

**NATIONAL INSTRUMENT 45-101  
RIGHTS OFFERINGS**

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**NATIONAL INSTRUMENT 45-101  
RIGHTS OFFERINGS<sup>1</sup>**

**PART 1      DEFINITIONS, INTERPRETATION AND APPLICATION<sup>2</sup>**

**1.1            Definitions - In this Instrument**

"acceptance date" means

- (i)      the date that is 10 days after the notice referred to in the rights offering prospectus exemption is given to the reviewing authority, or
  
- (ii)     if the reviewing authority has objected to the rights offering before the end of such 10 day period, 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;

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<sup>1</sup> This proposed National Instrument is derived from policies and administrative practices of Canadian securities regulatory authorities relating to rights offerings including Uniform Act Policy No. 2-05, in British Columbia, Local Policy Statement No. 3.05, in Alberta, Alberta Securities Commission Policy Statement No. 5.2 and in Ontario, Ontario Securities Commission Policy Statement No. 6.2. This proposed National Instrument is expected to be adopted as a rule in British Columbia, Alberta, Manitoba, Ontario and Nova Scotia, as a Commission regulation in Saskatchewan and as a policy in all other jurisdictions represented by the CSA.

<sup>2</sup> A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning given to it in the statute relating to securities of that jurisdiction. National Instrument 14-101 also provides that a provision in a national instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

"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 average of the closing price of securities of that class on the published market for the days on which trading occurred during the 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 averages of the highest and lowest prices of securities of the class on the published market for the days on which trading occurred during the 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 amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined as follows:
  - 1. The average of the average bid and lowest 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 the days that trading occurred, the closing price, or
    - (ii) provides only the highest and lowest prices of securities of the class traded, the average of the

average of the highest and lowest prices of securities of the class for the days that trading occurred;

"published market" means, for a class, a market on which securities of the class are traded that is

- (a) an exchange; or
- (b) a quotation and trade reporting system, if the prices at which securities of the class have traded on that market are regularly published in a publication of general and regular paid circulation;

"reviewing authority" means

- (a) in all jurisdictions except British Columbia, Alberta and Saskatchewan, the securities regulatory authority or regulator; and
- (b) in British Columbia, Alberta and Saskatchewan, the regulator;<sup>3</sup>

"rights offering" means

- (a) in all jurisdictions except British Columbia, the issuance by an issuer to its securityholders of
  - (i) a right to purchase additional securities of the issuer's own issue, and
  - (ii) securities on exercise of the right; and
- (b) in British Columbia, the issuance by an issuer to its securityholders 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<sup>4</sup> for a rights offering;

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<sup>3</sup> In some jurisdictions, notably British Columbia, Alberta and Saskatchewan, it is the regulator and not the securities regulatory authority that has the discretion to object to a rights offering proceeding in reliance on the rights offering prospectus exemption. The term "securities regulatory authority" is defined in National Instrument 14-101 Definitions. The definition is the securities commission or similar regulatory authority in the local jurisdiction listed in an appendix to that instrument. The term "regulator" is defined in National Instrument 14-101 Definitions as meaning, in a jurisdiction, the person listed in an appendix to that instrument.

<sup>4</sup> The term "prospectus requirement" is defined in National Instrument 14-101 as the requirement in securities legislation that prohibits a person or company from distributing a security unless a

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

"soliciting dealer"<sup>5</sup> 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.

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

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preliminary prospectus and prospectus for the security have been filed and receipts obtained for them. The term "securities legislation" is defined in National Instrument 14-101 Definitions as meaning the particular statute and legislative instruments of the local jurisdiction set out in an appendix to that instrument and will generally include the statute, regulations and, in some cases, rules, rulings, orders and forms relating to securities in the local jurisdiction. The term "local jurisdiction" is defined in the National Instrument 14-101 Definitions. The definition is "in a national instrument adopted or made by a Canadian securities regulatory authority, the jurisdiction in which the Canadian securities regulatory authority is situate".

