiction that a receipt or notification of clearance has been issued with respect hereto.
4. [ ] after the filing of the next amendment to this Form (if preliminary material is being filed).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee *

Title of each class of securities to be registered
Amount to be registered
Proposed maximum offering price per unit
Proposed maximum aggregate offering price
Amount of registration fee

* See General Instructions II.G.–II.H. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

If it is proposed that this filing become effective pursuant to Rule 467(b), the following legend shall appear on the cover page of this Form:

"The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to section 8(a) of the Act, may determine."

General Instructions

I. Eligibility Requirements for Use of Form F–9

A. Form F–9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or investment grade preferred securities that are: (1) Offered for cash or in connection with an exchange offer; and (2) either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in E. below, are thereafter only convertible into a security of another class of the issuer.

Instruction Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

B. Form F–9 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation;

(3) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form, and is currently in compliance with such obligations;

(4) has an aggregate market value of its outstanding equity shares of (CN) $180 million or more: and

(5) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more;

provided, however, that the requirements set forth in B.(4) and B.(5) above shall not apply if the securities being registered on this Form are not convertible into another security.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

C. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of securities to be exchanged (the "subject securities") for the securities of the Registrant.

D. In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

Instructions

1. For purposes of this Form, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

E. If the Registrant is a majority-owned subsidiary offering debt securities or preferred shares, it shall be deemed to meet the requirements of I.B. (3), (4) and (5) above if the parent of the Registrant-subsidiary meets the requirements of I.B. above, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

F. If the Registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement, or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the 36-month reporting requirement of I.B.(3) above if: (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; and (2) the successor Registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

G. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

H. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Application of General Rules and Regulations

A. A registration statement on this Form, and any amendment thereto, shall become effective in accordance with Rule 467 under the Securities Act.

B. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

C. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

D. Five copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

E. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file number[s] of previous registration statement[s]]."

F. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

G. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

H. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of the securities received or cancelled shall be the average of the high and low prices reported or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

I. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

J. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

K. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf prospectus offering procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.K. of Form F-9; File No. 33—[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf prospectus offering procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

L. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

III. Compliance With Exchange Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act (and the requirements of Regulation 15D thereunder) arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Forms 40-F and 6-K, certain home jurisdiction documents. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6 and 10b-7 under the Exchange Act.

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F-8, Form F-9, Form F-10 or Form F-80 or under the Exchange Act filed by the issuer on Form 40-F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

C. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

D. Pursuant to Rule 13e-4(g) under the Exchange Act, the provisions of Rule 13e-4 are not applicable, and pursuant to Rule 14d-1(b) under the Exchange Act, the provisions of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D-1 thereunder, and Rule 14e-1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers; *provided that*, if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be required by Commission tender offer rules, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of section 10(b), 13(e) or 14(e) of the Exchange Act or Rule 10b-5, 13e-4(b)(1) or 14e-3 thereunder, if the transaction otherwise is subject to those sections.

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents used to offer securities in any Canadian jurisdiction. Except as noted hereinafter, such disclosure documents shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s).

In all other cases, the prospectus shall consist of the entire disclosure document or documents used to offer the securities of the Registrant in the principal jurisdiction (or, if the offering is not being made contemporaneously in Canada, as if the offering were made in such jurisdiction). Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

Such prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into disclosure document(s) used in Canada and not required to be delivered to offerees or purchasers (in the case of an exchange offer) pursuant to Canadian law or to offerees or purchasers (in all other cases) pursuant to the laws of the principal jurisdiction.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); and (v) certificates of the issuer or any underwriters.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. The financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and may be subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed or to be exchanged, or certain related securities, as permitted by applicable laws or regulations of Canada or its provinces or territories."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 4. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U. S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) In the case of an exchange offer, any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the subject issuer, must be made publicly available by the Registrant in connection with the transaction.

(2) In all other cases, any reports or information that in accordance with the requirements of the principal jurisdiction must be made publicly available in connection with the offering (or, if the offering is not being made contemporaneously in Canada, the reports or information that would be required to be made publicly available by the principal jurisdiction if the offering were made in Canada).

(3) In connection with an exchange offer, a copy of any agreement relating to the proposed acquisition.

(4) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with the principal jurisdiction or any other Canadian regulatory authority concurrently with the prospectus.

(5) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding the use of the report or valuation in the registration statement filed in the United States.

(6) If any name is signed to the registration statement or amendment pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(7) A copy of any indenture relating to the registered securities.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

This Form shall set forth the following undertaking of the Registrant:

Item 1. Undertaking

The Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–9 or to transactions in said securities.

Item 2. Consent to Service of Process

(a) At the time of filing Form F–9, the Registrant shall file with the Commission a written irrevocable consent and power of attorney on Form F-X.

(b) At the time of filing Form F–9, any non-U.S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–9 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, Country of _____, on _____ (date), _____.

Registrant— __________

By (Signature and Title)— __________

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

____

(Signature)

____

(Name and Title)

____

(Date)

Instructions

A. The registration statement shall be signed by the Registrant, 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. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

C. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–9 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

D. Where eligibility for use of this Form is based on the assignment of a security rating, the Registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the Registrant reasonably believes, and so states, that the security rating requirement will be met by the time of effectiveness.

Securities and Exchange Commission
Washington, D.C. 20549
Form F-10
Registration Statement Under the Securities Act of 1933

____

(Exact name of Registrant as specified in its charter)

____

(Translation of Registrant's name into English (if applicable))

____

(Province or other jurisdiction of incorporation or organization)

____

(Primary Standard Industrial Classification Code Number (if applicable))

____

(I.R.S. Employer Identification Number (if applicable))

____

(Address and telephone number of Registrant's principal executive offices)

____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public _____

____

(Principal jurisdiction regulating this offering (if applicable))

It is proposed that this filing shall become effective (check appropriate box)

A. [ ] upon filing with the Commission, pursuant to Rule 467(a) (if in connection with an offering being made contemporaneously in the United States and Canada).

B. [ ] at some future date (check the appropriate box below)

1. [ ] pursuant to Rule 467(b) on *(date)* at *(time)* (designate a time not sooner than 7 calendar days after filing).
2. [ ] pursuant to Rule 467(b) on *(date)* at *(time)* (designate a time 7 calendar days or sooner after filing) because the securities regulatory authority in the review jurisdiction has issued a receipt or notification of clearance on *(date)*.
3. [ ] pursuant to Rule 467(b) as soon as practicable after notification of the Commission by the Registrant or the Canadian securities regulatory authority of the review jurisdiction that a receipt or notification of clearance has been issued with respect hereto.
4. [ ] after the filing of the next amendment to this Form (if preliminary material is being filed).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securities to be registered
Amount to be registered
Proposed maximum offering price per unit
Proposed maximum aggregate offering price
Amount of registration fee

* See General Instructions II.G.–II.I. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

If it is proposed that this filing become effective pursuant to Rule 467(b), the following legend shall appear on the cover page of this Form:

"The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to section 8(a) of the Act, may determine."

General Instructions

I. General Eligibility Requirements for Use of Form F-10

A. Form F-10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act"), including securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination").

B. This Form may not be used for registration of derivative securities except: (1) warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the Registrant, its parent or an affiliate of either; and (2) convertible securities, provided that such securities are convertible only into securities of the Registrant, its parent or an affiliate of either.

Instruction

For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

C. Form F-10 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer;

(3) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations, *provided, however,* that in case of a business combination, each participating company other than the successor Registrant must meet such 36-month reporting obligation, except that any such participating company shall not be required to meet such reporting requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting requirement;

(4) has an aggregate market value of its outstanding equity shares of (CN) $360 million or more, *provided, however,* that in the case of a business combination, the aggregate market value of the outstanding shares of each participating company other than the successor Registrant is (CN) $360 million or more, except that any such participating company shall not be required to meet such market value requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such market value requirement; and

(5) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor Registrant is (CN) $75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; *provided further,* that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-9, Form F-10 or Form F-80, or a tender offer in connection with which Schedule 13E-4F or 14D-1F was filed or could have been filed, that terminated within the last 12 months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

D. In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

E. In the case of a business combination, each participating company shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

F. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of subject securities.

G. In the case of a business combination, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

3. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

H. With respect to registration of debt securities or preferred securities on this Form, if the Registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of I.C. (3), (4) and (5) above if the parent of the Registrant-subsidiary meets the requirements of I.C. above and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

I. If the Registrant is a successor Registrant subsisting after a business combination, it shall be deemed to meet the 36-month reporting requirement of I.C. (3) above if: (1) The time the successor Registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement and (2) the successor Registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

J. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

K. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Application of General Rules and Regulations

A. A registration statement on this Form, and any amendment thereto, shall become effective in accordance with Rule 467 under the Securities Act.

B. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the Form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

C. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

D. Five copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or any amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

E. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

F. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

G. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

H. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of the securities received or cancelled shall be the average of the high and low prices reported or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

I. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of a predecessor's equity securities shall be the average of the high and low prices reported or the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

J. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

K. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

L. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf prospectus offering procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right hand corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.L. of Form F–10; File No. 33—[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf prospectus offering procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

M. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

III. Compliance with Exchange Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d–4 under the Securities Exchange Act of 1934 (the "Exchange Act"), reporting obligations under section 15(d) of the Exchange Act (and the requirements of Regulation 15D thereunder) arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Forms 40–F and 6–K, certain home jurisdiction documents. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) and Rules 10b–6 and 10b–7 under the Exchange Act.

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–8, Form F–9, Form F–10 or Form F–80 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

C. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by item 3 of part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

D. Pursuant to Rule 13e–4(g) under the Exchange Act, the provisions of Rule 13e–4 are not applicable and pursuant to Rule 14d–1(b) under the Exchange Act, the provisions of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers; *provided that,* if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be required by Commission tender offer rules, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of section 10(b), 13(e) and 14(e) of the Exchange Act or Rule 10b–5, 13e–4(b) (1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

Part I—Information Required To Be Delivered to Offerees or Purchasers

Item 1. Home Jurisdiction Document

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents used to solicit votes of security holders in connection with the proposed business combination in any Canadian jurisdiction. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s).

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents used to offer securities in any Canadian jurisdiction. Except as noted hereinafter, such disclosure documents shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s).

In all other cases, the prospectus shall consist of the entire disclosure document or documents used to offer the securities of the Registrant in the principal jurisdiction (or, if the offering is not being made contemporaneously in Canada, as if the offering were made in such jurisdiction). Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into disclosure document(s) used in Canada and not required to be delivered to offerees or purchasers (in the case of an exchange offer) or to securityholders being solicited (in the case of a business combination) pursuant to Canadian law or to offerees or purchasers (in all other cases) pursuant to the laws of the principal jurisdiction.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Additional Information

The following information also shall be provided to offerees as part of the prospectus.

Financial Statements

If this Form is filed prior to July 1, 1993, any financial statements included in the home jurisdiction document must be reconciled to U.S. GAAP as required by Item 18 of Form 20–F under the Exchange Act.

Item 3. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and may be subject to foreign auditing and auditor independence standards, and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed or to be exchanged, or certain related securities, as permitted by applicable laws or regulations of Canada or its provinces or territories."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 4. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 5. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information not Required To Be Delivered to Offerees or Purchasers

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) In the case of an exchange offer or business combination, any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the subject issuer or, in the case of a business combination, in accordance with the requirements of the jurisdiction(s) of incorporation or organization of companies involved in the transaction other than the Registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) In the case of an exchange offer or a business combination, a copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) In all other cases, any reports or information that in accordance with the requirements of the principal jurisdiction must be made publicly available in connection with the offering (or, if the offering is not being made contemporaneously in Canada, the reports or information that would be required to be made publicly available by the principal jurisdiction if the offering were made in Canada).

(4) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with the principal jurisdiction or any other Canadian regulatory authority concurrently with the prospectus.

(5) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(6) If any name is signed to the registration statement or amendment pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(7) A copy of any indenture relating to the registered securities.

Part III—Undertaking and Consent to Service of Process

Item 1. Undertaking

This Form shall set forth the following undertaking of the Registrant:

The Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–10 or to transactions in said securities.

Item 2. Consent to Service of Process

(a) At the time of filing Form F–10, the Registrant shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) At the time of filing Form F–10, any non-U. S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–10 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ______, Country of ______, on ______, ____.

Registrant ____________________

By (Signature and Title) ____________________

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ____________________

(Name and Title) ____________________

(Date) ____________________

Instructions

A. The registration statement shall be signed by the Registrant, 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. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–10 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

Securities and Exchange Commission
Washington, DC 20549

Form F–80

Registration Statement Under the Securities Act of 1933

____

(Exact name of Registrant as specified in its charter)

____

(Translation of Registrant's name into English (if applicable))

____

(Province or other jurisdiction of incorporation or organization)

____

(Primary Standard Industrial Classification Code Number (if applicable))

____

(I. R. S. Employer Identification Number (if applicable))

____

(Address and telephone number of Registrant's principal executive offices)

____

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Approximate date of commencement of proposed sale of the securities to the public

____

This registration statement and any amendment thereto shall become effective upon filing with the Commission in accordance with Rule 467(a).

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf prospectus offering procedures, check the following box. [ ]

CALCULATION OF REGISTRATION FEE*

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

* See General Instructions IV. F.—IV. H. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

General Instructions

I. General Eligibility Requirements for Use of Form F–80

A. Form F–80 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

B. This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

C. This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the Registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the Registrant, its parent or an affiliate of either.

Instruction. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

D. This Form shall not be used if the Registrant or, in the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Eligibility Requirements for Exchange Offers

A. In the case of an exchange offer, Form F–80 is available to any Registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12

calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the Registrant on this Form.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

B. In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of subject securities.

C. In the case of an exchange offer, if the Registrant is a successor Registrant subsisting after a business combination, the Registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of II. A. (3) above if: (1) the time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement; (2) the time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor Registrant in each case satisfy such 12-month listing requirement; and (3) the successor Registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

D. In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 40 percent of the class of subject securities outstanding shall be held by U.S. holders.

Instructions

1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d-1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges, NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E-4F, Schedule 14D-1F, and/or Form F-8 or Form F-80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

III. Eligibility Requirements for Business Combinations

A. In the case of a business combination, Form F-80 is available if:

(1) each company participating in the business combination, including the successor Registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) each company participating in the business combination other than the successor Registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however,* that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) the aggregate market value of the public float of the outstanding equity shares of each company participating in the business

combination other than the successor Registrant is (CN) $75 million or more: *provided, however,* that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further,* that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last 12 months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

B. In the case of a business combination, less than 40 percent of the class of securities to be offered by the successor Registrant shall be held by U. S. holders, as if measured immediately after completion of business combination.

Instructions

1. For purposes of business combinations, the term "U. S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U. S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

C. In the case of a business combination, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

IV. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Five copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]. "

E. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

F. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with Rule 111 under the Securities Act, a fee in U. S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

G. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of the securities received or cancelled shall be the average of the high and low prices reported or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

H. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) For purposes of the registration fee, the market value of a predecessor's equity securities shall be the average of the high and low prices reported or the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 30 days prior to the date of filing.

