

## **Unofficial Consolidation – September 5, 2008**

This document is an unofficial consolidation of all amendments to National Instrument 45-101 *Rights Offerings*, its form and its companion policy current to **September 5, 2008**. This document is for reference purposes only and is not an official statement of the law. This is an unofficial consolidation of MSC Rules 2001-8, 2003-9, 2005-17, 2007-19 and 2011-5.

### **NATIONAL INSTRUMENT 45-101 RIGHTS OFFERINGS**

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**NATIONAL INSTRUMENT 45-101**  
***RIGHTS OFFERINGS***

PART 1 – DEFINITIONS, INTERPRETATION AND APPLICATION

**Definitions**

**1.1** In this Instrument

**"acceptance date"** means

- (i) the date that is 10 days after the date the issuer gives the notice referred to in the rights offering prospectus exemption, or
- (ii) if the reviewing authority has objected to the proposed trade under the rights offering prospectus exemption, the date the reviewing authority notifies the issuer by written notice that it no longer objects to the use of the rights offering prospectus exemption;

**"additional subscription privilege"** means the privilege, granted to a holder of a right, to subscribe for securities not subscribed for under a basic subscription privilege;

**"basic subscription privilege"** means a privilege to subscribe for that number of securities set out in a rights certificate held by a holder of the rights certificate;

**"class"** includes a series of a class of securities;

**"managing dealer"** means a dealer that has entered into an agreement with an issuer under which the dealer has agreed to organize, and participate in, the solicitation of the exercise of rights issued by the issuer;

**"market price"** means for securities of a class for which there is a published market

(a) except as provided in paragraph (b)

- (i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
- (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class in the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

1. The average of the closing bid and closing ask prices for each day on which there was no trading.
2. If the published market

(i) provides a closing price of securities of the class for each day that there has been trading, the closing price, or

(ii) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there has been trading;

**"published market"** means, for a class of securities, a marketplace on which the securities have traded that discloses regularly in a publication of general and regular paid circulation or in a form that is broadly distributed by electronic means the prices at which those securities have traded;

**"reviewing authority"** means

(a) in all jurisdictions except British Columbia and Alberta, the securities regulatory authority or regulator; and

(b) in British Columbia and Alberta, the regulator;

**"rights offering"** means the issuance by an issuer to existing security holders of a right to purchase additional securities of the issuer's own issue.

**"rights offering prospectus exemption"** means the exemption in securities legislation from the prospectus requirement for a rights offering;

**"rights offering registration exemption"** means the exemption in securities legislation from the trading registration requirement for a rights offering;

**"soliciting dealer"** means a person or company the interest of which in a rights offering is limited to participating in the solicitation of the exercise of rights by holders of those rights;

**"stand-by commitment"** means an agreement by a person or company to acquire securities of an issuer not issued under the basic subscription privilege or the additional subscription privilege available under a rights offering; and

**"subscription price"** means the price per security at which the securities issuable on the exercise of rights may be subscribed for under a rights offering.

## **Interpretation**

**1.2** For the purpose of the definition of "market price", if there is more than one published market for a security,

(a) if only one of the published markets is in Canada, the market price shall be determined solely by reference to that market;

(b) if there is more than one published market in Canada, the market price shall be determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined; and

(c) if there is no published market in Canada, the market price shall be determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date on which the market price is being determined.

## **Application**

**1.3** This Instrument applies to an issuer that trades in a local jurisdiction, by way of a rights offering, securities of its own issue to a beneficial holder of its securities.

## **PART 2 – REMOVAL OF RIGHTS OFFERING PROSPECTUS EXEMPTION**

### **General**

**2.1** The rights offering prospectus exemption is not available to an issuer unless the issuer and the rights offering comply with the requirements of Parts 3, 5, 6, 7 and 8 of this Instrument.