<sup>5</sup> The above provision has been conformed from the definition of "selling group member" in section 204 of the Regulation to the *Securities Act* (Ontario).

- (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.

### **1.3 Application**

- (1) This Instrument applies to an issuer that distributes, by way of a rights offering, securities of its own issue to a beneficial holder of its securities that is resident in the local jurisdiction<sup>6</sup>.
- (2) This Instrument applies to rights offerings whether made by way of a prospectus or in reliance upon the rights offering prospectus exemption.

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

**2.1 General** - 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.

**2.2 Restricted Offerings** - 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

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The term "jurisdiction" is defined in National Instrument 14-101 Definitions as meaning "a province or territory of Canada except when used in the term foreign jurisdiction". Given the extensive use of book-based systems to register securities, a "residency" test has been imposed.

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 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 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 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.<sup>7</sup>
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.<sup>8</sup>
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.<sup>9</sup>
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 subclause 3.3(a)(i).

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<sup>7</sup> If there is a minimum amount of proceeds required, the Canadian securities regulatory authorities wish to limit the amount of time during which a rightholder and other securityholder will not know if the transaction will proceed.

<sup>8</sup> In the case of an issuer with no continuous disclosure requirements the amount of time during which a rightholder should be required to rely on the disclosure contained in the circular and any other information provided by the issuer to its securityholders must be limited. In other circumstances, it is important that the rights offering not be left open indefinitely because of concerns over the rights offering circular disclosure becoming outdated.

<sup>9</sup> It is important that the rights offering not be left open indefinitely because of concerns over rights offering circular disclosure becoming outdated.



7. The issuer appears on the list of defaulting reporting issuers maintained by the securities regulatory authority.

## **PART 3 PROSPECTUS EXEMPT OFFERINGS**

### **3.1 Deliveries to the Reviewing Authority**

- (1) An issuer that is required to provide notice under 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.<sup>10</sup>
  2. If the rights offering is being made in a foreign jurisdiction by way of a prospectus, a copy of the preliminary prospectus or, if prepared, the prospectus submitted or to be submitted for acceptance in the foreign jurisdiction.
  3. If not already filed under National Instrument 13-101 System for Electronic Document Analysis and Retrieval, the issuer's financial statements for its most recently completed financial year for which statements have been prepared and any interim financial statements prepared and

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Form 45-101F is the required form. The form is designed to serve as a simple checklist for issuers and their advisors for the preparation of a rights offering circular. The form mandates the disclosure currently required by the rights offering prospectus exemption and items (4) through (7) of Uniform Act Policy No. 2-05. The disclosure required by the form relates principally to the securities being offered and the procedure for exercise of the rights. This is consistent with the policy rationale underlying the rights offering prospectus exemption, which is that existing securityholders of the issuer do not need further disclosure about the issuer, but do require disclosure about the securities being offered, the procedures under the rights offering and the use of the proceeds to be obtained on the exercise of the rights issued under the rights offering.

filed, or required to be filed under Canadian securities legislation for reporting issuers, for a period that ends after that financial year.

4. If not already filed under National Instrument 13-101 System for Electronic Document Analysis and Retrieval, the notice of meeting and information circular prepared and filed, or required to be filed under Canadian securities legislation, for the most recent annual meeting of securityholders of the issuer.
5. If not already filed under National Instrument 13-101 System for Electronic Document Analysis and Retrieval, the notice of meeting and information circular prepared and filed, or required to be filed under Canadian securities legislation, for any special meeting of securityholders of the issuer held after the most recent annual meeting.<sup>11</sup>
6. A copy of any agreement entered into, or proposed to be entered into, by the issuer with a managing dealer.<sup>12</sup>
7. A copy of the technical reports and certificates prepared under National Instrument 43-101 Standards of Disclosure for Mineral Projects or National Policy Statement 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument.