I. If any part of the prospectus is in a language other than English, it shall be accompanied by a translation in the English language. If any other part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

J. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

K. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with any Canadian jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction IV. K. of Form F–80; File No. 33-[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

V. Compliance With Exchange Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 12h–4 under the Exchange Act, a Registrant shall be exempt from reporting obligations under section 15(d) of the Exchange Act if such reporting obligation would have arisen solely from registration of securities on this Form. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b–6, 10b–7 and 10b–13 under the Exchange Act. [See Exchange Act Release No. 29355 (June 21, 1991) containing exemptions from Rules 10b–6 and 10b–13.]

B. The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–8, Form F–9, Form F–10 or Form F–80 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

C. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

D. Pursuant to Rule 13e–4(g) under the Exchange Act, the provisions of Rule 13e–4 are not applicable, and pursuant to Rule 14d–1(b) under the Exchange Act, the provisions of sections 14(d) (1) through 14(d) (7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers, *provided that,* if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be required by Commission tender offer rules, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of section 10(b), 13(e) or 14(e) of the Exchange Act or Rule 10b–5, 13e–4(b) (1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

PART I—INFORMATION REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents used to offer the securities of the Registrant in any Canadian jurisdiction. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction(s) as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s) .

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents used to solicit votes of security holders in connection with the proposed business combination in any Canadian jurisdiction. Except as noted hereinafter, such disclosure documents(s) shall be prepared in accordance with the disclosure requirements of the jurisdiction(s) governing such solicitation as interpreted and applied by the securities commission(s) or other regulatory authorities in such jurisdiction(s) .

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into the disclosure document(s) used in Canada and not required to be delivered to offerees or purchasers (in the case of an exchange offer) or securityholders being solicited (in the case of a business combination) pursuant to Canadian law.

Notwithstanding the foregoing, such prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution) ; (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers) ; or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. The financial statements included or incorporated herein, if any, have been prepared in accordance with foreign generally accepted accounting principles, and may be subject to foreign auditing and auditor independence standards, and, thus, may not be comparable to financial statements of United States companies. "

"Prospective investors should be aware that acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein. "

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States. "

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed or to be exchanged, or certain related securities, as permitted by applicable laws or regulations of Canada or its provinces or territories."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. Incorporation of Certain Information by Reference

Information called for by this Form, including exhibits, may be incorporated by reference at the Registrant's option from documents that the Registrant has filed previously with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act or submitted to the Commission pursuant to Rule 12g3–2(b) under the Exchange Act. Any such incorporation by reference shall be done in accordance with Rule 24 of the Commission's Rules of Practice. If any information is incorporated by reference into the prospectus, the prospectus shall provide the name, address and telephone number of an officer of the Registrant from whom copies of such information may be obtained upon request without charge.

Item 4. List of Documents Filed With the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the jurisdiction of incorporation or organization of the subject issuer or, in the case of business combination, in accordance with the requirements of the jurisdiction(s) of incorporation or organization of companies involved in the transaction other than the Registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) A copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) Copies of any documents incorporated by reference into the registration statement and any publicly available documents filed with any other Canadian regulatory authority concurrently with the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the manually signed, written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the manually signed, written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437 under the Securities Act.

Any other consent required by Rule 436 or 438 under the Securities Act. Every amendment relating to a certified financial statement shall include the manually signed, written consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(5) If any name is signed to the registration statement pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(6) A copy of any indenture relating to the registered securities.

PART III—UNDERTAKINGS AND CONSENT TO SERVICE OF PROCESS

Item 1. Undertakings

This Form shall set forth the following undertakings of the Registrant:

(a) Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–80 or to transactions in said securities.

(b) In the case of an exchange offer, Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchases of the Registrant's securities or of the subject issuer's securities during the exchange offer. Such information shall be set forth in amendments to this Form.

Item 2. Consent to Service of Process

(a) At the time of filing Form F–80, the Registrant shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) At the time of filing Form F–80, any non-U.S. person acting as trustee with respect to the registered securities shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(c) Any change to the name or address of the agent for service of the Registrant or the trustee shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the relevant registration statement.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–80 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ______, Country of ______, on ______ (date), ____.

Registrant

______

By (Signature and Title)

______

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

______

(Name and Title)

______

(Date)

______

Instructions

A. The registration statement shall be signed by the Registrant, 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. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–80 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

Securities and Exchange Commission
Washington, D.C. 20549
Form 40–F

[Check one]

[ ] Registration Statement Pursuant to Section 12 of the Securities Exchange Act of 1934

or

[ ] Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended ______
Commission File Number ______

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service in the United States)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class

Name of each exchange on which registered

Securities registered or to be registered pursuant to Section 12(g) of the Act.

(Title of Class)

(Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

(Title of Class)

For annual reports, indicate by check mark the information filed with this Form:

[ ] Annual information form

[ ] Audited annual financial statements

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

Indicate by check mark whether the Registrant by filing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 (the "Exchange Act"). If "Yes" is marked, indicate the file number assigned to the Registrant in connection with such Rule.

Yes______ 82–______ No______

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes______ No______

General Instructions

A. Rules As To Use of Form 40–F

(1) Form 40–F may be used to file reports with the Commission pursuant to section 15(d) of the Exchange Act and Rule 15d–4 thereunder by Registrants that are subject to the reporting requirements of that Section solely by reason of their having filed a registration statement on Form F–7, F–8, F–9, F–10 or F–80 under the Securities Act of 1933 (the "Securities Act").

Note: No reporting obligation arises under section 15(d) of the Securities Act from the registration of securities on Form F–7, F–8 or F–80 if the issuer, at the time of filing such Form, is exempt from the requirements of Section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b). See Rule 12h–4 under the Exchange Act.

(2) Form 40–F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 thereunder, and to file reports with the Commission pursuant to Section 15(d) of the Exchange Act if: (i) The Registrant is incorporated or organized under the laws of Canada or any Canadian province or territory; (ii) the Registrant is a foreign private issuer or a crown corporation; (iii) the Registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months (or, if a crown corporation, for a period of at least 12 calendar months) immediately preceding the filing of this Form and is currently in compliance with such obligations; (iv) the aggregate market value of the outstanding equity shares of the Registrant is: (a) (CN) $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F–9-eligible issuer that would be eligible for registration under the Securities Act on Form F–9; or (b) (CN) $360 million or more in all other cases; *provided, however*, that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9; and (v) the aggregate market value of the public float of such equity shares is (CN) $75 million or more; *provided, however*, that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If the Registrant is a successor Registrant subsisting after a business

combination, it shall be deemed to meet the 36-month reporting requirement of A. (2)(iii) above if: (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 60 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor Registrant in each case satisfy such 36-month reporting requirement and (2) the successor Registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(4) This Form shall not be used if the Registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

B. Information To Be Filed on this Form

(1) Except as hereinafter noted, Registrants registering securities under sction 12 shall file with the Commission on this Form all information material to an investment decision that the Registrant, since the beginning of its last full fiscal year: (i) Made or was required to make public pursuant to the law of any Canadian jurisdiction, (ii) filed or was required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributed or was required to distribute to its securityholders. A list of all documents filed with the Commission as a part of the registration statement shall be set forth in or attached as an exhibit to the Form.

(2) Unless otherwise furnished in information provided pursuant to General Instruction B.(1), all registration statements on this Form shall include that portion of its home jurisdiction reports, forms or listing applications containing a description of the securities to be registered.

(3) Registrants reporting pursuant to section 13(a) or 15(d) of the Exchange Act should file under cover of this Form the annual information form required under Canadian law and the Registrant's audited annual financial statements and accompanying management's discussion and analysis. All other information material to an investment decision that a Registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile, (ii) files or is required to file with a stock exchange on which its securities are traded or (iii) distributes or is required to distribute to its securityholders shall be furnished by Registrants under cover of Form 6-K.

(4) Information contained in registration statements and reports on this Form shall be in the English language.

(5) If a report filed on this Form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and filed with this Form.

C. Compliance With Auditor Independence and Reconciliation Requirements

(1) The Commission's rules on auditor independence, as codified in section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement or annual report, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in a registration statement under the Securities Act filed by the issuer on Form F-8, Form F-9, Form F-10 or Form F-80 or under the Exchange Act filed by the issuer on Form 40-F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

(2) If this Form is filed prior to July 1, 1993, any financial statements, other than interim financial statements, included in this Form by registrants registering securities pursuant to section 12 of the Exchange Act or reporting pursuant to the provisions of section 13(a) or 15(d) of the Exchange Act must be reconciled to U.S. GAAP as required by Item 17 of Form 20-F under the Exchange Act, unless this Form is filed with respect to securities that would be eligible for registration under the Securities Act on Form F-9, in which case no such reconciliation is required, or unless this Form is filed with respect to a reporting obligation under section 15(d) that arose solely as a result of a filing made on Form F-7, F-8, F-9 or F-80, in which case no such reconciliation is required.

D. Application of General Rules and Regulations

(1) Rules 12b-2, 12b-5, 12b-10, 12b-11, 12b-12, 12b-13, 12b-14, 12b-21, 12b-22, 12b-23, 12b-25, 12b-33 and 12b-37 under the Exchange Act shall not apply to filings on this Form. The rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Exchange Act rules and regulations other than Rules 12b-2, 12b-5, 12b-10, 12b-11, 12b-12, 12b-13, 12b-14, 12b-21, 12b-22, 12b-23, 12b-25, 12b-33 and 12b-37 shall apply to filings on this Form unless specifically excluded in this Form. Pursuant to Rule 13a-3, an eligible registrant that files reports on Form 40-F and Form 6-K is deemed to satisfy the requirements of Regulation 13A under the Exchange Act.

(2) A registration statement on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date.

(3) An annual report on this Form or any amendment thereto shall be filed the same day the information included therein is due to be filed with any securities commission or equivalent regulatory authority in Canada.

(4) A registration statement filed pursuant to section 12 of the Exchange Act on this Form shall become effective in accordance with section 12(d) and Rule 12b-6 or section 12(g)(1) of such Act, as applicable.

(5) In accordance with Rule 0-11 under the Exchange Act, at the time of filing a registration statement or annual report pursuant to sections 12, 13(a) or 15(d) on this Form, the Registrant shall pay to the Commission in U.S. dollars a fee in the amount specified in Rule 12b-7, Rule 13a-1 or Rule 15d-1 under the Exchange Act, as applicable.

(6) Rule 12b-20, which provides that in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

(7) Pursuant to Rule 12b-15, all amendments to this Form shall be filed under cover of Form 8.

(8) Five copies of the complete registration statement or report, including exhibits, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled, or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement or report, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

(9) At least one copy of every registration statement or report filed on this Form shall be signed manually by an authorized officer of the Registrant. Unsigned copies shall be conformed.

(10) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement or annual report, or is named as having prepared or certified a report or valuation for use in connection with the registration statement or annual report, the manually signed, written consent of such person shall be filed.

If any person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement or annual report, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement or annual report, the manually signed, written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship.

Any other consent required by Rule 12b-36 also shall be filed. Every amendment relating to a certified financial statement shall include the manually signed, written consent of the certifying accountant to the use of such accountant's certificate in connection with the amended financial statements in the registration statement or annual report and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

Undertaking and Consent to Service of Process

A. Undertaking

This Form shall set forth the following undertaking of the Registrant:

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the securities registered pursuant to Form 40–F; the securities in relation to which the obligation to file an annual report on Form 40–F arises; or transactions in said securities.

B. Consent to Service of Process

(1) Registrants registering securities on this Form, and Registrants filing annual reports on this Form who have not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file this report arises, shall file a Form F–X with the Commission together with this Form.

(2) Any change to the name or address of a Registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the Registrant.

Signatures

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40–F and has duly caused this registration statement [annual report] to be signed on its behalf by the undersigned, thereto duly authorized.

Registrant ______

By (Signature and Title) ______

Date ______

Instructions

A. The name and title of the officer who signs the registration statement or annual report shall be typed or printed beneath such person's signature. Any such person who occupies more than one position shall indicate each capacity in which the registration statement is signed.

B. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any purchases or sales of any security registered pursuant to Form 40–F on the securities in relation to which the obligation to file an annual report on Form 40–F arises, or transactions in said securities, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U. S. Securities and Exchange Commission

Washington, DC 20549

Form F–X

Appointment of Agent for Service of Process

General Instructions

I. Form F–X shall be filed with the Commission:

(a) by any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) by any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934 (the "Exchange Act");

(c) by any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) by any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

A Form F–X filed in conjunction with any other Commission form should not be bound together with or be included only as an exhibit to, such other form.

II. Six copies of the Form F–X, one of which must be manually signed, shall be filed with the Commission at its principal office.

A. Name of issuer or person filing ("Filer"):

______

B. This is [check one]

[ ] an original filing for the Filer

[ ] an amended filing for the Filer

C. Identify the filing in conjunction with which this Form is being filed:

Name of registrant ______

Form type ______

File Number (if known) ______

Filed by ______

Date Filed (if filed concurrently, so indicate)

______

D. The Filer is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the issuer is organized or incorporated) ______ and has its principal place of business at (Address in full and telephone number)

______

______

E. The Filer designates and appoints (Name of United States person serving as agent) ______ ("Agent") located at (Address in full in the United States and telephone number)

______

______

as the agent of the Filer upon whom may be served any process, pleadings, subpoenas, or other papers in

(a) Any investigation or administrative proceeding conducted by the Commission; and

(b) Any civil suit or action brought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns (i) any offering made or purported to be made in connection with the securities registered by the Filer on Form (Name of form) ______ on (Date) ______ or any purchases or sales of any security in connection therewith; (ii) the securities in relation to which the obligation to file an annual report on Form 40–F arises, or any purchases or sales of such securities; (iii) any tender offer for the securities of a Canadian issuer with respect to which filings are made by the Filer with the Commission on Schedule 13E–4F, 14D–1F or 14D–9F; or (iv) the securities in relation to which the Filer acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act of 1939. The Filer stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

F. Each person filing this Form in connection with the use of Form F–9, F–10, or 40–F or Schedule 13E–4F, 14D–1F or 14D–9F stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act. Each person filing this Form in connection with the use of Form F–8 or Form F–80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed following the effective date of the latest amendment to such Form F–8 or Form F–80. Each person filing this Form in connection with its status as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding. Each Filer further undertakes to advise the Commission promptly of any change to the Agent's name or address during the applicable period by amendment of this Form, referencing the file number of the relevant form in conjunction with which the amendment is being filed.

The Filer certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of __________ Country of __________ this __________ day of __________.

Filer: ______________________________

____

By: (Signature and Title)

This statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ______________________________

(Title) ______________________________

(Date) ______________________________

Instructions

1. The power of attorney, consent, stipulation and agreement shall be signed by the Filer and its authorized Agent in the United States.

2. The name of each person who signs Form F–X shall be typed or printed beneath such person's signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which such person signs Form F–X. Each copy shall be manually signed. If any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of Form F–X. If any name is signed pursuant to a power of attorney, a manually signed copy of the power of attorney shall be filed with each copy of Form F–X.