### **Restricted offerings**

**2.2** The rights offering prospectus exemption is not available to an issuer for a rights offering in any of the following circumstances:

1. The issuer is a reporting issuer in any jurisdiction and there would be an increase of more than 25 percent in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class to be issued upon the exercise of rights, assuming the exercise of all rights issued under the rights offering and the exercise of any other rights issued by the issuer under the rights offering prospectus exemption during the 12 months immediately before the acceptance date.
2. The issuer has entered into an agreement to compensate a person or company for soliciting the exercise of rights issued under the rights offering that provides for payment of a higher fee for soliciting the exercise of rights by holders of rights that were not securityholders of the issuer immediately before the rights offering than the fee payable for soliciting the exercise of rights by holders of rights that were securityholders at that time.
3. The rights offering is conditional on a minimum amount of proceeds being raised and the exercise period for the rights is more than 45 days after the acceptance date.
4. The issuer is not a reporting issuer in any jurisdiction and the exercise period for the rights is more than 60 days after the acceptance date.
5. The issuer is a reporting issuer in any jurisdiction and the exercise period for the rights is more than 90 days after the acceptance date.
6. The issuer is a reporting issuer in any jurisdiction and the exercise period for the rights is less than 21 days after the date on which the rights offering circular is sent to securityholders under paragraph 3.2(a).
7. The issuer is a reporting issuer in any jurisdiction and has not filed financial statements required to be filed under Canadian securities legislation.

## **PART 3 – PROSPECTUS EXEMPT OFFERINGS**

### **Deliveries to the reviewing authority**

**3.1(1)** An issuer that is relying on the rights offering prospectus exemption shall send to the reviewing authority the following documents:

1. A rights offering circular in draft and final form prepared in accordance with Form 45-101F.

2. If the issuer is not a reporting issuer in any jurisdiction, a statement of the issuer signed on its behalf by a senior officer confirming:

(a) that the issuer is in compliance with the requirements of its incorporating legislation concerning the distribution of information to its security holders; and

(b) no material change has occurred that has not been previously disclosed in writing to its security holders.

3. A copy of any agreement entered into, or proposed to be entered into, by the issuer with a managing dealer.

4. A copy of the technical reports and certificates prepared under National Instrument 43-101 Standards of Disclosure for Mineral Projects.

5. If the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and the rights offering circular is sent to the reviewing authority on or before June 30, 2005, an oil and gas report prepared in accordance with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators*, unless the issuer has filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101.

6. The details of any other rights offering completed by the issuer within the 12 months immediately preceding the date the rights offering circular in draft form is sent to the reviewing authority.

**3.1(2)** A rights offering circular in draft form may exclude information about the subscription price and other matters dependent on the subscription price.

### **Delivery to securityholders**

**3.2** An issuer that is required to provide notice under the rights offering prospectus exemption shall send

(a) to each securityholder entitled to receive rights under the rights offering a rights offering circular to which the reviewing authority has not objected or has confirmed its acceptance; and

(b) to each securityholder entitled to receive rights under the rights offering and to each registered rights holder, a copy of any amendment under section 3.3.

### **Amendments**

**3.3(1)** An issuer that has sent to its securityholders a rights offering circular under paragraph 3.2(a) may amend the rights offering circular, for the purpose of updating information, by sending to the reviewing authority an amendment to the rights offering circular in draft and final form or an amended rights offering circular in draft and final form blacklined to the previously filed rights offering circular.

**3.3(2)** Despite subsection (1), after the acceptance date, an issuer shall not amend the rights offering circular to change the terms of the rights offering.

## PART 4 – PROSPECTUS OFFERINGS

### **Reliance on registration exemption**

**4.1** An issuer that files a prospectus for a rights offering and intends to rely on the rights offering registration exemption shall state that it intends to rely on the exemption in a letter accompanying the filing of the preliminary prospectus.

### **Prospectus**

**4.2** An issuer shall not file a prospectus for a rights offering, unless

(a) in addition to qualifying the distribution of the rights, the prospectus qualifies the distribution of the securities issuable on the exercise of the rights;

(b) if there is a managing dealer, the managing dealer has signed the underwriter's certificate in the prospectus; and

(c) if the issuer is a reporting issuer, the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to securityholders.

### **Compliance with Instrument**

**4.3** An issuer shall not file a prospectus or an amendment to a prospectus for a rights offering unless the issuer and the rights offering comply with the requirements of Parts 5, 6, 7 and 8.

### **Amendment**

**4.4** An issuer shall not file an amendment to a prospectus for a rights offering to change the terms of the rights offering.

## PART 5 – INSIDER SUBSCRIPTIONS

### **Insider subscriptions**

**5.1(1)** If there is no published market or the subscription price is greater than the market price, for securities of the class of securities issuable on the exercise of the rights, no insider of the issuer shall be permitted to increase its proportionate interest in the issuer through the exercise of the rights under the rights offering or through a stand-by commitment.