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<sup>11</sup> This provision is based on a requirement of the rights offering regime under Canadian securities legislation and Canadian securities directions in British Columbia and improves the quality of the information before the securities regulatory authority or regulator, allowing staff to better assess the quality of the disclosure previously provided to securityholders and the appropriateness of proceeding on a prospectus exempt basis in light of recent activity of the issuer.

<sup>12</sup> The Canadian securities regulatory authorities are of the view that staff will be in a better position after reviewing this agreement to determine the basis on which the managing dealer and the soliciting dealers, if any, will be compensated and that the compensation has been appropriately described in the rights offering circular. Staff may also wish to confirm that there is no greater incentive for dealers to solicit the exercise of rights by new securityholders than by existing securityholders on the basis that such remuneration would offend the spirit of the exemption, which is intended to permit existing securityholders (as opposed to new securityholders) to receive the securities issuable on the exercise of rights and protect themselves against dilution. This principle currently appears in item (10) of Uniform Act Policy Statement No. 2.05 and is continued in Section 2.2 of this Instrument.

8. The details of any other rights offering completed by the issuer within the 12 months before the date of sending to the reviewing authority the rights offering circular in draft form.

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

**3.2 Requests for Additional Information** - An issuer that intends to effect a rights offering under the rights offering prospectus exemption shall 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.<sup>13, 14</sup>

**3.3 Delivery to Securityholders** - 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
  - (i) a rights offering circular to which the reviewing authority has not objected or has confirmed its acceptance, and

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<sup>13</sup> This language is substantially similar to the statutory language for the rights offering exemption currently existing under Canadian securities legislation. Additional circumstances in which the securities regulatory authority or regulator may object to the use of the rights offering prospectus exemption are set out in the proposed Companion Policy 45-101CP to this Instrument.

<sup>14</sup> In Ontario, the Ontario Securities Commission has delegated its power to object to use of the exemption or confirm acceptance of a rights offering circular to the Director under section 6 of the *Securities Act* (Ontario).

- (ii) concurrently with sending the rights offering circular, a copy of the prospectus, if any, referred to in paragraph 2 of section 3.1; 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 3.4.

### **3.4 Amendments**

- (1) An issuer that has sent to its securityholders a rights offering circular under clause 3.3(a)(i) 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.<sup>15</sup>
- (2) The reviewing authority shall 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.
- (3) Despite subsection (1), once a rights offering circular has been accepted by the reviewing authority, an issuer shall not amend the rights offering circular to change the terms of the rights offering.

## **PART 4 PROSPECTUS OFFERINGS**

**4.1 Reliance on Registration Exemption** - 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.

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

<sup>15</sup>

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In Quebec an amendment to a rights offering circular is required if a material change occurs after the circular has been accepted.

- (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<sup>16</sup>;
- (b) if there is a managing dealer, the managing dealer has signed the underwriter's certificate in the prospectus<sup>17</sup>; 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.

**4.3 Compliance with Instrument** - 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 of this Instrument.

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

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<sup>16</sup> Given that consideration is not typically paid in connection with the issuance of rights but rather at the time the rights are exercised, to ensure the applicability of the statutory rights of action under Canadian securities legislation the prospectus must qualify the distribution of securities issuable on the exercise of the rights. This will require the issuer to keep the prospectus current for the period of time up to the earlier of the exercise of all the rights and the expiry of the rights.

<sup>17</sup> This provision formalizes the practice of the Ontario Securities Commission as set out in its notice entitled "Rights Offerings Under a Prospectus" (1989), 12 OSCB 1463.

## **PART 5 INSIDER SUBSCRIPTIONS<sup>18</sup>**

### **5.1 Insider Subscriptions**

- (1) If there is no market price, 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 person or company that is an 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.
- (2) Subsection (1) does not apply if there is no market price 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**

- 6.1 Stand-By Commitments** - 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.