Appendix B Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: Forms F–7, F–8, F–9, F–10 and F–80 under the Securities Act of 1933 (the "Securities Act"); Form 40–F and Schedules 14D–1F, 14D–9F and 13E–4F under the Securities Exchange Act of 1934 (the "Exchange Act"); Form F–X under the Securities Act, the Exchange Act and the Trust Indenture Act of 1939 (the "Trust Indenture Act"); Rule 467, changes to Rules 158, 175, 424, 473 and 502, and changes to Forms S–2, S–3, S–4, S–8, S–11, F–1, F–2, F–3 and F–4 under the Securities Act; Rules 13a–3, 13e–4(h), 14d–1(b), 14e–2(c), 15d–4, and 15d–5(c), changes to Rules 3a12–3(b), 3b–6, 12g–3, 12g3–2, 13a–10, 13a–16, 15d–5(b), 15d–10 and 15d–16, and changes to Forms 20–F, 10–K and 6–K under the Exchange Act; Rules 4d–9 and 10a–5 and changes to Rules 0–11 and 10a–4 and Forms T–1 and T–6 under the Trust Indenture Act; changes to Rule 3–01, 3–02, 3–12 and 3–19 under Regulation S–X; changes to Rules 30–1 and 30–3 of the Commission's Rules Delegating Authority to Division Directors; changes to Rule 24 under the Commission's Rules of Practice; and changes to Items 302, 402 and 404 under Regulation S–K, when promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The rules, forms and schedules noted above are intended primarily to facilitate multijurisdictional and cross-border offerings of securities by Canadian issuers. The resulting reduction in the expense, time and effort of making such offerings will benefit Canadian entities that issue securities, rather than U.S. entities. In connection with the multijurisdictional disclosure system, the Securities and Exchange Commission (the "Commission") also is revising existing rules and forms to permit their use by Canadian foreign private issuers, for registration and reporting under the Securities Act and the Exchange Act on an equal basis with all other foreign private issuers. Such revisions also benefit Canadian entities registering securities and reporting with the Commission, rather than U.S. entities.

It is anticipated that the Canadian securities regulatory authorities will propose adoption of rules and policies that will permit the implementation of a corresponding multijurisdictional system permitting U.S. entities to make public offerings and file reports in Canada with disclosure documents prepared according to the requirements of U.S. federal securities law.

An expected result of adoption of the rules, forms and schedules by the Commission is that offerings by Canadian companies will be made in the United States in situations where hitherto investors in the United States would have been excluded due to the time and expense of compliance with the regulatory requirements of more than one jurisdiction. The resulting increase in U.S.-registered offerings by Canadian issuers can be expected to increase ease of investment for small U.S. entities acting as investors. While small U.S. entities raising capital in the United States may experience some increase in competition for such capital from Canadian entities using the multijurisdictional system, that effect is not expected to be significant for a substantial number of U.S. small entities in view of the small increase in total competition that is expected to result. In addition, small U.S. entities who act as financial intermediaries, such as investment banks, can be expected to be affected by the increased number of offerings being made in the United States. Small U.S. entities are not more likely than large U.S. entities, however, to be affected by the greater ease of investment in offerings of Canadian issuers; nor are small entities who act as intermediaries more likely than large entities who act in that capacity to be affected by the increase in U.S.-registered offerings. These effects, in any case, are not expected to be significant for a substantial number of small entities in the United States.

With respect to shelf offerings, a clarifying change to Rule 424 has been made in connection with the Canadian MJDS in order to ensure that U.S. issuers taking a tranche off the shelf, even if selling only in Canada, file a Rule 424 prospectus with the Commission. Such revision may have a minimal effect on small U.S. entities. Nevertheless, since the amendment is more in the nature of a clarification and most U.S. issuers using the MJDS will be substantial in size, it is not likely that the effect on small U.S. entities will be significant.

The new rules, forms and schedules and the amendments to rules and forms are summarized in the attached memorandum. [1] That their primary effect is on Canadian entities is apparent from such document.

Dated: June 13, 1991.

Richard C. Breeden,

Chairman

[1] The above-referenced memorandum is not included in this release.

APPENDIX C.—MJDS CONTINUOUS DISCLOSURE OBLIGATIONS

Type of Issuer	§ 15(d)	§ 12(g)		§ 12(b)
		Non-NASDAQ	NASDAQ	
Form F-7 filer	None [1]	Rule 12g3-2(b) exemption [2]	20-F & 6-K	20-F & 6-K
Form F-8 filer	None [1]	Rule 12g3-2(b) exemption [2]	20-F & 6-K	20-F & 6-K
Form F-80 filer	None [1]	Rule 12g3-2(b) exemption [2]	20-F & 6-K	20-F & 6-K
Form F-9 filer	40-F & 6-K [1]	Rule 12g3-2(b) exemption [2]	40-F & 6-K [3]	40-F & 6-K [3]
Form F-10 filer	40-F & 6-K [1]	Rule 12g3-2(b) exemption [2]	40-F & 6-K	40-F & 6-K
Form F-9 eligible	40-F & 6-K	Rule 12g3-2(b) exemption [2]	40-F & 6-K [3]	40-F & 6-K [3]
Form F-10 eligible	40-F & 6-K	Rule 12g3-2(b) exemption [2]	40-F & 6-K	40-F & 6-K
All other Canadian foreign private issuers.	20-F & 6-K	Rule 12g3-2(b) exemption [2]	20-F & 6-K	20-F & 6-K

[1] With respect to the 15(d) obligation arising from use of the form specified, if the issuer is exempt from reporting under Section 12(g) of the Exchange Act pursuant to Rule 12g3-2(b). If the issuer is not so exempt, Forms 40-F and 6-K are available for reporting.

[2] Assuming issuer with no section 12(b) obligation or section 15(d) obligation arising from non-MJDS forms.

[3] If section 12 obligation arises only from the Form F-9 eligible securities; otherwise Forms 20-F and 6-K must be filed.

Appendix D—National Policy Statement No. 45 Multijurisdictional Disclosure System

Contents

National Policy Statement No. 45 Multijurisdictional Disclosure System

1. Introduction

The multijurisdictional disclosure system is a joint initiative by the Canadian Securities Administrators and the Securities and Exchange Commission of the United States (the "SEC") to reduce duplicative regulation in cross-border offerings, issuer bids, take-over bids, business combinations and continuous disclosure and other filings.

The multijurisdictional disclosure system implemented in Canada pursuant to this Policy Statement (the "MJDS") is intended to remove unnecessary obstacles to certain offerings of securities of U.S. issuers in Canada and to facilitate take-over and issuer bids and business combinations involving securities of U.S. issuers having less than a specified percentage of Canadian security holders, while ensuring that Canadian investors remain adequately protected.

The MJDS permits public offerings of securities of U.S. issuers that meet specified eligibility requirements to be made in Canada on the basis of disclosure documents prepared in accordance with the laws of the United States (with certain additional Canadian disclosure). A public offering of securities of a U.S. issuer may be made under the MJDS both in Canada and the United States or in Canada only.

The MJDS also reduces disincentives to the extension to Canadian security holders of rights offerings by U.S. issuers by permitting such rights offerings to be made in Canada on the basis of U.S. disclosure documents. Similarly, it facilitates the extension to Canadian security holders of U.S. issuers of take-over bids, issuer bids and business combinations in the circumstances contemplated by this Policy Statement. The MJDS permits such transactions to be made in Canada generally in the same manner as in the United States and on the basis of U.S. disclosure documents.

Regulatory review of disclosure documents used under the MJDS for offerings made by a U.S. issuer both in Canada and the United States will be that customary in the United States, with the SEC being responsible for carrying out the review. Canadian securities regulatory authorities will monitor materials filed under the MJDS in order to check compliance with the specific disclosure and filing requirements of this Policy Statement. In addition, 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.

The MJDS does not change the liability provisions of the securities laws of any province or territory or the discretionary authority of a Canadian securities regulatory authority to halt a distribution, remove an exemption, cease trade the related securities, or refuse to issue a receipt for a preliminary prospectus or prospectus. The Canadian securities regulatory authorities also will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

Use of the MJDS is based on compliance with U.S. law. Thus, any person or company doing a transaction or filing a document in Canada under the MJDS must comply in full with all applicable U.S. requirements. However, violation of a U.S. requirement will not automatically disqualify a person or company from using the MJDS with respect to a transaction or document. Instead, a person or company that violates a U.S. requirement may, depending upon the circumstances, be considered to have violated an equivalent requirement of a Canadian jurisdiction with respect to the transaction or document.

Concurrently with the adoption of this Policy Statement, the SEC is adopting rules, forms and schedules for the implementation of a similar multijurisdictional disclosure system in the United States. The U.S. system removes unnecessary impediments to certain offerings of securities of Canadian issuers in the United States and facilitates the extension to U.S. security holders of Canadian issuers of take-over bids, issuer bids and business combinations in the circumstances contemplated by the U.S. system.

The procedures to be followed in Canada when the U.S. system is used for a U.S.-only offering of securities of a Canadian issuer are set out in section 7.

2. Definitions

As used in this Policy Statement, unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

(1) *Affiliate,* with respect to an issuer, means a person or company that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the issuer;

(2) *Applicable Canadian securities legislation* means the securities legislation of each Canadian province and territory in which securities are offered, or a bid is made, under this Policy Statement;

(3) *Applicable securities regulatory authority* means the securities regulatory authority in each Canadian province and territory in which securities are offered, or a bid is made, under this Policy Statement;

(4) *Approved Rating,* with respect to debt or preferred shares, means a provisional rating by an Approved Rating Organization in one of the categories applicable thereto, as set out below opposite the Approved Rating Organization's name:

Approved rating organization	Debt	Preferred shares
C.B.R.S. Inc.	A++, A+, A or B++.	P-1+, P-1, P-2 or P-3.
Dominion Bond Rating Service Limited.	AAA, AA, A or BBB.	Pfd-1, Pfd-2 or Pfd-3.
Moody's Investors Service, Inc.	Aaa, Aa, A or Baa.	"aaa," "aa," "a" or "baa".
Standard & Poor's Corporation.	AAA, AA, A or BBB.	AAA, AA, A or BBB.

(5) *Approved Rating Organization* means each of C.B.R.S. Inc., Dominion Bond Rating Service Limited, Moody's Investors Service, Inc. and Standard & Poor's Corporation;

(6) *Bid* means a take-over bid or an issuer bid;

(7) *Bid circular*, in respect of the application of this Policy Statement in a province or territory, means a take-over bid circular or an issuer bid circular as those terms are used in the securities legislation of such province or territory, consisting, for purposes of this Policy Statement, of the tender offer materials used in the United States, as modified pursuant to section 4.5;

(8) *Business combination* means a statutory merger or consolidation or similar plan or acquisition requiring the vote or consent of security holders of a company or person, in which securities of such company or person or another company or person held by such security holders will become or be exchanged for securities of any other company or person;

(9) *Canadian GAAP* means the accounting principles generally accepted in Canada, and, where a principle is recommended in the Handbook of the Canadian Institute of Chartered Accountants which is applicable in the circumstances, means such principle;

(10) *Commodity pool issuer* means an issuer formed and operated for the purpose of investing in commodity futures contracts, commodity futures and/or related products;

(11) *Company*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(12) *Conflicts Rules* has the meaning assigned thereto in Section 3.12;

(13) *Connected issuer* or *Connected party*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the Conflicts Rules of such province or territory;

(14) *Control*, with respect to an issuer, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the issuer, whether through the ownership of voting securities, by contract or otherwise, and "under common control with" shall be construed accordingly;

(15) *Convertible*, with respect to debt or preferred shares, means that the rights and attributes attaching to such securities include a right or option to purchase, convert or exchange or otherwise acquire any equity shares of the issuer or of any other issuer (or any debt or preferred shares not having an Approved Rating in the case of debt or preferred shares having an Approved Rating), or any other security which itself has a right to purchase, convert or exchange or otherwise acquire any equity shares of the issuer or any other issuer (or any debt or preferred shares not having an Approved Rating in the case of debt or preferred shares having an Approved Rating), "convert" shall be construed accordingly, and "non-convertible" means securities that are not convertible;

(16) *Equity shares*, with respect to an issuer, means common shares, non-voting equity shares and subordinate or restricted voting equity shares of the issuer, but excludes preferred shares;

(17) *Foreign issuer* means an issuer that is not incorporated or organized under the laws of Canada or a province or territory of Canada, except where:

(a) Voting securities carrying more than 50% of the votes for the election of directors are held by persons or companies whose last address as shown on the books of the issuer is in Canada; and

(b) either:

(i) The majority of the senior officers or directors of the issuer are citizens or residents of Canada;

(ii) More than 50% of the assets of the issuer are located in Canada; or

(iii) The business of the issuer is administered principally in Canada;

(18) *Independent underwriter*, in respect of the application of this Policy Statement in a province or territory, means a dealer that is not the issuer and in respect of which the issuer is not a related party or related issuer or connected party or connected issuer or, where the dealer is not a registrant in such province or territory, would not be a connected party or connected issuer if the dealer were a registrant;

(19) *Insider bid*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(20) *International Accounting Standards* means the accounting principles issued by the International Accounting Standards Committee;

(21) *Issuer*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(22) *Issuer bid*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(23) *Majority-owned subsidiary* means a person or company of which voting securities carrying more than 50% of the votes for the election of directors are held by (i) another person or company and (ii) the other majority-owned subsidiaries of that other person or company;

(24) *Market value*, with respect to a class of securities, means the aggregate market value of such securities, calculated by using the price at which such securities were last sold in the principal market for such securities on the date specified in the applicable provision of this Policy Statement, or the average of the bid and asked prices of such securities in such market on such date if there were no sales on such date and, where there is no market for such class of securities, it means the book value of such securities computed on such date, provided that if the issuer of such class of securities is in bankruptcy or receivership or has an accumulated capital deficit, it means one-third of the principal amount, par value or stated value of such class of securities;

(25) *Method 1* means the first of the two alternative methods of providing prospectus certificates for Rule 415 Offerings made under the MJDS described in Section 3.11(2);

(26) *Method 2* means the second of the two alternative methods of providing prospectus certificates for Rule 415 Offerings made under the MJDS described in Section 3.11(2);

(27) *MJDS* means the multijurisdictional disclosure system rules and procedures set forth in Sections 1–6 of this Policy Statement;

(28) *MTN Program* means a continuous Rule 415 Offering of debt in which the specific variable terms of the individual securities and the offering thereof are determined at the time of sale;

(29) *NASDAQ* means the National Association of Securities Dealers Automated Quotation System;

(30) *NASDAQ NMS* means the National Market System of NASDAQ;

(31) *Offeree issuer* means an issuer whose securities are the subject of a bid;

(32) *Offeror*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(33) *Parent*, with respect to a majority-owned subsidiary, means a person or company that, together with the parent's other majority-owned subsidiaries, holds voting securities of the majority-owned subsidiary carrying more than 50% of the votes for the election of directors;

(34) *Person*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(35) *Principal market*, with respect to a class of securities, means the single securities market with the largest aggregate trading volume for the class of securities in the preceding 12 calendar month period;

(36) *Principal jurisdiction* means the principal jurisdiction selected in accordance with section 3.8(2);

(37) *Public float*, with respect to a class of securities, means the aggregate market value of such securities held by persons or companies that are not affiliates of the issuer of such securities, calculated by using the price at which such securities were last sold in the principal market for such securities on the date specified in the applicable provision of this Policy Statement, or the average of the bid and asked prices of such securities in such market on such date if there were no sales on such date, and where there is no market for such class of securities, it means the book value of such securities held by persons or companies that are not affiliates of the issuer of such securities computed on

such date, provided that if the issuer of such class of securities is in bankruptcy or receivership or has an accumulated capital deficit, it means one-third of the principal amount, par value or stated value of such securities held by persons or companies that are not affiliates of the issuer of such securities;

(38) *Related issuer* or *related party*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the Conflicts Rules of such province or territory;

(39) *Review jurisdiction* means the review jurisdiction selected in accordance with section 7;

(40) *Rule 415 Offering* means an offering under Rule 415 under the 1933 Act that is made in Canada pursuant to Section 3.7;

(41) *Rule 430A Offering* means an offering under Rule 430A under the 1933 Act that is made in Canada pursuant to Section 3.7;

(42) *Rule 430A Pricing Prospectus* means a prospectus prepared in connection with a Rule 430A Offering that contains the information omitted from the related registration statement as permitted by Rule 430A under the 1933 Act;

(43) *SEC* means the Securities and Exchange Commission of the United States;

(44) *Securities exchange bid* means a bid for which the consideration for the securities of the offeree issuer consists, in whole or in part, of securities of an offeror or other issuer;

(45) *Securities legislation* in respect of the application of this Policy Statement in a province or territory, means the statutes concerning the regulation of securities markets and trading in securities of such province or territory, the regulations and blanket rulings and orders thereunder, and the policy statements and written interpretations issued by the securities regulatory authority of such province or territory;

(46) *Take-over bid*, in respect of the application of this Policy Statement in a province or territory, has the meaning assigned thereto in the securities legislation of such province or territory;

(47) *U.S. issuer* means a foreign issuer that is incorporated or organized under the laws of the United States or any state or territory of the United States or the District of Columbia;

(48) *Voting securities* means securities the holders of which have a present entitlement to vote for the election of directors;

(49) *1933 Act* means the Securities Act of 1933 of the United States;

(50) *1934 Act* means the Securities Exchange Act of 1934 of the United States; and

(51) *1940 Act* means the Investment Company Act of 1940 of the United States.