**5.1(2)** Subsection (1) does not apply if there is no published market and the issuer, at the time that the rights offering circular in final form or the rights offering prospectus under which the rights are to be issued is sent to the reviewing authority, by notice in writing confirms to the reviewing authority that the subscription price for the securities issuable on the exercise of the rights is not greater than the fair value of the securities on the day before the date the subscription price is established.

## PART 6 – STAND-BY COMMITMENTS

### **Stand-By commitments**

**6.1** If there is a stand-by commitment for a rights offering, the issuer shall deliver to the reviewing authority at the time the rights offering circular in final form or the rights offering prospectus is sent

to the reviewing authority evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment.

## PART 7 – ADDITIONAL SUBSCRIPTION PRIVILEGE

### **Additional subscription privilege**

**7.1** An issuer shall not grant an additional subscription privilege to a holder of a right unless the issuer grants the additional subscription privilege to all holders of rights.

### **Stand-by commitment**

**7.2** If there is a stand-by commitment for a rights offering, the issuer shall grant an additional subscription privilege to all holders of rights.

### **Number or amount of securities**

**7.3(1)** Under an additional subscription privilege, each holder of a right shall be entitled to receive, on exercise of the additional subscription privilege, the number or amount of securities that is equal to the lesser of

(a) the number or amount of securities subscribed for by the holder under the additional subscription privilege; and

(b)  $x(y/z)$  where

$x$  = the aggregate number or amount of securities available through unexercised rights,

$y$  = the number of rights previously exercised by the holder under the rights offering, and

$z$  = the aggregate number of rights previously exercised under the rights offering by holders of rights that have subscribed for securities under the additional subscription privilege.

**7.3(2)** Any unexercised rights shall be allocated on a pro rata basis to holders who subscribed for additional securities based on the additional subscription privilege up to the number of securities subscribed for by a particular holder.

### **Price of securities**

**7.4** The subscription price under an additional subscription privilege or a stand-by commitment shall be the same as the subscription price under the basic subscription privilege.

## PART 8 – APPOINTMENT OF DEPOSITORY

### **Depository**

**8.1(1)** Subject to section 8.2, if a reporting issuer has specified in a rights offering circular or rights offering prospectus that no securities will be issued on the exercise of the rights unless proceeds at least equal to the specified minimum amount are received by the issuer under the rights offering, the issuer shall appoint one of the following to hold, as a depository, all money received on the exercise of the rights until that specified minimum amount is received or until the money is returned under the agreement referred to in section 8.2:

1. A Canadian financial institution.



2. A registrant in the jurisdiction in which the funds are proposed to be held, who is acting as managing dealer for the rights offering, or if there is no managing dealer, who is acting as a soliciting dealer.

**8.1(2)** The issuer shall identify the depository appointed under subsection (1) in the rights offering circular or rights offering prospectus.

**Release of funds from depository**

**8.2** The agreement between the depository and the issuer under which the depository referred to in section 8.1 is appointed shall provide that, if the specified minimum amount referred to in section 8.1 is not received by the depository during the exercise period for the rights, the money held by the depository will be returned in full to the holders of rights that have subscribed for securities under the rights offering.

PART 9 – LISTING REPRESENTATIONS

**Listing representations**

**9.1** A reviewing authority's written permission to include a listing representation that is not otherwise permitted under the securities legislation of the Jurisdictions in a rights offering circular or in a rights offering prospectus is evidenced by the acceptance of, or non-objection to, the circular or the issuance of a receipt for the prospectus by the reviewing authority.

PART 10 – EXEMPTION

**Connection test**

**10.1(1)** Parts 2, 3, 5, 6, 7 and 8 do not apply to an issuer effecting a rights offering if

(a) to the knowledge of the issuer after reasonable enquiry,

(i) the number of beneficial holders of the class for which the rights are issued resident in Canada does not constitute 10 percent or more of all holders of that class;

(ii) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class;

(iii) the number of beneficial holders of the class for which the rights are issued resident in the local jurisdiction does not constitute five percent or more of all holders of that class; and

(iv) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class; and

(b) all materials sent to any other securityholders for the rights offering are concurrently sent to the reviewing authority and to each securityholder of the issuer resident in the local jurisdiction.