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<sup>18</sup>

Concerns about pricing exist if the pricing of an offering could assist an insider in its efforts to consolidate its holdings of an issuer by discouraging non-insiders from participating in the offering. The provisions are intended to address such concerns. If consolidation is not an issue, an issuer should not be restricted by the reviewing authority in the issuer's decision as to the pricing of an offering.

**PART 7      ADDITIONAL SUBSCRIPTION PRIVILEGE**

**7.1      Additional Subscription Privilege** - 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.

**7.2      Stand-by Commitment** - If there is a stand-by commitment for a rights offering, the issuer shall grant an additional subscription privilege in accordance with section 7.1<sup>19</sup>.

**7.3      Number or Amount of Securities**

(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 the lesser of the number or amount of securities

(a)      subscribed for by the holder under the additional subscription privilege; and

(b)      equal to  $x(y/z)$  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

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<sup>19</sup>

This provision codifies practice of staff of Canadian securities regulatory authorities that requires an additional subscription privilege even in circumstances in which the stand-by commitment is not provided by a related party.

$z$  = 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<sup>20</sup>.

- (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.

**7.4 Price of Securities** - 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<sup>21</sup>**

### **8.1 Depository**

- (1) If an issuer that is a reporting issuer has specified in a rights offering circular or rights offering prospectus that no securities will

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<sup>20</sup> This provision amends the formula prescribed in Ontario Securities Commission Policy Statement No. 6.2 Part VI paragraph (4) in order to more efficiently permit the exercise of all unexercised rights. In the amended formula, the denominator of the fraction used in the calculation properly references the number of rights previously exercised by those exercising the additional subscription privilege rather than the aggregate number of rights exercised by all holders of rights under the basic subscription privilege.

<sup>21</sup> This requirement formalizes the practice of Canadian securities regulatory authorities concerning the appointment of a depository.



be issued on the exercise of the rights unless proceeds in an amount not less than 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:

1. A Canadian financial institution<sup>22</sup>.
2. A registrant in the jurisdiction in which the funds are 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.

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

**8.2 Release of Funds from Depository** - 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**

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The term "Canadian financial institution" is defined in National Instrument 14-101 Definitions as a bank, loan corporation, trust company, insurance company, treasury branch, credit union or caisse populaire licensed in Canada or a province or territory and the Confédération des caisses populaires et d'économie Desjardins du Québec.

**9.1 Listing Representations** - A reviewing authority's written permission to a listing representation contained in a rights offering circular or a rights offering prospectus is evidenced by the acceptance of the circular or the issuance of a receipt for the prospectus by the reviewing authority.<sup>23</sup>

## **PART 10 EXEMPTION**

### **10.1 Connection Test**<sup>24</sup>

- (1) Parts 2, 3, 5, 6, 7 and 8 do not apply to a rights offering by an issuer if
  - (a) the number of holders of the class of securities for which the rights are issued whose last address as shown on the books of the issuer is in Canada, and, as certified by the issuer under subsection (2), the number of beneficial holders of the class resident in Canada, constitutes, in the aggregate, less than 10 percent of all holders of that class;
  - (b) the number of securities of the issuer of the class of securities for which the rights are issued held by securityholders whose last address as shown on the books of the issuer is in Canada, and, as certified by the issuer under subsection (2), held beneficially by holders resident

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<sup>23</sup> This procedure has been established so that the reviewing authority's non-objection to the use of the prospectus exemption or, if applicable, confirmation of the reviewing authority's approval of the rights offering circular or receipt of a rights offering prospectus, constitutes the written permission of the regulator for the offering circular or prospectus to contain representations about the listing of securities in accordance with securities legislation.