Prospectus Offerings by U.S. Issuers

3.1 *General*

The MJDS permits the following types of securities of a U.S. issuer to be distributed by prospectus in Canada, either by the issuer or by a selling security holder, on the basis of documentation prepared in accordance with U.S. requirements (with certain additional Canadian disclosure) :

(1) Non-convertible debt and non-convertible preferred shares that have an Approved Rating;

(2) Debt and preferred shares that have an Approved Rating and may not be converted for at least one year after issuance, if the issuer meets a substantiality requirement;

(3) Other securities, if the issuer meets a greater substantiality requirement; and

(4) Certain rights to acquire securities of the issuer.

The availability of the MJDS for rights offerings is discussed in section 3.4(1) , for securities exchange bids in section 4.1 and for business combinations in section 5.1.

The purpose of the "substantiality" requirement is to single out issuers whose size is such that (i) information about them is publicly disseminated and (ii) they have a significant market following. As a result, the marketplace can be expected to set efficiently a price for the securities of these issuers based on publicly available information.

Non-convertible debt and preferred shares that have an Approved Rating are particularly appropriate for the MJDS because these securities trade primarily on the basis of their yield and an assessment of creditworthiness by an independent rating organization. The lack of a "substantiality" requirement for offerings of these securities reflects this and allows the MJDS to be used by issuers of securities having an Approved Rating, such as finance subsidiaries, that access the market frequently, but do not meet the market value and public float requirements.

Debt and preferred shares that have an Approved Rating and are not convertible into other securities for at least one year after issuance can be expected to trade primarily on the basis of their yield and independent rating, but are also priced to some extent on the basis of the anticipated value of the security into which they are convertible. Thus, the MJDS is available for these securities on the basis of their Approved Rating, coupled with a "substantiality" requirement.

In the case of offerings of common shares or other securities other than debt and preferred shares that have an Approved Rating, the MJDS is available upon satisfaction of a greater "substantiality" requirement.

The MJDS may not be used for offerings of derivative securities, except warrants, options, rights or convertible securities where the issuer of the underlying securities to which the warrants, options, rights or convertible securities relate is eligible under this Policy Statement to distribute the underlying securities. Therefore, offerings of derivative securities such as stock index warrants, currency warrants and debt the interest on which is based upon the performance of a stock index may not be made under the MJDS.

All prospectus offerings remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The applicable securities regulatory authorities will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

3.2 *Offerings of Debt or Preferred Shares Having an Approved Rating*

The MJDS may be used for the distribution in Canada of debt that has an Approved Rating or preferred shares that have an Approved Rating or rights that, upon issuance, are immediately exercisable for any such securities, provided that:

(1) The issuer is a U.S. issuer;

(2) The issuer (i) has a class of securities registered pursuant to section 12(b) or 12(g) of the 1934 Act; or (ii) is required to file reports pursuant to section 15(d) of the 1934 Act;

(3) The issuer has filed with the SEC all the material required to be filed pursuant to sections 13, 14 and 15(d) of the 1934 Act for a period of at least 36 calendar months immediately preceding the filing of the preliminary prospectus with the principal jurisdiction;

(4) The issuer is not registered or required to be registered as an investment company under the 1940 Act;

(5) The issuer is not a commodity pool issuer; and

(6) The securities being offered or issuable upon the exercise of the rights either:

(a) Are not convertible; or

(b) If convertible, may not be converted for at least one year after issuance, and the equity shares of the issuer of the securities into which the offered securities are convertible have a market value and a public float of not less than U.S. $150,000,000 and U.S. $75,000,000, respectively, determined as of a date that is within 60 days prior to the filing of the preliminary prospectus with the principal jurisdiction.

For purposes of this section 3, whether debt or preferred shares have an Approved Rating shall be determined as of the time the preliminary prospectus is filed in the principal jurisdiction.

3.3 Offerings of Other Securities

The MJDS may be used for the distribution in Canada of any securities of an issuer, provided that:

(1) The issuer meets the eligibility requirements specified in sections 3.2(1)–(5) ; and

(2) The equity shares of the issuer have a market value and a public float of not less than U.S. $300,000,000 and U.S. $75,000,000, respectively, determined as of a date that is within 60 days prior to the filing of the preliminary prospectus with the principal jurisdiction.

Offerings of debt and preferred shares that are not eligible to be made pursuant to section 3.2, rights offerings that are not eligible to be made pursuant to section 3.4, securities exchange bids that are not eligible to be made pursuant to section 4.2 and business combinations that are not eligible to be made pursuant to section 5.2 may be made pursuant to this section 3.3, provided that (1) and (2) above are satisfied.

3.4 *Rights Offerings*

(1) *General*

Subject to certain limitations, the MJDS permits U.S. issuers to make rights offerings by prospectus to existing security holders in Canada on the basis of documentation prepared in accordance with U.S. requirements (with certain additional Canadian disclosure). There is no market value or public float requirement for rights offerings since existing security holders can reasonably be expected to be familiar with the issuer and follow publicly available information concerning it.

The MJDS is available for rights offerings primarily to encourage fair treatment of Canadian investors. Previously, a U.S. issuer might not have extended rights offerings to its security holders in Canada due to the perceived costs and burdens of meeting Canadian regulatory requirements. The MJDS is intended to alter a U.S. issuer's cost-benefit analysis in favour of extending a rights offering to Canadian investors.

(2) *Issuer Eligibility Requirements*

The MJDS may be used for the distribution by an issuer of rights to purchase additional securities of its own issue to its existing security holders in Canada, provided that the issuer:

(a) Meets the eligibility requirements specified in sections 3.2(1)–(5); and

(b) Has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS for a period of at least 12 calendar months immediately preceding the filing of the preliminary prospectus with the principal jurisdiction and is in compliance with the obligations arising from such listing or quotation.

(3) *Limitations on Rights Offerings*

Rights offerings by issuers relying on the eligibility requirements of section 3.4(2) shall be subject to the following limitations:

(a) The rights must be exercisable immediately upon issuance;

(b) Subject to (c) below, the rights issued to residents of Canada have the same terms and conditions as the rights issued to residents of the United States; and

(c) Beneficial ownership of rights issued to a resident of Canada may not be transferable to a resident of Canada (other than residents to whom rights of the same issue were granted), provided that (i) the securities issuable upon exercise of the rights may be so transferable, and (ii) this limitation shall not restrict the transfer of rights on a securities exchange or inter-dealer quotation system outside of Canada.

(4) *Dealer Registration Requirements*

Registration as a dealer is not required by an issuer in respect of a rights offering made under section 3.4. A standby underwriter or dealer manager for a rights offering made under section 3.4 is not required to register as a dealer if it does not engage in soliciting activity in Canada or resell in Canada any securities acquired under the standby underwriting arrangement.

3.5 *Successor Issuers*

A successor issuer subsisting after a business combination shall be deemed to meet the respective eligibility requirements set forth in sections 3.2(3), 3.4(2)(b), 4.4(3) and 5.2(3) if:

(1) Since the business combination the successor issuer has filed all the material required to be filed pursuant to sections 13, 14 and 15(d) of the 1934 Act and, if applicable, has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS;

(2) If applicable, the successor issuer is in compliance with the obligations arising from such listing or quotation; and

(3) The filing, listing or quotation requirement to be satisfied for a period of 12 or 36 months is satisfied in respect of each predecessor by separately adding the period during which the successor issuer satisfied the requirement to the immediately preceding period during which the predecessor satisfied the requirement, provided that the 12- or 36-month requirement need not be satisfied with respect to any predecessors whose assets and gross revenues in aggregate contributed less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each predecessor's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed.

3.6 *Alternative Eligibility Requirements for Certain Guaranteed Issues*

An issuer that does not meet the eligibility requirements set forth in section 3.2 or 3.3 may use the MJDS to offer the securities respectively specified in such Sections, subject to the following requirements and limitations:

(1) The securities being offered are:

(a) Non-convertible debt having an Approved Rating or non-convertible preferred shares having an Approved Rating of a majority-owned subsidiary whose parent meets the eligibility requirements set forth in sections 3.2 (1)–(5);

(b) Debt having an Approved Rating or preferred shares having an Approved Rating of a majority-owned subsidiary that may not be converted for at least one year after issuance and are convertible only into securities of a parent that meets the eligibility requirements set forth in sections 3.2 (1)–(5) and (6)(b);

(c) Non-convertible debt or non-convertible preferred shares of a majority-owned subsidiary whose parent meets the eligibility requirements set forth in section 3.3; or

(d) Debt or preferred shares of a majority-owned subsidiary that are convertible only into securities of a parent that meets the eligibility requirements set forth in section 3.3;

(2) The issuer meets the eligibility requirements set forth in sections 3.2 (1), (4) and (5); and

(3) The parent fully and unconditionally guarantees payment in respect of the securities being offered as to principal and interest if such securities are debt and as to liquidation preference, redemption and dividends if such securities are preferred shares.

3.7 *Rule 415 Offerings and Rule 430A Offerings*

The procedures permitted by Rule 415 and Rule 430A under the 1933 Act may be used for offerings of securities under the MJDS. The shelf procedures and post-receipt pricing rules set forth in National Policy Statement No. 44 do not apply to such offerings. A prospectus supplement filed in accordance with the procedures permitted by Rule 415 or Rule 430A shall not be subject to the review procedures set out in section 3.8(3) or the receipt procedures set out in section 3.8(4).

3.8 *Mechanics of Making an Offering*

(1) *General*

In order to use the MJDS to distribute securities in Canada, an issuer that meets the relevant eligibility requirements set forth in this Policy Statement shall prepare a registration statement for the offering for filing with the SEC, the related preliminary prospectus and prospectus for use in Canada and any amendments and supplements thereto in accordance with U.S. disclosure requirements as interpreted and applied by the SEC. The preliminary prospectus and prospectus used in Canada shall contain the additional information, legends and certificates required by this Policy Statement, shall provide full, true and plain disclosure of all material facts relating to the securities proposed to be distributed, and shall contain no untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. The issuer may use either a separate Canadian prospectus or a wrap-around prospectus that includes the prospectus filed with the SEC. The issuer is required to prepare a preliminary prospectus for use in Canada even if the issuer does not prepare a preliminary prospectus for use in the United States.

Notwithstanding the foregoing, a preliminary prospectus, prospectus or amendment or supplement thereto used in Canada need not contain any disclosure relevant solely to U.S. offerees or purchasers, including, without limitation: (i) Any "red herring" legend required by U.S. law; (ii) any legend regarding approval or disapproval by the SEC; (iii) any discussion of U.S. tax considerations other than those material to Canadian purchasers; and (iv) the names of any U.S. underwriters not acting as underwriters in Canada or a description of the U.S. plan of distribution (except to the extent necessary to describe facts material to the Canadian offering). Except as specifically provided in this Policy Statement, such documents are not required to comply with the form and content requirements set forth in applicable Canadian securities legislation.

If the offering is also being made in the United States, one unsigned copy of the registration statement and all amendments and exhibits thereto and one signed and two unsigned copies of the preliminary prospectus, prospectus and each amendment and supplement thereto used in Canada (together with one copy of all documents incorporated by reference in the prospectus and the supporting documentation required by this Policy Statement) shall be filed in the manner set forth in this Policy Statement with the securities regulatory authority in the principal jurisdiction as nearly as practicable contemporaneously with the filing of the registration statement with the SEC. One signed and one unsigned copy of the preliminary prospectus, prospectus and each amendment and supplement thereto used in Canada (together with one copy of all documents incorporated by reference in the prospectus and the supporting documentation required by this Policy Statement) shall be filed with the other applicable securities regulatory authorities. Such filings shall be made as nearly as practicable contemporaneously with the filing in the principal jurisdiction.

For filings made in Quebec, both English and French language versions of the preliminary prospectus, prospectus and each amendment and supplement thereto shall be filed in the requisite numbers. French language versions of the documents incorporated by reference into any of those documents shall be filed in Quebec not later than the time the incorporating document is filed. Thus, French language versions of continuous disclosure documents need not be filed until incorporated by reference. In addition, information contained in a Form 10–K or Form 10–Q prescribed under the 1934 Act that is not required to be disclosed under Quebec requirements applicable to offerings not made under the MJDS need not be included in the French language versions of those documents. Notwithstanding the foregoing, French language versions of the disclosure documents are not required to be filed for rights offerings made pursuant to section 3.4, unless (i) the issuer is a reporting issuer in Quebec other than solely as a result of rights offerings made pursuant to section 3.4, or (ii) 20% or more of the class of securities in respect of which the rights are issued is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

If the offering is being made solely in Canada, the preliminary prospectus, prospectus and each amendment and supplement thereto shall be prepared as if the offering were also being made in the United States. The issuer need not prepare or file the cover page of the U.S. registration statement and other information required in the U.S. registration statement, but not required in the U.S. prospectus.

Representations that securities offered under the MJDS will be listed on a stock exchange or that application has been or will be made to list such securities upon a stock exchange may be made in connection with offerings made under the MJDS.