**10.1(2)** An issuer relying on the exemption in subsection (1) shall send to the reviewing authority a written notice that it is relying on the exemption and a certificate of an officer or director of the issuer, or if the issuer is a limited partnership, an officer or director of the general partner of the issuer, or if the issuer is a trust, a trustee or officer or director of a trustee of the issuer, that to the knowledge of the person signing the certificate, after reasonable inquiry that

(a) the number of beneficial holders of the class for which the rights are issued resident in Canada does not constitute 10 percent or more of all holders of that class;

(b) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class;

(c) the number of beneficial holders of the class for which the rights are issued resident in the local jurisdiction does not constitute five percent or more of all holders of that class; and

(d) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class.

**Exemption**

**10.2(1)** The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**10.2(2)** Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

**Evidence of exemption**

**10.3** Without limiting the manner in which an exemption under section 10.2 may be evidenced, the issuance by the reviewing authority of a receipt for the rights offering prospectus or acceptance of, or non-objection to, the rights offering circular is evidence of the granting of the exemption if

(a) the person or company that sought the exemption delivered to the regulator on or before the date the preliminary rights offering prospectus or rights offering circular in draft form was sent to the reviewing authority, a letter or memorandum describing the matters relating to the exemption application, and indicating why consideration should be given to the granting of the exemption; and

(b) the regulator has not sent written notice to the contrary to the person or company that sought the exemption before or concurrently with the issuance of the receipt for the prospectus or acceptance of, or non-objection to, the circular by the reviewing authority.

**PART 11 – EFFECTIVE DATE**

**Effective date of instrument**

**11.1** This Instrument comes into force on July 25, 2001.

**FORM 45-101F**  
**INFORMATION REQUIRED IN A RIGHTS OFFERING CIRCULAR**

This is the form required by section 3.1 of National Instrument 45-101 Rights Offerings.

**Item 1 - Name of Issuer**

**Name of issuer**

**1.1** State the full legal name of the issuer and the addresses of its head office or registered office, and of its principal office.

**Item 2 - Summary of Offering**

**Summary of offering**

**2.1** On the first page of the circular, set out in summary form

- (i) the number of rights;
- (ii) the record date;
- (iii) the time and date of expiry of the offer;
- (iv) the subscription price;
- (v) the basic subscription privilege;
- (vi) the maximum number of securities issuable and the proceeds to be received by the issuer, assuming the exercise of all rights issued under the rights offering;
- (vii) the estimated expenses of the rights offering;
- (viii) any stand-by commitment;
- (vix) the basis on which any additional subscription privilege may be exercised; and
- (x) the minimum amount of proceeds, if any, upon which the rights offering is conditioned.

**INSTRUCTIONS:**

*1. If the rights will be listed on a stock exchange, include the following statement on the face page:*

"The Rights will be listed on the [name of exchange]".

*2. If the securities issuable on the exercise of the rights will be listed on a stock exchange, include the following statement on the face page:*

"The [name of exchange] has approved the listing of the [name of securities] issuable on the exercise of the Rights".

### **Item 3 - International Issuers**

**3.1** If the Issuer is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the rights offering circular, with the bracketed information completed:

"[The issuer] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the issuer has appointed [name(s) and address(es) of agent(s) for service] as its agent(s) for service of process in [list jurisdictions] it may not be possible for investors to enforce judgements obtained in Canada against [the issuer]."

**3.2** [Repealed]

### **Item 4 - Brief Description of the Business of the Issuer**

#### **Brief description of the business of the issuer**

**4.1** Briefly describe the business carried on and intended to be carried on by the issuer and its subsidiaries.

### **Item 5 - Details of the Rights and Securities Offered**

#### **Details of the rights and securities offered**

**5.1** Describe the significant attributes of the rights issued under the rights offering and the securities to be issued on the exercise of the rights.

### **Item 6 - Registration and Delivery of Certificates Evidencing Securities**

#### **Registration and delivery of certificates evidencing securities**

**6.1** Describe the details of the registration and delivery of security certificates or other evidence of securities to holders of rights who exercise the rights.

### **Item 7 - Subscription Agent and Transfer Agent**

#### **Subscription agent and transfer agent**

**7.1(1)** Identify the person or company appointed as subscription agent to receive subscriptions and payments from holders of a rights certificate and to perform the services relating to the exercise and transfer of the rights and provide details of such arrangements.

**7.1(2)** Identify the person or company appointed as registrar and transfer agent for the securities to be issued on exercise of the rights.