<sup>24</sup> The purpose of the exemption from this National Instrument is to permit a rights offering to be made to residents of a local jurisdiction without the need to comply with the provisions of the proposed Instrument if there is little connection of the issuer to the jurisdiction.

in Canada, constitutes, in the aggregate, less than 10 percent of the outstanding securities of that class;

- (c) the number of holders of the class for which the rights are issued whose last address as shown on the books of the issuer is in the local jurisdiction, and, as certified by the issuer under subsection (2), the number of beneficial holders of the class resident in the local jurisdiction constitutes, in the aggregate, less than five percent of all holders of that class;
  - (d) the number of securities of the issuer of the class for which the rights are issued held by securityholders whose last address as shown on the books of the issuer is in the local jurisdiction, and, as certified by the issuer under subsection (2), held beneficially by holders resident in the local jurisdiction constitutes, in the aggregate, less than five percent of the outstanding securities of that class<sup>25</sup>; and
  - (e) 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 jurisdiction.
- (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

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Historically, residents in some jurisdictions have been excluded from some rights offerings by the issuers not located in that jurisdiction for reasons relating to the cost of compliance and timing concerns. Typically, Canadian securities regulatory authorities have exempted an issuer on the basis that the connection of the issuer to the jurisdiction is minor. For example see the exemption in Ontario Securities Commission Policy Statement No. 6.2 Part III paragraph (5).

- (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.

## **10.2 Exemption**

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

## **10.3 Form of Approval of Reviewing Authority** - 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 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 the circular by the reviewing authority.



**NATIONAL INSTRUMENT 45-101  
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**

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

**Item 2 - Summary of Offering**

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

- (i) the record date;
- (ii) the time and date of expiry of the offer;
- (iii) the subscription price;
- (iv) the basic subscription privilege;
- (v) 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;
- (vi) the estimated expenses of the rights offering;
- (vii) any stand-by commitment;
- (viii) the basis on which any additional subscription privilege may be exercised; and
- (ix) the minimum amount of proceeds, if any, upon which the rights offering is conditioned.

*INSTRUCTIONS<sup>1</sup>:*

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

"The Rights are 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 - Brief Description of the Business of the Issuer**

- 3.1 **Brief Description of the Business of the Issuer** - Briefly describe the business carried on and intended to be carried on by the issuer and its subsidiaries.

**Item 4 - Details of the Rights and Securities Offered**

- 4.1 **Details of the Rights and Securities Offered** - Describe the material attributes of the rights issued under the rights offering and the securities to be issued on the exercise of the rights.

**Item 5 - Registration and Delivery of Certificates Evidencing Securities**

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<sup>1</sup> National Instrument 45-101 provides that acceptance of a rights offering circular or receipt of a prospectus in which a listing representation is made is evidence of the regulator's written permission under securities legislation to the making of the representation.



- 5.1 Registration and Delivery of Certificates Evidencing Securities -**  
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 6 - Subscription Agent and Transfer Agent**

**6.1 Subscription Agent and Transfer Agent**

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

**Item 7 - How to Exercise the Rights**

- 7.1 How to Exercise the Rights -** 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 number of rights and the subscription price.*
2. *Describe the basis on which a holder of a rights certificate may exercise any additional subscription privilege.*
3. *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.*
4. *Describe the basis on which the holder of a rights certificate may sell or transfer the rights or the prohibitions to the transfer.*
5. *Describe the basis on which the holder of a rights certificate may divide or combine the certificate with other rights certificates.*

## **Item 8 - Stand-By Commitment**

- 8.1 Stand-By Commitment** - 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 9 - Escrow of Proceeds and Depository**

- 9.1 Escrow of Proceeds and Depository** - Identify the depository, if any, and any provisions for the deposit of the proceeds of the rights offering with the depository.

## **Item 10 - Managing Dealer and Soliciting Dealer(s)**

- 10.1 Managing Dealer and Soliciting Dealer(s)** - Identify the managing dealer, if any, and the soliciting dealers, if known, and describe the fees payable to them.