The provisions of applicable Canadian securities legislation relating to the advertising of securities or the making of representations or undertakings in respect of offerings of securities, including, without limitation, the distribution of material to potential investors and the provision of information to the press prior to the issuance of a receipt for the prospectus, shall apply to offerings made under the MJDS. Solicitations of expressions of interest with respect to an issue of securities to be qualified for distribution under the MJDS may be made prior to the filing of a preliminary prospectus under the following conditions:

(a) The issuer has entered into an enforceable agreement with an underwriter whereby the underwriter has agreed to purchase the securities and which agreement has fixed the terms of the issue and requires the issuer to file with the principal jurisdiction, and obtain a receipt from it for, the preliminary prospectus within two business days from the date that the agreement is entered into by the parties thereto and to file with the other applicable securities regulatory authorities, and obtain a receipt from them for, the preliminary prospectus within three business days from the date that the agreement is entered into by the parties thereto;

(b) Once a receipt for the preliminary prospectus has been obtained, a copy of the preliminary prospectus is forthwith forwarded to any person who has expressed an interest in acquiring the securities;

(c) No contract of purchase and sale with respect to the securities is entered into until such time as the prospectus with respect to such securities has been filed and a receipt obtained for it; and

(d) Neither the underwriter nor the issuer has been advised in writing by an applicable securities regulatory authority that such issuer or underwriter is not entitled to rely on this sentence.

(2) *Selection of Principal Jurisdiction*

At the time of filing a preliminary prospectus under the MJDS, the issuer shall select a principal jurisdiction in Canada and advise the applicable securities regulatory authorities and, unless the offering is being made in Canada only, the SEC of its selection and that the offering is being made under the MJDS. The jurisdiction so selected may or may not agree to act in such capacity. If a jurisdiction does not agree to act, the issuer shall select another jurisdiction as principal jurisdiction. As of the date of this Policy Statement, the securities regulatory authorities of New Brunswick, Prince Edward Island, Newfoundland, Yukon Territory and the Northwest Territories have indicated that they will not agree to act as principal jurisdiction in connection with offerings made under the MJDS.

(3) *Review Procedures*

Disclosure documents filed for an MJDS offering will be subject to SEC review procedures if the offering is being made both in Canada and the United States. Whether the offering is made both in Canada and the United States or solely in Canada, the applicable securities regulatory authorities will monitor materials filed under the MJDS in order to check compliance with the specific disclosure and filing requirements of this Policy Statement. In addition, the substance of the disclosure documents will be reviewed in the unusual case where, through monitoring of the materials or otherwise, the applicable 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.

If the SEC notifies an issuer that a filing made under the MJDS has been selected for review, the issuer shall so notify the principal jurisdiction.

(4) *Receipt Procedures*

The receipt for a preliminary prospectus filed under the MJDS will be issued by each applicable securities regulatory authority when the preliminary prospectus and all required supporting documentation have been filed with it in the manner required by this Policy Statement.

Where the offering also is being made in the United States, the receipt for a prospectus filed under the MJDS will be issued by each applicable securities regulatory authority, unless it has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist, upon the following conditions having been satisfied:

(a) In the case of the principal jurisdiction, the related registration statement has been declared effective by the SEC, as certified by the issuer in writing (which may be in facsimile form);

(b) In the case of the other Canadian provinces and territories, the principal jurisdiction has notified such securities regulatory authority that the principal jurisdiction has issued a receipt for the prospectus; and

(c) The prospectus, all documents incorporated therein by reference and all supporting documentation required by this Policy Statement have been filed with such securities regulatory authority in the manner required by this Policy Statement.

Where the offering is being made solely in Canada, the receipt for a prospectus filed under the MJDS will be issued by each applicable securities regulatory authority upon the conditions set out in (b) and (c) above having been satisfied, unless it has reason to believe that there may be a problem with the transaction or the related disclosure or other special circumstances exist.

Issuers filing a prospectus under the MJDS may elect to receive a single National Policy No. 1 Receipt that permits securities to be distributed in all provinces and territories in which a preliminary prospectus has been filed and which has not opted out of the National Policy No. 1 Receipt System, in accordance with the procedures set forth in part 3 of National Policy Statement No. 1.

(5) *Amendment, Supplement and Incorporation by Reference Procedures*

The provisions of applicable Canadian securities legislation that prescribe the circumstances under which a preliminary prospectus or prospectus is required to be amended and the form and content of an amendment shall not apply to offerings made under the MJDS. Instead, disclosure documents filed under the MJDS shall be amended and supplemented in accordance with U.S. securities law, but shall contain the legends, where applicable, and certificates required by this Policy Statement.

Where a registration statement is amended in a manner that modifies the related U.S. prospectus, two copies of the documents containing the modification shall be filed with each applicable securities regulatory authority as nearly as practicable contemporaneously with the filing of the amendment with the SEC. If the receipt for the prospectus has not been issued and the filing has been made as a result of the occurrence of a material adverse change since the last filing, such documents are required to be filed as an amendment to the preliminary prospectus. The issuer shall specify, upon filing, that such documents have been filed as such under applicable Canadian securities legislation. Otherwise such documents will not be considered to be amendments to the preliminary prospectus within the meaning of applicable Canadian securities legislation. Any modifications made to a prospectus by filing a post-effective amendment to the registration statement with the SEC must be made by filing an amendment to the prospectus with the applicable securities regulatory authorities.

An amendment is required to be filed with the applicable securities regulatory authorities in the event of a material adverse change in the additional disclosure contained only in the preliminary prospectus used in Canada or a material change in the additional disclosure contained only in the prospectus used in Canada.

A prospectus supplement used in connection with a Rule 415 Offering to modify a U.S. prospectus is required to be filed with the applicable securities regulatory authorities, as set forth below, as nearly as practicable contemporaneously with the filing thereof with the SEC and shall be deemed to be incorporated into the prospectus as of the date thereof, but only for the purpose of the offering of securities covered by the supplement. Such a prospectus supplement will not be considered to be a prospectus amendment within the meaning of applicable Canadian securities legislation.

Notwithstanding the preceding paragraph, a prospectus supplement is not required to be filed in a province or territory other than the principal jurisdiction if:

(a)(i) The prospectus supplement is used to describe the terms of a tranche of securities distributed under the prospectus (or is a preliminary form of such supplement for use in marketing), and (ii) the securities covered by the supplement will not be distributed in such province or territory; or

(b)(i) The prospectus supplement is used to establish an MTN Program or other continuous offering program or to update disclosure for such program, and (ii) securities will not be distributed under such program in such province or territory.

Where (i) a revised prospectus, filed with the SEC other than as an amendment to the related registration statement pursuant to Rule 424(b) under the 1933 Act or otherwise, or (ii) a prospectus supplement is used to modify a prospectus other than a prospectus for a Rule 415 Offering or a Rule 430A Offering, such revised prospectus or prospectus supplement shall be filed with each applicable securities regulatory authority as nearly as practicable contemporaneously with the filing of the revised prospectus or prospectus supplement with the SEC and shall be deemed to be incorporated into the prospectus as of the date thereof. Such revised prospectus or prospectus supplement will not be considered to be a prospectus amendment within the meaning of applicable Canadian securities legislation.

A Rule 430A Pricing Prospectus shall be filed with the applicable securities regulatory authorities as nearly as practicable contemporaneously with the filing of the Rule 430A Pricing Prospectus with the SEC. The information contained in a Rule 430A Pricing Prospectus that was omitted from the prospectus in accordance with Rule 430A under the 1933 Act and any other additional information which the issuer has elected to include therein shall be deemed to be incorporated by reference into the prospectus as of the date of the Rule 430A Pricing Prospectus. A Rule 430A Pricing Prospectus will not be considered to be a prospectus amendment within the meaning of applicable Canadian securities legislation.

Except as otherwise provided in this Policy Statement, documents shall be, and shall be deemed to be, incorporated by reference into each preliminary prospectus or prospectus filed under the MJDS in accordance with U.S. securities law. All documents that are incorporated by reference into a prospectus after issuance of the receipt therefor shall be filed with the applicable securities regulatory authorities as nearly as practicable contemporaneously with the filing thereof with the SEC.

Any statement contained in a document incorporated by reference into a prospectus shall be deemed to be modified or superseded, for the purposes of the prospectus, to the extent that a statement contained in the prospectus or in any other subsequently filed document that is incorporated by reference into the prospectus modifies or supersedes such statement. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not be deemed in its unmodified or superseded form to constitute part of the prospectus.

(6) *Delivery Requirements*

Preliminary prospectuses, prospectuses and amendments and supplements thereto filed under the MJDS shall be delivered to offerees and purchasers in accordance with applicable Canadian securities legislation. All prospectus supplements applicable to the securities being purchased shall be attached to, or included with, the prospectus that is delivered to offerees and purchasers of such securities in accordance with applicable Canadian securities legislation. A Rule 430A Pricing Prospectus shall be delivered to offerees and purchasers, in lieu of the related prospectus, in accordance with applicable Canadian securities legislation.

Documents that are incorporated by reference into a preliminary prospectus or a prospectus filed under the MJDS, other than prospectus supplements and Rule 430A Pricing Prospectuses, are not required to be delivered to offerees or purchasers unless they are required to be so delivered under the securities laws of the United States. Such documents, in addition to being filed with applicable securities regulatory authorities as required by this Policy Statement, shall be provided by the issuer without charge to any person upon request.

3.9 *Additional Legends and Disclosure*

The following are the texts of certain additional legends and disclosure required to be included in a preliminary prospectus and/or prospectus used in Canada under the MJDS.

(1) There shall be printed in red ink on the outside front cover page (or on a sticker thereto) of each preliminary prospectus the following statement:

"This is a preliminary prospectus relating to these securities, a copy of which has been filed with the securities commission or similar authority in [insert the names of the provinces and territories where filed], but which has not yet become final for the purpose of a distribution to the public. Information contained herein is subject to completion or amendment. These securities may not be sold to, nor may offers to buy be accepted from, residents of such jurisdictions prior to the time a receipt is obtained for the final prospectus from the appropriate securities regulatory authority."

(2) There shall be printed on the outside or inside front cover page (or on a sticker thereto) of each preliminary prospectus and prospectus the following statements:

(a) "This offering is being made by a U.S. issuer pursuant to disclosure documents prepared in accordance with U.S. securities laws. Purchasers should be aware that these requirements may differ from those of [insert the names of the provinces and territories where qualified]. The financial statements included or incorporated by reference in this prospectus have not been prepared in accordance with Canadian generally accepted accounting principles and thus may not be comparable to financial statements of Canadian issuers."

(b) "[All of] [Certain of] the directors and officers of the issuer and [all of] [certain of] the experts named herein reside outside of Canada. [[Substantially] all of the assets of these persons and of the issuer may be located outside of Canada.] The issuer has appointed [name and address of agent for service] as its agent for service of process in Canada, but it may not be possible for investors to effect service of process within Canada upon the directors, officers and experts referred to above. It may also not be possible to enforce against the issuer, its directors and officers and [certain of] the experts named herein judgments obtained in Canadian courts predicated upon the civil liability provisions of applicable securities laws in Canada."

(c) "This prospectus constitutes a public offering of these securities only in those jurisdictions where they may be lawfully offered for sale and therein only by persons permitted to sell such securities. No securities commission or similar authority in Canada or the United States has in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence."

(3) If documents are incorporated by reference in a preliminary prospectus or prospectus, the portion of the preliminary prospectus or prospectus which provides information about incorporation by reference shall include a statement that such documents have been filed with securities commissions or similar authorities in each jurisdiction in Canada in which the offering is being made and shall provide the name, address and telephone number of an officer of the issuer from whom copies of such documents may be obtained on request without charge.

(4) The following shall be included in each preliminary prospectus and prospectus:

"Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities within two business days after receipt or deemed receipt of a prospectus or any amendment. In several provinces and territories of Canada, securities legislation further provides a purchaser with rights of rescission or, in some jurisdictions, damages where the prospectus or any amendment contains a misrepresentation or is not delivered to the purchaser, provided that such remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the province or territory. Purchasers should refer to the applicable provisions of the securities legislation of their province or territory for particulars of these rights or consult with a lawyer. Rights and remedies also may be available to purchasers under U.S. law; purchasers may wish to consult with a U.S. lawyer for particulars of these rights."

(5) An underwriter of the Canadian offering named in the preliminary prospectus or prospectus remains subject to any obligation under applicable Canadian securities legislation to disclose the names of persons or companies having an interest in its capital.

3.10 *Reconciliation of Financial Statements*

An issuer offering securities pursuant to section 3.3 shall provide a reconciliation to Canadian GAAP or to International Accounting Standards of the financial statements contained in or incorporated by reference in the preliminary prospectus or prospectus in the notes to such financial statements or as a supplement included or incorporated by reference in the preliminary prospectus and prospectus. The reconciliation shall explain and quantify as a separate reconciling item any significant differences between the principles applied in the financial statements (including note disclosure) and Canadian GAAP or International Accounting Standards, as the case may be, and, in the case of the annual financial statements, shall be covered by an auditor's report.

Reconciliation of financial statements to Canadian GAAP or International Accounting Standards is not required for other offerings made under the MJDS.

3.11 *Certificates*

(1) *General*

Except as otherwise provided for Rule 415 Offerings and Rule 430A Offerings, each preliminary prospectus and prospectus used for an offering under the MJDS shall contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]."

Where there is an underwriter, except as otherwise provided for Rule 415 Offerings and Rule 430A Offerings, each preliminary prospectus and prospectus used for an offering under the MJDS shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(2) *Rule 415 Offerings*

In Rule 415 Offerings, issuers and underwriters may choose between two alternative methods of providing certificates. Either method can be substituted for the other until the filing of the prospectus. The method chosen for the provision of the issuer's and underwriters' certificates need not be the same.

Method 1 allows the use of prospectus supplements and, in the case of MTN Programs, pricing supplements (i.e., supplements setting the price and certain variable terms of the securities rather than establishing the program) that do not contain certificates, provided that a "forward-looking" certificate has been included in the prospectus or in the supplement establishing the program.

Method 2 requires the inclusion of certificates in each prospectus supplement and pricing supplement filed under the MJDS, provided that no certificate is required to be included in a prospectus supplement filed with the securities regulatory authority in the principal jurisdiction if the securities covered by such prospectus supplement are not offered in Canada.

The text of the certificates for Rule 415 Offerings is set forth in appendix "A".

