

**COMPANION POLICY 45-101CP
TO NATIONAL INSTRUMENT 45-101
RIGHTS OFFERINGS¹**

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 and final form.
2. The information required to be sent under clause 10.1(1)(e) 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 if²
 - (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 legislation³;
 - (c) excessive consideration is payable to the managing dealer, to any soliciting dealer or for a stand-by commitment; or

¹ This proposed Companion Policy is expected to be adopted as a policy in all jurisdictions represented by the CSA.

² Item (b) of this list is restated from Ontario Securities Commission Policy Statement No. 6.2. Part III paragraph (3).

³ The experience of staff at the Ontario Securities Commission has been that the term "major new undertaking" in Ontario Securities Commission Policy Statement No. 6.2 created considerable confusion and accordingly an effort has been made to define the concept more particularly. This concept is intended to capture both qualitative and quantitative matters.

- (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) it is inappropriate to exceed the 25 percent threshold in paragraph 1 of section 2.2 of the Instrument if securities convertible into the securities issuable on the exercise of the rights are likely to be converted within a short period of time after the rights offering. Therefore, unless it is reasonably expected that convertible securities will not be converted before 12 months after the date of the rights offering, the potential increase in outstanding securities should be calculated as if the conversion of convertible securities had occurred⁴.

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This provision is intended to include in the calculation of the 25% threshold those securities which may be issued on conversion within one year, other than securities for which it is reasonably

- (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 - Under the Instrument the issuer is required to send a rights offering circular in draft form to ensure the reviewing authorities are satisfied as to the contents. Once the reviewing authorities are they will advise the issuer that they are prepared to accept the rights offering circular in final form.

1.5 Reports under National Policy Statement 2-A or National Policy Statement 2-B - The reviewing authorities may object to the use of the rights offering exemption if reports prepared under National Policy Statement 2-A or any successor instrument or National Policy Statement 2-B or any successor instrument do not comply with those policies or successor instruments.

1.6 Acceptance of Rights Offering Circular - The delivery of information relating to the securities that is accepted by a reviewing authority will be confirmed in writing to the issuer by the reviewing authority.

expected that the conversion will not occur within the 12-month period. Accordingly, unless the conversion is unlikely to take place within one year of the date of the rights offering, the Canadian securities regulatory authorities will look through the issuance of the convertible security to the potential issuance of underlying securities.

- 1.7 Availability of Registration Exemption** - The registration rights offering 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.

PART 4 STAND-BY COMMITMENTS⁵

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

- (1) 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

⁵ This requirement is based upon a requirement of the British Columbia rights offering regime. It is intended to provide a protocol for the assessment of financial capacity.

- (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.
- (2) 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 the issuer should use reasonable efforts to determine the jurisdictions in which its securityholders are resident. Such efforts could include requesting a securityholders' list and participants' list from the issuer's transfer agent and requesting the transfer agent to request that each participant provide information on the aggregate number of securityholders for which the participant holds securities in each jurisdiction and the percentage of securities of the class held by the securityholders in each jurisdiction.

PART 6 RESALE RESTRICTIONS

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

PART 7 EXEMPTIONS

7.1 Exemptions - The Canadian securities regulatory authorities will consider exemptions from paragraph 2 of section 2.2 of the Instrument in certain circumstances if the securities issuable on the rights are convertible or exchangeable into a class of securities that are currently outstanding.

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