### *INSTRUCTIONS:*

- 1. Issuers are directed to Multilateral Instrument 33-105 Underwriting Conflicts for disclosure requirements for connected and related issuers.*

## **Item 11 - Ownership of Securities of Issuer**

- 11.1 Ownership of Securities of Issuer** - State, if known, the intentions of the persons or companies that are, to the knowledge of the issuer after reasonable inquiry insiders of the issuer, for the exercise of rights issued under the rights offering.

- 11.2 Changes of Ownership** - State the particulars of any issuances<sup>2</sup> or, if

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<sup>2</sup> Under item (6) of Uniform Act Policy Statement No. 2-05, transfers affecting control since the last shareholders meeting were expected to be disclosed. The disclosure under the Instrument expands the requirement to disclose any issuances affecting control. Such disclosure is required for the period after the end of the last year for which audited statements have been prepared. This is a more practical cut-off date than the date of the last meeting of shareholders, as was previously required.

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 12 - Use of Proceeds**

**12.1 Use of Proceeds** - Describe the use of the proceeds of the rights offering.

### *INSTRUCTIONS:*

1. *Specify the net estimated proceeds of the rights offering, after deducting expenses of the issue, assuming full exercise of the rights, and the purpose intended for the proceeds.*
2. *Provide particulars of any minimum amount of proceeds required to complete the rights offering.*

## **Item 13 - Statement as to Non-Transferability**

**13.1 Statement as to Non-Transferability** - If the issuer is not a reporting issuer in jurisdictions where there are restrictions on the resale of securities of non-reporting issuers, the Offering Circular should have a heading "Statement as to Non-Transferability" under which the following statements or a variation that contains substantially the same information as may be permitted by the reviewing authority should be set out:

1. The rights issued under this rights offering to securityholders whose last address as shown on the books of the issuer is in the [jurisdictions in which issuer is not a reporting issuer] are not transferable in [jurisdictions].
2. The securities issued to residents of [jurisdiction] upon exercise of the rights may not be sold or otherwise disposed of for value in [jurisdiction], except under either a prospectus or a prospectus exemption (available only in specific and limited circumstances), unless or until the issuer has been a reporting issuer in [jurisdiction] for at least [insert number] months and disclosure to the securities regulatory authority of the original purchase has been made.

3. The issuer is not a reporting issuer in [jurisdiction]."<sup>3</sup>

## **Item 14 - Statutory Rights**

### **14.1 Statutory Rights**

- (1) If the issuer has not been incorporated or organized under the laws of Canada or a jurisdiction and is required to deliver to each securityholder entitled to receive rights under the rights offering, a prospectus in accordance with subparagraph 3.3(a)(ii) of the Instrument, include the following statement under the heading "Statutory Rights":

"The statutory rights described in the Prospectus enclosed may not be available to residents of [jurisdiction]. As a result, residents of [jurisdiction] may have to rely on other remedies including common law rights of action for damages or rescission."

- (2) If the issuer has not been incorporated or organized under the laws of Canada or a jurisdiction or if any experts named in the prospectus or any directors or officers reside outside of Canada, then the issuer shall also include the following statement in the offering circular under the heading "Statutory Rights":

"[All/certain of] the directors and officers of the issuer and [all/certain of] the experts named herein reside outside of Canada. Although the issuer has appointed [name and address of agent for service] as its agent for service of

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<sup>3</sup>

This provision is based on Ontario Securities Commission Policy Statement No. 6.2 Part III paragraph (2). Reference is also made to Ontario Rule 72-501 Prospectus Exemption for First Trades over a Market Outside Ontario.

process in [applicable jurisdiction] it may not be possible for investors to effect service of process within [applicable jurisdiction] upon the directors, officer and experts referred to above. It may also not be possible to collect from the issuer, [certain of] its directors and officers, and [certain of] the experts named herein judgments obtained in Canadian courts predicated upon the civil liability provisions of Canadian securities legislation."

- (3) In Saskatchewan, the Offering Circular must comply with the requirement to disclose statutory rights of action prescribed under securities legislation.

## **Item 15 - Website**

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