(3) *Rule 430A Offerings*

(a) *Issuer's Certificate.*

Each (i) preliminary prospectus and prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (ii) each amendment to a preliminary prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (iii) each amended prospectus filed with the applicable securities regulatory authorities to commence a new period for filing a Rule 430A Pricing Prospectus, and (iv) each amendment to a prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering before the information omitted from the prospectus has been filed in either a Rule 430A Pricing Prospectus or an amendment shall contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference and the information deemed to be incorporated herein by reference, as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(b) *Underwriters' Certificate.*

Where there is an underwriter, each (i) preliminary prospectus and prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (ii) each amendment to a preliminary prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering, (iii) each amended prospectus filed with the applicable securities regulatory authorities to commence a new period for filing a Rule 430A Pricing Prospectus, and (iv) each amendment to a prospectus filed with the applicable securities regulatory authorities for a Rule 430A Offering before the information omitted from the prospectus has been filed in either a Rule 430A Pricing Prospectus or an amendment shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference and the information deemed to be incorporated herein by reference, as of the date of the prospectus providing the information permitted to be omitted from this prospectus, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(c) *Issuer's Certificate for Rule 430A Pricing Prospectus.*

Each Rule 430A Pricing Prospectus shall contain, in place of the certificate referred to in (a) above, the following issuer's certificate:

"The foregoing [insert, if applicable—", together with the documents incorporated herein by reference,"] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(d) *Underwriters' Certificate for Rule 430A Pricing Prospectus.*

Where there is an underwriter, each Rule 430A Pricing Prospectus shall contain, in place of the certificate referred to in (b) above, the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing [insert, if applicable—", together with the documents incorporated herein by reference,"] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(4) *Rights Offerings*

A rights offering prospectus used under section 3.4 need not contain an underwriters' certificate, provided that there is no soliciting activity in Canada other than the dissemination by the issuer of the rights and the prospectus and any securities acquired under a standby underwriting arrangement are not resold in Canada.

(5) *Signing of Certificates*

Certificates contained in a preliminary prospectus, prospectus, amendment to a preliminary prospectus or prospectus, prospectus supplement or Rule 430A Pricing Prospectus shall be signed in accordance with applicable Canadian securities legislation. However, the chief executive officer, chief financial officer and two directors, on behalf of the board of directors, of the issuer, and the underwriters may each sign such certificates for an offering made under the MJDS by an agent duly authorized in writing.

3.12 *Conflicts of Interest*

(1) *General*

Any provisions of applicable Canadian securities legislation which regulate conflicts of interest in connection with the distribution of securities of a registered dealer or a related party or related issuer or connected party or connected issuer of a registered dealer (the "Conflicts Rules") apply to offerings under the MJDS as follows:

(a) The Conflicts Rules shall not apply so as to require any specified disclosure in the preliminary prospectus or prospectus; and

(b) The Conflicts Rules shall apply so as to require the participation of an independent underwriter to the extent provided in sections 3.12 (2) and (3).

(2) *Participation of Independent Underwriter*

(a) *Canada-U.S. Offerings.*

In an offering made under the MJDS in both Canada and the United States, any requirement in the Conflicts Rules for the underwriting of a portion of a distribution by an independent underwriter shall be satisfied if the aggregate of the portions of the distribution in Canada and the United States underwritten by at least one independent underwriter and its affiliates is not less than the aggregate of the portions of the distribution in Canada and the United States underwritten by dealers in respect of which the issuer is a related issuer, related party, connected issuer or connected party or, where a dealer is not a registrant, would be a connected party or connected issuer if the dealer were a registrant.

(b) *Canada-Only Offerings.*

In an offering made under the MJDS solely in Canada, any requirement in the Conflicts Rules for the underwriting of a portion of a distribution by an independent underwriter shall be satisfied if the aggregate of the portions of the distribution underwritten by at least one independent underwriter and its affiliates is not less than the aggregate of the portions of the distribution underwritten by dealers in respect of which the issuer is a related issuer, related party, connected issuer or connected party.

(3) *Rule 415 Offerings*

The Conflicts Rules must be satisfied for a delayed Rule 415 Offering for each tranche. The Conflicts Rules may be satisfied for a continuous Rule 415 Offering on the basis of the total amount of securities proposed to be distributed on a continuous basis.

3.13 *Trust Indenture Requirements*

Any requirement of a Canadian province or territory (other than British Columbia) applicable to trust indentures, in respect of any debt outstanding or guaranteed thereunder or to be issued or guaranteed thereunder (including, without limitation, any requirement that a person or company appointed as trustee under a trust indenture be resident or authorized to do business in the province or territory) shall not apply to offerings made under the MJDS, provided that:

(1) The trust indenture under which the obligations are issued or guaranteed is subject to and complies with the Trust Indenture Act of 1939 of the United States; and

(2) At least one person or company appointed as trustee under the trust indenture (i) is resident in such province or territory, (ii) is authorized to do business in such province or territory, or (iii) has filed with the applicable securities regulatory authority in such province or territory a duly executed Submission to Jurisdiction and Appointment of Agent for Service of Process in the form set forth in part C of appendix "B".

Reference should be made to the Company Act (British Columbia) for the trust indenture requirements applicable in British Columbia.

3.14 *Filing Packages and Commercial Copies*

The supporting documentation specified below shall be filed with the applicable securities regulatory authorities in connection with offerings made under the MJDS in the manner specified. In addition, any exhibit to a registration statement shall be provided to an applicable securities regulatory authority upon request.

(1) *Certificate Confirming Satisfaction of Eligibility Requirements*

A certificate of the issuer, signed on its behalf by a senior officer, confirming that it satisfies the applicable eligibility criteria shall be filed with each applicable securities regulatory authority at the time of filing the preliminary prospectus for each offering made under the MJDS.

(2) *Consents*

The written consent of a solicitor, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified any part of a disclosure document for an offering made under the MJDS or a document that is incorporated by reference therein, or who is named as having prepared or certified a report used in or in connection with such disclosure document or any document incorporated by reference therein (such part or report being referred to herein as an "expertised statement"), shall be prepared in accordance with the requirements of applicable Canadian securities legislation and shall be filed with each applicable securities regulatory authority in accordance with applicable Canadian securities legislation as follows:

(a) If the expertised statement appears in the preliminary prospectus, an amendment thereto, the prospectus or a document incorporated by reference into the prospectus that was filed prior to the filing of the prospectus, the related consent shall be filed at the time of filing the prospectus.

(b) If the expertised statement appears in an amendment to the prospectus, a prospectus supplement, a Rule 430A Pricing Prospectus, or a document incorporated by reference into a prospectus that was filed after the filing of the prospectus, the related consent shall be filed at the time of filing such amendment, prospectus supplement, Rule 430A Pricing Prospectus or document.

A further consent may be required to be filed with an amendment to a prospectus pursuant to the requirements of applicable Canadian securities legislation as a result of a material change to an expertised statement.

(3) *Reports on Property*

A report on the property of a natural resource company is not required to be filed for offerings made under the MJDS, unless such report is also required to be filed with the SEC.

(4) *Appointment of Agent for Service*

At the time of filing a prospectus under the MJDS, the issuer shall file a duly executed Submission to Jurisdiction and Appointment of Agent for Service of Process in the form set forth in part A of appendix "B" with each applicable securities regulatory authority.

(5) *Powers of Attorney*

If a person or company signs a certificate by an agent pursuant to section 3.11(5), a duly executed copy of the document authorizing the agent to sign the certificate shall be filed with each applicable securities regulatory authority not later than the time of filing the document in which the certificate is included.

(6) *Fees*

The provisions of Canadian securities legislation regarding fees shall apply to an offering made under the MJDS in the same manner as though the offering had not been made under the MJDS.

Fees shall be payable for a Rule 415 Offering or Rule 430A Offering in the manner prescribed for offerings made under the shelf procedures and post-receipt pricing rules set forth in National Policy Statement No. 44, respectively.

(7) *Commercial Copies*

Commercial copies of any prospectus, prospectus supplement, preliminary prospectus used in connection with solicitations of expressions of interest, Rule 430A Pricing Prospectus or prospectus amendment used in an MJDS offering in connection with offers or sales of securities shall be filed with the applicable securities regulatory authorities. Once so filed, the commercial copy need not be refiled if it is used, without change, in offers or sales of additional tranches of securities.

4. *Bids for Securities of U.S. Issuers*

4.1 *General*

Subject to the provisions of this section 4, the MJDS permits eligible take-over bids and issuer bids for securities of a U.S. issuer to be made in accordance with U.S. requirements to Canadian residents where Canadian residents hold less than 40% of the securities. The MJDS enables offerors generally to comply with applicable U.S. disclosure requirements and requirements governing the conduct of the bid in lieu of complying with Canadian requirements.

The MJDS is extended to take-over bids and issuer bids primarily to encourage fair treatment of Canadian investors. Security holders in a particular jurisdiction who are excluded from an offer may be relegated to choosing, without the disclosure and procedural safeguards available under either the Canadian or the U.S. regulatory scheme, whether to sell into the secondary market at less than the full bid price and incur additional transactional costs or to remain minority security holders subject to the possibility of being forced out of their equity position in a subsequent merger. The application of the MJDS to bids is intended to facilitate bids by reducing duplicative regulation and avoiding conflict between the two regulatory schemes. Because the substantive protections and disclosure obligations applicable to bids are, as a whole, comparable to those prescribed by applicable Canadian securities legislation, Canadian resident holders of securities of U.S. issuers should remain adequately protected by the application of U.S. rather than Canadian rules in the circumstances contemplated by this Policy Statement.

Particularly when relatively few securities are held by Canadian residents, there may be a disincentive to extend a bid to them if doing so would require compliance with additional Canadian regulatory requirements. The availability of the MJDS for bids for securities of U.S. issuers is intended to alter the offeror's cost-benefit analysis in favour of extending those bids to Canadian residents.

There are no offeror eligibility requirements except in the case of securities exchange bids. For securities exchange bids, compliance with U.S. disclosure requirements satisfies Canadian disclosure requirements with respect to the offeror and the offered securities only if the offeror meets certain reporting history, listing and other eligibility requirements and, in the case of securities exchange take-over bids, a substantiality or Approved Rating requirement. In take-over bids, unlike issuer bids and rights offerings, the investor has not already made an investment decision with respect to the issuer of the securities that are being offered in the exchange.

Bids made under the MJDS must be extended to all holders of the class of securities subject to the bid in Canada and the United States. Further, bids must be made on the same terms and conditions to all security holders.

Provision is made in the securities legislation of some Canadian provinces for exemption from take-over bid and issuer bid requirements if the bid is for the securities of a non-Canadian issuer, the bid is made in compliance with the laws of a recognized jurisdiction and there are relatively few holders in the province holding a relatively small percentage of the class of securities subject to the bid. An offeror is permitted to make a bid under the MJDS in certain provinces and territories and pursuant to such an exemption in others.

4.2 *Eligibility Requirements for a Bid*

The MJDS may be used for a bid made to security holders in Canada if:

(1) The offeree issuer is a U.S. issuer;

(2) The offeree issuer is not registered or required to be registered as an investment company under the 1940 Act;

(3) The offeree issuer is not a commodity pool issuer;

(4) The bid is subject to section 14(d) of the 1934 Act in the case of a take-over bid or section 13(e) of the 1934 Act in the case of an issuer bid and is not exempt therefrom;

(5) The bid is made to all holders of the class of securities in Canada and the United States;

(6) The bid is made to residents of Canada on the same terms and conditions as it is made to residents of the United States; and

(7) Less than 40% of each class of securities that is the subject of the bid is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

The calculation of the percentage of securities held by persons and companies having an address in Canada in this section 4 shall be made as of the end of the offeree issuer's last quarter preceding the date of filing the Tender Offer Statement or Issuer Tender Offer Statement with the SEC or, if such quarter terminated within 60 days of such filing date, as of the end of the offeree issuer's preceding quarter. If another bid for securities of the same class of the offeree issuer is in progress at the date of such filing, the foregoing calculation for the subsequent bid shall be made as of the same date as for the first bid already in progress.

Where (i) a take-over bid is made without the prior knowledge of the directors of the offeree issuer who are not insiders of the offeror or acting jointly or in concert with the offeror, or (ii) upon informing such directors of the proposed bid the offeror has a reasonable basis for concluding that the bid is being regarded as a hostile bid by a majority of such directors, and in either such case the offeror lacks access to the relevant list of security holders of the offeree issuer, it will be conclusively presumed that (7) above is satisfied and clause (a) in the definition of "foreign issuer" is not satisfied, unless (i) the aggregate published trading volume of the class on the Toronto, Montreal, Vancouver and Alberta stock exchanges and the Canadian Dealing Network Inc. exceeded the aggregate published trading volume of the class on national securities exchanges in the United States and NASDAQ for the 12 calendar month period prior to commencement of the bid (or, if another bid for securities of the same class is in progress, the 12 calendar month period prior to commencement of the first bid already in progress); (ii) disclosure that (7) above was not satisfied or such clause (a) was satisfied had been made by the issuer in its Form 10–K prescribed under the 1934 Act most recently filed with the SEC; or (iii) the offeror has actual knowledge that (7) above is not satisfied or such clause (a) is satisfied.

4.3 *Effect of Making a Bid*

Subject to the provisions of this section 4.3 and of section 4.4, any bid made under the MJDS shall be exempt from compliance with the provisions of applicable Canadian securities legislation governing the conduct of bids, except any requirement to file with the applicable securities regulatory authorities and deliver a bid circular, a directors' circular or an individual officer's or director's circular and any notice of change or notice of variation to holders of the securities subject to the bid. Except as specifically provided in this Policy Statement, such documents are not required to comply with the form and content requirements set forth in applicable Canadian securities legislation. Such documents shall contain the information required to be disseminated to security holders in accordance with U.S. requirements and the additional information, legends and certificates required by this Policy Statement. They shall contain no untrue statement of material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made, but need not contain any disclosure relevant solely to U.S. security holders.

Provisions of applicable Canadian securities legislation that require disclosure of acquisitions reaching a certain threshold or restrict acquisitions of securities once such a threshold has been reached continue to apply.

Bids made under the MJDS must comply with the relevant requirements of applicable Canadian securities legislation relating to going private transactions, other than the requirement to provide a valuation at the time of a take-over bid where it is anticipated by the offeror that a going private transaction will follow the bid.

Where 20% or more of any class of securities that is the subject of a bid made under the MJDS is held by persons or companies whose last address as shown on the books of the issuer is in Canada, such bid must comply with the requirements of applicable Canadian securities legislation respecting integration of pre-bid transactions with the bid.

Where 20% or more of any class of securities that is the subject of an issuer bid or insider bid made under the MJDS is held by persons or companies whose last address as shown on the books of the issuer is in Canada, such bid must comply with the valuation requirements of applicable Canadian securities legislation.

All bids remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The applicable securities regulatory authorities also will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

The offeror shall comply with sections 14(d) and 14(e) of the 1934 Act and Regulations 14D and 14E thereunder in connection with any take-over bid made under the MJDS. The offeror shall comply with sections 13(e) and 14(e) of the 1934 Act and Regulations 13E and 14E thereunder in connection with any issuer bid made under the MJDS. The offeree issuer and its officers and directors shall comply either with the requirements of applicable Canadian securities legislation or with sections 14(d) and 14(e) of the 1934 Act and Regulations 14D and 14E thereunder in connection with any bid made under the MJDS.