### **Item 8 - How to Exercise the Rights**

#### **How to exercise the rights**

**8.1** Set out in detail how a holder may exercise the basic subscription privilege, exercise any additional subscription privilege, sell or transfer rights or divide or combine the rights evidenced by the certificate.

**INSTRUCTIONS:**

1. Describe the basis on which a holder of a rights certificate may exercise the basic subscription privilege and any additional subscription privilege.
2. State if a holder of rights is to forward payment for additional securities issuable under any additional subscription privilege with the duly completed rights certificate or wait until notified by the issuer of the number of additional securities allotted to such holder.
3. Describe the basis on which the holder of a rights certificate may sell or transfer the rights or the prohibitions to the transfer.
4. Describe the basis on which the holder of a rights certificate may divide or combine the certificate with other rights certificates.

**Item 9 - Stand-By Commitment**

**Stand-by commitment**

**9.1** Identify the person or company providing the stand-by commitment, if any. Describe the stand-by commitment, if any, and the material terms of the basis on which the person or company providing the stand-by commitment may terminate the obligation under the stand-by commitment.

**Item 10 - Escrow of Proceeds and Depository**

**Escrow of proceeds and depository**

**10.1** Identify the depository, if any, and any provisions for the deposit of the proceeds of the rights offering with the depository.

**Item 11 - Managing Dealer, Soliciting Dealer(s) and Underwriting Conflicts**

**Managing dealer and soliciting dealer(s)**

**11.1** Identify the managing dealer, if any, and the soliciting dealers, if known, and describe the fees payable to them.

**Underwriting conflicts**

**11.2** Comply with the requirements of National Instrument 33-105 *Underwriting Conflicts*.

**INSTRUCTIONS:**

*Disclose any information concerning conflicts of interest, including, without limitation, underwriting conflicts, as required by securities legislation.*

**Item 12 - Intention of Insiders to Exercise Rights**

**Intention of insiders to exercise rights**

**12.1** State, if known to the issuer after reasonable enquiry, the intentions of insiders of the issuer, concerning the exercise of rights issued under the rights offering.

### **Item 13 - Ownership of Securities of Issuer**

#### **Ownership of securities of issuer**

**13.1** Provide the following information for each person or company that beneficially owns, or controls or directs, directly or indirectly, more than 10% of any class or series of voting securities of the issuer as of a specified date not more than 30 days before the date of the rights offering circular:

- (a) the name;
- (b) for each class or series of voting securities of the issuer, the number or amount of securities owned, controlled or directed, directly or indirectly; and
- (c) the percentage of each class or series of voting securities known by the issuer to be owned, controlled or directed, directly or indirectly.

#### **Changes of ownership**

**13.2** State the particulars of any issuances and, if known to any director or senior officer of the issuer, transfers of securities of the issuer that in either case have materially affected the control of the issuer since the end of the most recent financial year for which audited financial statements have been prepared.

### **Item 14 - Use of Proceeds**

#### **Use of proceeds**

**14.1** Describe the use of the proceeds of the rights offering.

#### *INSTRUCTIONS:*

*Specify the estimated gross and net proceeds of the rights offering assuming full exercise of the rights, any minimum amount of proceeds required, and the purpose intended for the proceeds.*

### **Item 15 - Statement as to Resale Restrictions**

#### **Statement as to resale restrictions**

**15.1** where the issuer is offering rights in one or more jurisdictions in which there are restrictions on the resale of securities, the rights offering circular shall include a heading entitled "Statement as to Resale Restrictions" under which the issuer shall include a statement disclosing when those rights and underlying securities will become freely tradable in those jurisdictions and that until then, such securities may not be resold except pursuant to a prospectus or prospectus exemption, which may only be available in limited circumstances.

### **Item 16 - Website**

#### **Website**

**16.1** Disclose the SEDAR website address and that continuous disclosure for the issuer can be obtained on that site.

**COMPANION POLICY 45-101CP**  
***RIGHTS OFFERINGS***

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**COMPANION POLICY 45-101CP**  
***RIGHTS OFFERINGS***

**PART 1            PROSPECTUS EXEMPT OFFERINGS**

**1.1            Notice Under Rights Offering Prospectus Exemption** - The reviewing authority will consider the following as the notice required to be sent under securities legislation in order to rely on the rights offering prospectus exemption:

1.            A rights offering circular in draft form.
2.            The information required to be sent under clause 10.1(1)(b) and subsection 10.1(2) of the Instrument in order to rely on the exemption provided in subsection 10.1(1) of the Instrument.

