

**THE MANITOBA SECURITIES COMMISSION  
NOTICE 2001-9**

**NOTICE OF NATIONAL INSTRUMENT 45-101  
RIGHTS OFFERINGS, COMPANION POLICY 45-101CP  
AND FORM 45-101F AND RESCISSION OF CERTAIN POLICIES**

The Commission has, under the Rule-Making Procedure Regulation, Regulation 246/97 under the *Securities Act* (the "Act"), made National Instrument 45-101 Rights Offerings (the "National Instrument") as a Rule under the Act, and had adopted Companion Policy 45-101CP (the "Companion Policy") as a Policy under the Act. The National Instrument contains Form 45-101F (the "Form").

The National Instrument and Companion Policy are initiatives of the Canadian Securities Administrators (the "CSA"). The National Instrument has been, or is expected to be, adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario, Newfoundland and Nova Scotia, a Commission regulation in Saskatchewan, and a national policy in all other jurisdictions represented by the CSA. The Companion Policy has been, or is expected to be, implemented as a policy in all the jurisdictions represented by the CSA. The National Instrument and Companion Policy are substantially similar to, and will replace, administrative practices and policies of the Canadian securities regulatory authorities including Uniform Act Policy Statement No. 2-05, British Columbia Securities Commission Policy Statement No. 3-05, Alberta Securities Commission Policy Statement No. 5.2 and Ontario Securities Commission Policy Statement No. 6.2.

The National Instrument will come into force on July 25, 2001. The Companion Policy will come into force on the date that the National Instrument comes into force.

The CSA published drafts of the National Instrument and Companion Policy for comments in November 1997 and more recently in August 2000 (collectively, the "Draft Instruments"). Manitoba only participated in the August 2000 publication.

The CSA received one submission during the most recent comment period on the Draft Instruments, which ended on November 10, 2000. This comment along with the comments received during the initial comment period on the Draft Instruments are discussed below under the heading "Summary of Written Comments received by the CSA". While the National Instrument and Companion Policy are substantially similar to the Draft Instruments published in August 2000, a number of non-substantive changes have been made to the National Instrument, Companion Policy and Form since the August 2000 publication.

## **Substance and Purpose of Proposed National Instrument and Companion Policy**

The substance and purpose of the National Instrument is to prescribe the basis on which an issuer may, by way of a rights offering, sell additional securities of its own issue to holders of its securities either by way of a prospectus or in reliance on the rights offering prospectus exemptions found in Canadian securities legislation. In order to utilize the exemptions found in Canadian securities legislation, the issuer must send to the Canadian securities regulatory authority or regulator (the "reviewing authority") information, which the reviewing authority determines to be acceptable, about the securities that it proposes to offer. A reviewing authority may object to the use of the rights offering prospectus exemption and rights offering registration exemption.

The National Instrument requires that issuers seeking to use the rights offering prospectus exemption provide the reviewing authority in a jurisdiction in which the rights offering is to be effected with information about the issuer, including information previously delivered to the issuer's securityholders but not available through SEDAR, to permit the reviewing authority to confirm that securityholders have been provided with current information about the affairs of the issuer and are not in need of a prospectus for the rights offering. This information will allow the reviewing authorities to assess whether the rights offering is being made in compliance with the National Instrument and whether the terms of the offering are clearly stated in the rights offering circular. The National Instrument requires that issuers disclose the information contained in a rights offering circular in accordance with the prescribed Form.

The National Instrument provides that the rights offering prospectus exemption is unavailable in certain circumstances including where:

- (a) as a result of the exercise of the rights under the offering and the exercise of rights issued within the previous 12 months 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 the rights;
- (b) the rights are exercisable for securities of a class which were not previously outstanding;
- (c) there is an agreement to compensate dealers in a manner which encourages solicitation of the exercise of rights by holders of rights that were not securityholders of the issuer immediately prior to the rights offering;
- (d) there is a minimum amount of proceeds necessary to conduct the purpose for which the funds are being raised and the offering is open for more than 45 days;
- (e) the issuer is not a reporting issuer in any jurisdiction and the offering is open for more than 60 days; and

- (f) the issuer is a reporting issuer in any jurisdiction and the offering is open for more than 90 days.

Finally, the National Instrument advises issuers that approval by the reviewing authority of the listing representations required in the Form will be evidenced by the acceptance of, or non-objection to, the rights offering circular, and that the approval by the reviewing authority of listing representations contained in a prospectus will be evidenced by a receipt for the prospectus.

The purpose of the Companion Policy is to provide information on the factors that the reviewing authorities will consider in determining whether to object to the offering proceeding under the rights offering prospectus exemption or in refusing to issue a receipt for a prospectus used for a rights offering. The Companion Policy also provides guidelines relating to a number of provisions found in the National Instrument including how to calculate certain numerical thresholds, the various types of evidence that may be used to establish that a person or company supplying a stand-by commitment will be positioned to meet its obligations under the commitment, and the use of the rights offering registration exemption independently from the rights offering prospectus exemption. The Companion Policy also provides notice that the issuer may, in certain circumstances, need to implement a mechanism to "claw back" securities subscribed for by insiders.

Finally, the Companion Policy cautions issuers that excluding securityholders resident in a particular jurisdiction, if there is sufficient connection between the issuer and the jurisdiction, may cause the Canadian securities regulatory authority in the jurisdiction to consider taking action against the issuer and its directors and officers.

The National Instrument and Companion Policy implement, in part, the recommendation of the CSA Task Force on Operational Efficiencies that Canadian securities regulatory authorities increase the co-ordination of regulation, including standardization of requirements.

Terms used in the Companion Policy that are defined or interpreted in the National Instrument or a definition national instrument in force in the jurisdiction should be read in accordance with the National Instrument or definition national instrument, unless the context otherwise requires.

### **Summary of Written Comments Received by the CSA**

The CSA received one comment in response to the August 2000 publication for comment of the National Instrument and Companion Policy. The Commentator, Marcel de la Gorgendière, Q.C., supported the harmonization that the National Instrument will create but suggested that a mutual reliance review system be immediately created as a companion to the National Instrument. The CSA agree with the Commentator that a mutual reliance review system will increase the harmonization achieved by the National Instrument. However, the CSA are of the view that this harmonization will best be achieved by

amending National Policy 43-201 Mutual Reliance Review System (“MRRS”) For Prospectuses and Annual Information Forms to include rights offering circulars or by including the review of rights offering circulars under an MRRS initiative for continuous disclosure documentation. The CSA are currently considering these alternatives.

The CSA received five comments on the initial publication for comment of the National Instrument and Companion Policy, which occurred in November 1997.

### **Regulations to be Revoked**

The adoption of the National Instrument as a rule does not require any regulation to be revoked.

### **Text of National Instrument, Companion Policy and Form**

The text of the National Instrument, Companion Policy and Form follow.

### **Rescission of Policy**

The National Instrument, Companion Policy and Form will replace, in Manitoba, Uniform Act Policy Statement No. 2-05. The Manitoba Securities Commission proposes to rescind this policy. The text of the proposed rescission is as follows:

"The policy of the Manitoba Securities Commission entitled  
Uniform Act Policy Statement No. 2-05 is rescinded."

**Dated:** April 23, 2001.