4.4 *Securities Exchange Bids*

In the case of a securities exchange bid, the provisions of applicable Canadian securities legislation applicable as a result of the consideration for the securities of the offeree issuer being at least in part securities of the offeror or other issuer shall be satisfied by compliance with U.S. requirements only if:

(1) The offeree issuer and the bid satisfy the eligibility requirements set forth in Section 4.2;

(2) The offeror or, if the securities being offered are of another issuer, such other issuer, meets the eligibility requirements set forth in Sections 3.2(1)–(5), except that the reference in Section 3.2(3) to the filing of the preliminary prospectus with the principal jurisdiction shall be replaced by the filing of the registration statement with the SEC;

(3) The offeror or, if the securities being offered are of another issuer, such other issuer, has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS for a period of at least 12 calendar months immediately preceding the filing of the registration statement with the SEC and is in compliance with the obligations arising from such listing or quotation; and

(4) Any of the following are satisfied:

(a) The equity shares of such offeror or, if the securities being offered are of another issuer, such other issuer, have a public float of not less than U.S. $75,000,000, determined as of a date within 60 days prior to the filing of the registration statement with the SEC;

(b) The securities being offered are non-convertible debt having an Approved Rating or non-convertible preferred shares having an Approved Rating; or

(c) The bid is an issuer bid made under the MJDS with securities of the issuer being offered as consideration.

4.5 *Mechanics of Making a Bid*

(1) *Filing Requirements*

In order to use the MJDS to make a bid in Canada or to any security holder whose last address as shown on the books of the offeree issuer is in Canada, an offeror shall prepare a Tender Offer Statement or Issuer Tender Offer Statement, any exhibits and amendments thereto and any information required to be disseminated to security holders in accordance with U.S. requirements as interpreted and applied by the SEC. The bid circular shall consist of the tender offer materials disseminated to security holders resident on the date of commencement of the bid in the United States as modified pursuant to this Policy Statement. French language versions of these documents are not required to be filed for bids made under the MJDS, unless (i) the offeree issuer is a reporting issuer in Quebec, or (ii) 20% or more of any class of securities that is the subject of the bid is held by persons or companies whose last address as shown on the books of the issuer is in Canada.

As nearly as practicable contemporaneously with the filing with the SEC, the offeror shall file one unsigned copy of the Tender Offer Statement or Issuer Tender Offer Statement and all exhibits and amendments thereto, and one signed and two unsigned copies of the bid circular, together with the following supporting documentation, with each applicable securities regulatory authority:

(a) A certificate of the offeror, signed on its behalf by a senior officer, confirming that the eligibility criteria set forth in section 4.2 and, if applicable, section 4.4 are satisfied;

(b) The written consent of a solicitor, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified any part of such materials or any document filed pursuant to section 4.5(5) or incorporated by reference therein, or who is named as having prepared or certified a report used in or in connection with such materials or document;

(c) A duly executed Submission to Jurisdiction and Appointment of Agent for Service of Process in the form set forth in part B of appendix "B"; and

(d) If a person or company signs a certificate by an agent pursuant to section 4.8, a duly executed copy of the document authorizing the agent to sign the certificate.

An offeror filing a bid circular under the MJDS must so notify the offeree issuer at its principal office not later than the business day following the day the bid circular is filed with any applicable securities regulatory authority.

(2) *Directors' and Individual Officer's and Director's Circulars*

If a bid is made under the MJDS, the offeree issuer and its officers and directors shall comply with the requirements of applicable Canadian securities legislation or with U.S. requirements in respect of the bid. In the case of compliance by the directors or by individual officers or directors with Canadian requirements, the requirements set out in this Policy Statement regarding directors' circulars or individual officer's or director's circulars, as the case may be, shall not apply. Otherwise, a Tender Offer Solicitation/Recommendation Statement, if applicable, and any exhibits and amendments thereto shall be prepared in accordance with U.S. requirements as interpreted and applied by the SEC. The directors' circular or an individual officer's or director's circular and any notice of change shall consist of the materials disseminated by the offeree issuer or its board of directors, an individual officer or officers, and an individual director or directors, respectively, to security holders resident in the United States and containing the certificates prescribed by section 4.8. As nearly as practicable contemporaneously with the filing with the SEC, one unsigned copy of the Tender Offer Solicitation/Recommendation Statement and all exhibits and amendments thereto and one signed and two unsigned copies of the directors' circular or an individual officer's or director's circular, together with the following supporting documentation, shall be filed with each applicable securities regulatory authority:

(a) A statement that the circular has been prepared in accordance with U.S. requirements;

(b) The written consent of a solicitor, auditor, accountant, engineer, appraiser or any other person or company who is named as having prepared or certified any part of such materials or any document incorporated by reference therein, or who is named as having prepared or certified a report used in connection with such materials; and

(c) If a person or company signs a certificate by an agent pursuant to section 4.8, a duly executed copy of the document authorizing the agent to sign the certificate.

Notwithstanding that a bid was eligible to be made under the MJDS, the offeree issuer and its officers and directors may not use the MJDS in respect of the bid if the offeror did not make the bid under the MJDS.

(3) *Notices of Variation and Notices of Change*

The provisions of applicable Canadian securities legislation that prescribe the circumstances under which a bid circular, directors' circular, or individual officer's or director's circular is required to be changed or varied and the form and content of the applicable disclosure documents shall not apply to bids made under the MJDS, unless, in respect of the directors' circular or individual officer's or director's circular, the directors or individual officer or director have elected to comply with the requirements of applicable Canadian securities legislation. Instead, disclosure documents filed under the MJDS shall be changed or varied in accordance with U.S. requirements as additional tender offer materials, but shall contain the legends, where applicable, and certificates required by this Policy Statement.

Any additional tender offer materials that vary the terms of the bid shall be filed, as modified, with the applicable securities regulatory authorities as a notice of variation and identified as such. Any additional tender offer materials that contain a change in the information from that contained in the tender offer materials or previous additional tender offer materials, other than information in respect of a variation in the terms of the bid, shall be filed, as modified, with the applicable securities regulatory authorities as a notice of change and identified as such. Any additional tender offer materials required to be identified as a notice of variation and a notice of change shall be identified as both. Any additional materials prepared by the directors or an individual officer or director shall be filed, as modified, with the applicable securities regulatory authorities as a notice of change and identified as such.

Any notice of variation or notice of change shall be filed in the requisite numbers referred to in section 4.5(1) as nearly as practicable contemporaneously with the filing with the SEC. The filing package shall contain, if applicable, a duly executed copy of a document authorizing an agent to sign a certificate, and, in the event of a material change in the relevant part of the materials or document referred to in section 4.5(1)(b), a further consent.

(4) *Dissemination Requirements*

Bid circulars, notices of change thereto and notices of variation thereto filed under the MJDS shall be mailed by prepaid first class mail or delivered by personal delivery to security holders whose last address as shown on the books of the offeree issuer is in a province or territory in which the bid is made under the MJDS (and, in respect of notices of change and variation, whose securities were not taken up at the date of the occurrence of the change or variation), whether those materials are published, sent or given to security holders resident in the United States by the use of stockholder lists and security position listings, by long-form publication or by summary publication. Any such documents generally sent or given to security holders resident in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree issuer is in Canada at the same time as they are sent or given to security holders resident in the United States. Any such documents published by long-form publication or by summary publication in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree issuer is in Canada as soon as practicable following such publication.

Directors' circulars and individual officer's and director's circulars and notices of change thereto shall be mailed by first class mail or delivered by personal delivery to every person or company to whom a take-over bid circular was required to be delivered under the preceding paragraph. Any such document generally sent or given to security holders resident in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree issuer in Canada at the same time as such document is sent or given to security holders resident in the United States. Any such document published in the United States shall be mailed or delivered to security holders whose last address as shown on the books of the offeree is in Canada as soon as practicable following such publication.

(5) *Securities Exchange Bids*

In the case of securities exchange bids made under the MJDS for which a registration statement is filed with the SEC, one signed copy of the registration statement and all exhibits and amendments thereto (together with all documents incorporated therein by reference) shall be filed with each applicable securities regulatory authority as nearly as practicable contemporaneously with the filing with the SEC. The prospectus forming part of the registration statement shall be included in or incorporated by reference into the bid circular.

(6) *Incorporation by Reference Procedures*

Except as otherwise provided in this Policy Statement, documents shall be, and shall be deemed to be, incorporated by reference into materials filed under this section 4.5 in accordance with U.S. securities law. Any statement contained in a document so incorporated by reference shall be deemed to be modified or superseded to the extent that a statement contained in such materials or in any other subsequently filed document which is incorporated by reference into such materials modifies or supersedes such statement. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not be deemed in its unmodified or superseded form to constitute part of such materials.

Documents that are incorporated by reference into materials filed under this section 4.5 are not required to be delivered to security holders unless they are required to be delivered to security holders under U.S. securities law; such documents, in addition to being filed with the applicable securities regulatory authorities, shall be provided without charge to any person upon request.

4.6 *Additional Legends*

The following are the texts of the additional legends and other disclosure required to be included in bid circulars used for a bid made under the MJDS. The legend contained in paragraph (1)(b) shall not be required if the offeror is incorporated or organized under the laws of Canada or a province or territory of Canada.

(1) The following shall be printed on the outside front cover page (or on a sticker thereto) of each bid circular used in Canada under the MJDS:

(a) "This bid is made in Canada [for applicable securities exchange bids—"by a U.S. issuer"] for securities of a U.S. issuer in accordance with U.S. securities laws. Security holders should be aware that the U.S. requirements applicable to the bid may differ from those of [insert the names of the provinces and territories where bid is made]. [For securities exchange bids, also insert the following—"The financial statements included or incorporated by reference herein have not been prepared in accordance with Canadian generally accepted accounting principles and thus may not be comparable to financial statements of Canadian issuers."]

(b) "[All of] [Certain of] the directors and officers of the offeror and [all of] [certain of] the experts named herein reside outside of Canada. [[Substantially] all of the assets of these persons and of the offeror may be located outside of Canada.] The offeror has appointed [name and address of agent for service] as its agent for service of process in Canada, but it may not be possible for security holders to effect service of process within Canada upon the directors, officers and experts referred to above. It may also not be possible to enforce against the offeror, its directors and officers and [certain of] the experts named herein judgments obtained in Canadian courts predicated upon the civil liability provisions of applicable securities laws in Canada."

(2) If documents are incorporated by reference into the bid circular, include in the section which provides information about incorporation by reference a statement that information has been incorporated by reference from documents filed with securities commissions or similar authorities in each jurisdiction in Canada in which the documents have been filed and provide the name, address and telephone number of a person in Canada or the United States from whom copies of the documents so incorporated by reference may be obtained on request without charge.

(3) The following shall be included in bid circulars used in Canada under the MJDS:

"Securities legislation in certain of the provinces [and territories] of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, rights of rescission or to damages, or both, if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province [or territory] for particulars of those rights or consult with a lawyer. Rights and remedies also may be available to security holders under U.S. law; security holders may wish to consult with a U.S. lawyer for particulars of these rights."

4.7 *Reconciliation of Financial Statements*

Reconciliation of financial statements to Canadian GAAP or International Accounting Standards is not required for securities exchange bids made under the MJDS that satisfy the eligibility requirements of section 4.4.

4.8 *Certificates*

The text of the certificate for bid circulars and directors' and individual officer's and director's circulars used under the MJDS is as follows:

"The foregoing contains no untrue statement of a material fact and does not omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made."

The text of the certificate for notices of variation and notices of change shall be in the form required in the preceding paragraph, amended to refer to the initial circular and all notices of variation or change thereto.

The certificate shall be signed in accordance with applicable Canadian securities legislation. However, the chief executive officer, the chief financial officer, and two directors, on behalf of the board of directors, of the offeror or the offeree issuer, may each sign the certificate by an agent duly authorized in writing.

4.9 *Fees*

The provisions of Canadian securities legislation regarding fees shall apply to a bid made under the MJDS in the same manner as though the bid had not been made under the MJDS.

5. *Business Combinations*

5.1 *General*

The MJDS permits securities of a U.S. issuer to be distributed by prospectus in Canada on the basis of documentation prepared in accordance with U.S. requirements (with certain additional Canadian disclosure) in connection with a business combination where less than 40% of the securities to be distributed by the successor issuer would be held by Canadian residents. As in the case of take-over bids, the MJDS is available for business combinations primarily to encourage fair treatment of Canadian investors.

Securities legislation of most of the Canadian provinces and territories provides for an exemption from prospectus requirements for certain distributions of securities issued in connection with a statutory amalgamation, merger or arrangement. As a result, an issuer may elect not to use the MJDS, but to distribute securities issued in a business combination pursuant to a prospectus exemption. A consequence of using a prospectus exemption instead of the MJDS may be resale restrictions on the distributed securities. However, under blanket rulings issued in certain provinces, the resale of securities acquired under such an exemption is not a distribution in respect of which a prospectus is required if the issuer meets certain eligibility and reporting requirements and the resale is executed through the facilities of a stock exchange outside of Canada or on NASDAQ.

A business combination done under the MJDS must comply with the relevant requirements of applicable Canadian securities legislation relating to going private transactions and, if it constitutes a related party transaction, the relevant requirements of applicable Canadian securities legislation relating to minority approvals and valuations. All business combinations remain subject to the fundamental principle that transactions must not be prejudicial to the public interest. The applicable securities regulatory authorities also will continue to exercise their public interest jurisdiction in specific cases where they determine that it is necessary to do so in order to preserve the integrity of the Canadian capital markets.

5.2 *Eligibility Requirements*

The MJDS may be used for the distribution of securities to security holders in Canada in connection with a business combination by a successor issuer subsisting after the business combination if:

(1) Each person or company participating in the business combination meets the eligibility requirements specified in sections 3.2(1)–(5), provided that the eligibility requirements specified in sections 3.2(2)–(3) shall not be required to be met in respect of participating persons or companies whose assets and gross revenues in aggregate would contribute less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each participating person's and company's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed;

(2) The equity shares of each person or company participating in the business combination have a public float of not less than U.S. $75,000,000, determined as of a date within 60 days prior to the filing of the preliminary prospectus with the principal jurisdiction, provided that this requirement shall not apply in respect of participating persons or companies whose assets and gross revenues in aggregate would contribute less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each participating person's and company's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed, and provided further that such requirement may be satisfied in respect of a participating person or company whose securities were the subject of a bid made under or eligible to have been made under the MJDS that terminated within the preceding 12 months if such requirement would have been satisfied immediately prior to commencement of the bid;

(3) Each person or company participating in the business combination has had a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ NMS for a period of at least 12 calendar months immediately preceding the filing of the preliminary prospectus with the principal jurisdiction and is in compliance with the obligations arising from such listing or quotation, provided that this requirement shall not apply in respect of participating persons or companies whose assets and gross revenues in aggregate would contribute less than 20% of the total assets and gross revenues from continuing operations of the successor issuer, based on a *pro forma* combination of each participating person's and company's financial position and results of operations for its most recently completed fiscal year ended prior to the business combination for which financial statements have been filed;

(4) The issue or exchange of securities in connection with the business combination is made to residents of Canada on the same terms and conditions as it is made to residents of the United States; and

(5) Less than 40% of the class of securities to be distributed in the business combination by the successor issuer would be distributed to persons or companies whose last address as shown on the books of the participating person or company is in Canada.

The calculation of the percentage of securities held by persons or companies having an address in Canada shall be made with respect to each participating person or company as of the end of such participating person's or company's last quarter preceding the date of filing the preliminary prospectus with the principal jurisdiction or, if such quarter terminated within 60 days of such filing date, as of the end of the participating person's or company's preceding quarter. Such calculation shall be made on the basis of the assumption that all persons or companies who have an option in respect of the consideration to be received pursuant to the business combination elect the option that would result in the issuance of the greatest number of securities.