**1.2            Objection to Use of Prospectus Exemption**

- (1)            The reviewing authority may exercise its statutory power to object to a rights offering being made in reliance on the rights offering prospectus exemption if
  - (a)            the rights offering is for the purpose of financing the reactivation of a dormant or inactive issuer;
  - (b)            the rights offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its last annual financial statements that have been filed under securities legislation;
  - (c)            excessive consideration is payable to the managing dealer, to any soliciting dealer or for a stand-by commitment; or
  - (d)            the reviewing authority believes that, in the circumstances, reliance upon the exemption is not otherwise appropriate.
- (2)            Despite clause 1.2(1)(a), the regulator in British Columbia will generally not object to the use of the rights offering prospectus exemption solely on the basis that the proceeds of the rights offering will be used to finance a reactivation. In exercising its discretion, the regulator will consider the following factors:
  - (a)            the amount of funds to be raised, which is generally expected to be less than:
    - (i)            \$500,000, if a rights offering complies with the condition in paragraph 1 of section 2.2 of the Instrument ("2.2-1"); and
    - (ii)            \$250,000, if the increase in the outstanding securities of the class to be issued on exercise of the rights will not exceed 50% of the outstanding securities of that class immediately before the rights offering (in which case the regulator is prepared to consider granting an exemption from the 25% limit in 2.2-1);



- (b) if the rights offering circular, together with other records required to be delivered, contains full, true and plain disclosure of all material facts relating to the reactivation; and
- (c) the extent to which shareholders of the issuer, other than management and insiders, can reasonably participate in the rights offering (generally the regulator will not object if the public shareholders able to participate in the offering constitute more than 50% of all shareholders).

### 1.3

#### Calculation of Number of Securities

- (1) In calculating the number of outstanding securities for purposes of paragraph 1 of section 2.2 of the Instrument the Canadian securities regulatory authorities are of the view that
  - (a) if
    - $x$  = the number of securities of the class of the securities that may be or have been issued upon the exercise of rights under all rights offerings made by the issuer in reliance on the rights offering prospectus exemption during the previous 12 months;
    - $y$  = the maximum number of securities that may be issued upon exercise of rights under the proposed rights offering; and
    - $z$  = the number of securities of the class of securities that is issuable upon the exercise of rights under the proposed rights offering that are outstanding as of the date of the rights offering circular prepared for the proposed rights offering that is delivered to the securities regulatory authority;then  $\frac{x + y}{z}$  must be equal to or less than 0.25; and
  - (b) unless it is reasonable to expect that convertible securities that may be acquired under the proposed rights offering will not be converted before 12 months after the date of the proposed rights offering, the potential increase in outstanding securities, and specifically, "y" in paragraph (1), should be calculated as if the conversion of those convertible securities had occurred.
- (2) The formula suggested in subsection (1) should be adjusted to take into account any concurrent rights offering.
- (3) Since paragraph 1 of section 2.2 of the Instrument prohibits a rights offering under the rights offering prospectus exemption where the result would be an increase in the number or amount of the securities in excess of 25%, the use of the rights offering prospectus exemption is not generally permitted under that paragraph for a rights offering under which the rights are exercisable into a security of a class of securities none of which were outstanding before the date of issuance of the rights.

### 1.4

**Timing of Deliveries** - In jurisdictions other than Quebec, the reviewing authority will use its best efforts to notify the issuer within two business days of the filing of an amendment to the rights offering circular in draft form or an amended rights offering circular in draft form if changes are required to the document. If the issuer does not hear from the reviewing authority

within that time, the issuer may deliver the amendment or amended circular to securityholders. However, this does not preclude further review by the reviewing authority of the amendment or amended circular, which is subject to review at any time. In Quebec, the amendment shall be submitted for approval to the Commission, which must make a decision within two working days after receipt. If approval is refused, the distribution shall cease. If the amendment is approved, the rights offering circular may not be sent unless accompanied by the amendment.

**1.5 Compliance with National Instrument 43-101, National Policy Statement No. 2-B or National Instrument 51-101** – The reviewing authorities may object to the use of the rights offering prospectus exemption if the issuer does not comply with NI 43-101 Standards of Disclosure for Mineral Projects, National Policy Statement No. 2-B or National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.

**1.6 Requests for Additional Information** - Canadian securities legislation contemplates that the reviewing authority may request an issuer that intends to effect a rights offering under the rights offering prospectus exemption to send such other information to the reviewing authority as the reviewing authority may require to allow the reviewing authority to determine whether to object to the use of the rights offering prospectus exemption.

**1.7 Availability of Registration Exemption** - The rights offering registration exemption is also ordinarily available if the rights offering prospectus exemption is available.

## **PART 2 PROSPECTUS OFFERINGS**

**2.1 Availability of Registration Exemption** - If an issuer proposes to effect a rights offering by way of prospectus, the rights offering registration exemption continues to be available to the issuer. The Canadian securities regulatory authorities will not ordinarily object to the use of the rights offering registration exemption in that case.

**2.2 Public Interest** - A regulator may refuse to issue a receipt for a prospectus filed for a rights offering under which rights are issued if the rights are exercisable into convertible securities that require an additional payment by the holder on conversion and the securities underlying the convertible securities are not qualified under the prospectus. This will ensure that the remedies for misrepresentation in the prospectus are available to the person or company who pays value.

## **PART 3 INSIDER SUBSCRIPTIONS**

**3.1 Insider Subscriptions** - If no market exists for the securities issuable on the exercise of the rights or if the subscription price is greater than the market price, section 5.1 of the Instrument does not necessarily preclude an insider from exercising rights under a rights offering. Insiders may subscribe for securities issuable on the exercise of rights to maintain their proportionate interest in any class of securities and avoid any dilution. An insider may not, however, exercise its rights to increase its proportionate interest in the issuer. Since the maximum number of securities or amount of securities that an insider may acquire under a rights offering will not be known until it is determined how many rights are exercised by non-insiders, issuers relying on section 5.1 will need to put in place a mechanism to "claw back" securities subscribed for by insiders and to repay subscription proceeds in certain circumstances, such as when the rights held by non-insiders are not fully exercised or have been traded to insiders. The Canadian securities regulatory authorities suggest that an escrow mechanism be used to ensure a successful claw-back, if necessary.

- 3.2**            **Establishing Fair Value If There is no Market Price** - Subsection 5.1(2) of the Instrument provides that if there is no market price for the securities issuable on the exercise of rights, insiders may not increase their proportionate interest in the issuer unless the issuer confirms to the reviewing authority that the subscription price is not greater than the fair value of the securities to be subscribed for under the rights. For this purpose, the Canadian securities regulatory authority or regulator will consider as evidence of the fair value such things as fairness opinions, valuations and letters from registered dealers.

#### **PART 4            STAND-BY COMMITMENTS**

- 4.1**            **Stand-by Commitments** - In assessing if a person or company providing a stand-by commitment has the financial ability to carry out its obligations under the commitment, a reviewing authority will consider any of the following:

1.            A statement of net worth attested to by the person or company making the commitment.
2.            A bank letter of credit.
3.            The most recent annual audited financial statements of the person or company making the commitment.
4.            Any other evidence that provides comfort to the reviewing authority.

#### **PART 5            OFFERINGS OUTSIDE OF LOCAL JURISDICTION**

- 5.1**            **Offerings Outside of Local Jurisdiction** - A Canadian securities regulatory authority may consider taking appropriate action, such as the denial of exemptions, issuance of a cease trade order or other sanctions, against an issuer and its directors and officers if securityholders resident in its jurisdiction are excluded from a rights offering that is made by an issuer that is

- (a)            a reporting issuer; or
- (b)            not a reporting issuer but has securityholders resident in its jurisdiction either
  - (i)            representing five percent or more of the holders of the securities of the class that are to be issued on the exercise of rights under the rights offering; or
  - (ii)            holding five percent or more of the securities of the class that are to be issued on the exercise of rights under the rights offering.

#### **PART 6            DETERMINATION OF BENEFICIAL OWNERSHIP**

- 6.1**            **Determination of Beneficial Ownership** - The Canadian securities regulatory authorities recognize the difficulty of determining beneficial ownership given the book-based system of holding securities. The Canadian securities regulatory authorities are of the view that for the purpose of determining beneficial ownership under Part 10 of the Instrument and Part 5 of the Companion Policy, procedures comparable to those found in National Policy 41 - Shareholder Communication, or any successor instrument, are appropriate.

#### **PART 7            RESALE RESTRICTIONS**

- 7.1**            **Resale Restrictions** - Issuers should refer to Canadian securities legislation to determine resale restrictions and exemptions from these restrictions.