5.3 *Mechanics*

If the eligibility requirements set forth in section 5.2 are met, securities may be distributed in Canada under the MJDS in connection with a business combination by complying with the procedures set forth in sections 3.8, 3.9, 3.11(1), 3.11(5) and 3.14. The disclosure documents would be required to be filed both as a prospectus and as an information circular. Reconciliation of financial statements to Canadian GAAP or International Accounting Standards is not required for business combinations done under the MJDS.

6. *Continuous Disclosure, Proxies and Proxy Solicitation, Shareholder Communication and Insider Reporting*

An issuer that files a prospectus or a bid circular for a securities exchange take-over bid in certain provinces of Canada becomes a reporting issuer in those provinces, subject, among other things, to certain continuous disclosure, proxy and proxy solicitation, and shareholder communication requirements, with its insiders being subject to certain insider reporting requirements.

Compliance with U.S. requirements relating to (i) current reports, (ii) annual reports, and (iii) proxy statements, proxies and proxy solicitation by a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act (or, in the case of current reports and annual reports, is required to file reports pursuant to section 15(d) of the 1934 Act) will satisfy the requirements of the Canadian provinces and territories relating to (i) reports of material change, (ii) annual information forms, annual reports and management's discussion and analysis of financial condition and results of operations, and (iii) information circulars, proxies and proxy solicitation, respectively, provided that (a) two copies of any material filed with the SEC are filed with the applicable securities regulatory authorities that require the filing of material of that nature (i) in the case of current reports, forthwith after the earlier of the date the report is filed with the SEC and the date it is required to be filed with the SEC, and (ii) in the case of other documents, within 24 hours after they are filed with the SEC, and (b) such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable U.S. law.

Compliance by any other person or company with U.S. requirements relating to proxies and proxy solicitation with respect to a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act will satisfy the requirements of the Canadian provinces and territories relating to proxies and proxy solicitation, provided that (i) two copies of any material relating to a meeting of security holders filed with the SEC are filed with the applicable securities regulatory authorities that require the filing of material of that nature within 24 hours after they are filed with the SEC, and (ii) such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable U.S. law.

Compliance with U.S. requirements relating to quarterly reports and annual reports by a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act or is required to file reports pursuant to section 15(d) of the 1934 Act will satisfy the requirements of the Canadian provinces and territories relating to interim financial statements and annual financial statements, respectively, provided that:

(1) Two copies of any material filed with the SEC are filed with the applicable securities regulatory authorities that require the filing of financial statements within 24 hours after they are filed with the SEC; and

(2) (a) if:

(i) The issuer is a reporting issuer in the Canadian provinces and territories solely as the result of offerings, bids and business combinations made under the MJDS;

(ii) The issuer meets the eligibility requirements specified in sections 3.3 (1) and (2) ; or

(iii) The issuer meets the eligibility requirements specified in sections 3.2 (1)–(5) and the issuer is a reporting issuer in the Canadian provinces and territories solely as the result of the distribution of securities that have an Approved Rating and meet the eligibility requirements of section 3.2(6);

Then such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable U.S. law; or

(b) Otherwise such documents are provided to security holders whose last address as shown on the books of the issuer is in Canada in the manner and at the time required by applicable Canadian securities legislation.

A U.S. issuer that has a class of its securities listed on the New York Stock Exchange or the American Stock Exchange or quoted on NASDAQ may satisfy any obligation under Canadian securities legislation to issue and file a press release by (i) complying with the requirements of either such exchange or NASDAQ in respect of making public disclosure of material information on a timely basis, and (ii) forthwith issuing in Canada, and filing with the applicable securities regulatory authorities that require the filing of press releases, any press release that discloses a material change in its affairs.

A U.S. issuer shall not be required to comply with the requirements of National Policy Statement No. 41 (Shareholder Communication) so long as it complies with the requirements of Rule 14a–13 under the 1934 Act with respect to any Canadian clearing agency (*i.e.*, The Canadian Depository for Securities Limited and West Canada Depository Trust Company) and any intermediary whose last address as shown on the books of the issuer is in Canada. Any such clearing agency or intermediary shall be required to comply only with the requirements of National Policy Statement No. 41 with respect to any such issuer, including, without limitation, responding to search cards and delivering proxy-related materials within the time periods specified in National Policy Statement No. 41. Any such intermediary shall be entitled to receive the fees and charges set out in National Policy Statement No. 41. For purposes of this paragraph, an intermediary means a registered dealer or adviser, a financial institution (bank or trust company) , a participant in a clearing agency, a trustee or administrator of a self-administered retirement savings plan, retirement income fund, education savings plan, or other similar self-administered savings or investment plan registered under the Income Tax Act (Canada) , or a nominee of any of the foregoing, that holds a security on behalf of another person or company who is not the registered holder of the security, unless excluded from the definition of "intermediary" by National Policy Statement No. 41.

An insider of a U.S. issuer that has a class of securities registered pursuant to section 12 of the 1934 Act shall not be required to file with any securities regulatory authority in Canada insider reports with respect to holdings of securities of such issuer so long as such insider files with the SEC on a timely basis all reports required to be filed with the SEC pursuant to section 16(a) of the 1934 Act and the rules and regulations thereunder.

7. *U.S.-Only Offerings by Canadian Issuers*

Where a Canadian issuer uses Form F–9 or F–10 prescribed under the 1933 Act to make an offering solely in the United States under the multijurisdictional disclosure system adopted by the SEC, the issuer shall select a review jurisdiction in Canada no later than the time of filing the registration statement with the SEC and shall advise the SEC of its selection. The jurisdiction selected may or may not agree to act in such capacity. If a jurisdiction does not agree to act, the issuer shall select another jurisdiction. As of the date of this Policy Statement, the securities regulatory authorities of New Brunswick, Prince Edward Island, Newfoundland, Yukon Territory and the Northwest Territories have indicated that they will not agree to act as the review jurisdiction in connection with offerings made under the MJDS. The issuer shall file with the review jurisdiction the documents that it files with the SEC no later than the time such documents are filed with the SEC, provided that the preliminary prospectus and prospectus filed with the review jurisdiction need not contain a certificate signed by the underwriters.

If the review jurisdiction selects a U.S.-only offering for review, it will so notify the issuer and the SEC within three business days of the date of filing of the preliminary prospectus. The review jurisdiction will give its comments, if any, to the issuer. Once all the comments have been resolved, the review jurisdiction will notify the issuer and the SEC of the receipt of the prospectus. The issuer shall pay a fee of $2,500 to the review jurisdiction at the time of filing the preliminary prospectus.

The selection of a review jurisdiction does not affect any obligation the issuer otherwise may have to file a prospectus with a securities regulatory authority in Canada, whether as a result of the likelihood that the securities will not come to rest outside of Canada, as a result of a distribution being made from a province or territory, or otherwise.

8. *U.S. Offerings of Debt and Preferred Shares by Canadian Issuers*

Securities offered by a Canadian issuer on or before June 30, 1992 using Form F–9 prescribed under the 1933 Act for use in the multijurisdictional disclosure system adopted by the SEC must receive, prior to issuance, a provisional rating by C.B.R.S. Inc. or Dominion Bond Rating Service Limited in one of the rating categories referred to in the definition of Approved Rating in Section 2.

Appendix "A" to National Policy Statement No. 45 Forms of Certificates for Rule 415 Offerings

1. *Method 1: Supplements Without Certificates*

(a) *Issuer's Certificate.*

(i) To use Method 1, the preliminary prospectus and prospectus used for a Rule 415 Offering must contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(ii) To use Method 1 for an MTN Program established under a prospectus for a Rule 415 Offering by a prospectus supplement, where a certificate of the issuer of the type referred to in paragraph 1(a)(i) of this appendix was not included in the prospectus, the supplement establishing such program in Canada must contain the following issuer's certificate:

"The prospectus dated * * *, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered hereby and by such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 1, each amendment to a prospectus used for a Rule 415 Offering, where the prospectus contained a certificate of the type referred to in paragraph 1(a)(i) of this Appendix, must contain the following issuer's certificate:

"The prospectus dated * * *, as amended, together with the documents incorporated therein by reference, as of the date of each supplement thereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(b) *Underwriters' Certificate.*

(i) Where there is an underwriter, to use Method 1 each preliminary prospectus and prospectus for a Rule 415 Offering shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus supplement, are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(ii) To use Method 1 for an MTN Program established by a prospectus supplement, where the prospectus did not contain a certificate of an underwriter of the type referred to in paragraph 1(b)(i) of this appendix of an underwriter, such supplement shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by such supplement, are, or will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated * * *, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, as of the date of each supplement hereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered hereby and by such supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 1, each amendment to a prospectus used for a Rule 415 Offering, where the prospectus contained a certificate of an underwriter of the type referred to in paragraph 1(b)(i) of this appendix, shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated * * *, as amended, together with the documents incorporated therein by reference, as of the date of each supplement thereto, will constitute full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and supplement as required by [insert applicable references] [insert if offering made in Quebec—"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

2. *Method 2: Certificates in Each Supplement*

(a) *Issuer's Certificate.*

(i) To use Method 2, the preliminary prospectus and prospectus used for a Rule 415 Offering must contain the following issuer's certificate:

"The foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to such securities as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(ii) To use Method 2, each prospectus supplement used for a Rule 415 Offering must contain the following issuer's certificate:

"The prospectus dated ***, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and this supplement as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 2, each amendment to a prospectus used in Canada for a Rule 415 Offering must contain the following issuer's certificate:

"The prospectus dated ***, as amended, together with the documents incorporated therein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered thereby as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(b) *Underwriters' Certificate.*

(i) Where there is an underwriter, to use Method 2, each preliminary prospectus and prospectus for a Rule 415 Offering shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the foregoing, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to such securities as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(ii) Where there is an underwriter, to use Method 2, each prospectus supplement used for a Rule 415 Offering shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus supplement, are in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated ***, [insert if applicable—"as amended,"] together with the documents incorporated therein by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by such prospectus and this supplement as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iii) To use Method 2, each amendment to a prospectus used for a Rule 415 Offering, where the prospectus contained a certificate of an underwriter of the type referred to in Paragraph 2(b)(i) of this appendix, shall contain the following underwriters' certificate signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus are, or it is known will be, in a contractual relationship with the issuer or a selling security holder:

"To the best of our knowledge, information and belief, the prospectus dated ***, as amended, together with the documents incorporated therein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered thereby as required by [insert applicable references] [insert if offering made in Quebec—"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

(iv) If:

A. Method 2 is being used;

B. An amendment to a prospectus for a Rule 415 Offering is filed with respect to a material change that occurred during a period when offers and sales of securities are being made by an underwriter in Canada; and

C. Such prospectus did not contain a certificate of such underwriter of the type referred to in paragraph 2(b) (i) of this appendix,

Such underwriter shall resign the certificate that it previously provided pursuant to Paragraph 2(b) (ii) of this Appendix in the prospectus supplement describing the securities being so offered. This resigned underwriters' certificate shall be filed with the applicable securities regulatory authorities concurrently with the amendment.

Appendix "B" to National Policy Statement No. 45 Forms of Submission to Jurisdiction and Appointment of Agent for Service of Process

A. *Prospectus Offering of Securities*

1. Name of issuer (the "Issuer"):

____

2. Jurisdiction of incorporation of Issuer:

____

3. Address of principal place of business of Issuer: ______________.

4. Description of securities (the "Securities") : ______________

5. Date of prospectus (the "Prospectus") pursuant to which the Securities are offered:

____

6. Name of agent (the "Agent") :

____

7. Address for service of process of Agent in Canada: ______________.

8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of or relating to or concerning the distribution of the Securities made or purported to be made pursuant to the Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

(a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the Securities are distributed pursuant to the Prospectus; and

(b) any administrative proceeding in any such province [or territory], in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made pursuant to the Prospectus.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in the form hereof at least 30 days prior to termination of this Submission to Jurisdiction and Appointment of Agent for Service of Process for any reason whatsoever.

11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days prior to any change in the name or above address of the Agent.

12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of ______________ (province of above address of Agent).

Dated: ______________

____

(Issuer)

By: ______________

(Name and title)

The undersigned accepts the appointment as agent for service of process of ______________ (Issuer) pursuant to the terms and conditions of the foregoing Appointment of Agent for Service of Process.

Dated: ______________

____

[Agent]

By: ______________

(Name and title)

B. *Take-Over or Issuer Bid*

1. Name of offeror (the "Offeror") :

______________.

2. Jurisdiction of incorporation of Offeror:

____

3. Address of principal place of business of Offeror: ______________.

4. Description of securities (the "Securities") : ______________.

5. Date of bid (the "Bid") for the Securities:

____

6. Name of agent (the "Agent") :

____

7. Address for service of process of Agent in Canada: ______________.

8. The Offeror designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of or relating to or concerning the Bid [insert for securities exchange bids—"or the obligations of the Offeror as a reporting issuer"], and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9.The Offeror irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

(a) The judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the Bid is made; and

(b) Any administrative proceeding in any such province [or territory],

In any Proceeding arising out of or related to or concerning the Bid.

10. Until six years from the date of the Bid, the Offeror shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in the form hereof at least 30 days prior to termination of this Submission to Jurisdiction and Appointment of Agent for Service of Process for any reason whatsoever.

11. Until six years from the date of the Bid, the Offeror shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days prior to any change in the name or above address of the Agent.

12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of ______________ [province of above address of Agent].

Dated:

(Offeror)

____

By: ______________

(Name and title)

The undersigned accepts the appointment as agent for service of process of ______________ [Offeror] pursuant to the terms and conditions of the foregoing Appointment of Agent for Service of Process.

Dated: ______________

____

(Agent)

By: ______________

(Name and title)

C. *Trust Indenture*

1. Name of trustee (the "Trustee"):

____

2. Jurisdiction of incorporation of Trustee:

____

3. Address of principal place of business of Trustee: ______________.

4. Description of securities (the "Securities") : ______________.

5. Date of trust indenture (the "Indenture") pursuant to which the Securities are issued:

______________.

6. Name of agent (the "Agent") :

____

7. Address for service of process of Agent in Canada: ______________.

8. The Trustee designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of or relating to or concerning the Indenture, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The Trustee irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

(a) The judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the Securities are issued; and

(b) Any administrative proceeding in any such province [or territory],

In any Proceeding arising out of or related to or concerning the Indenture.

10. Until six years from the termination of the Indenture, the Trustee shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in the form hereof at least 30 days prior to termination of this Submission to Jurisdiction and Appointment of Agent for Service of Process for any reason whatsoever.

11. Until six years from the termination of the Indenture, the Trustee shall file an amended Submission to Jurisdiction and

Appointment of Agent for Service of Process at least 30 days prior to any change in the name or above address of the Agent.

12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of __________ [province of above address of Agent].

Dated:__________

____

(Trustee)

By: __________

(Name and title)

The undersigned accepts the appointment as agent for service of process of __________ [Trustee] pursuant to the terms and conditions of the foregoing Appointment of Agent for Service of Process.

Dated:__________

____

(Agent)

By: __________

(Name and title)

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