

THE SECURITIES ACT ) Order No. 3240  
)  
Sections 20 and 131(1)(c) ) February 8, 2001

National Instruments 44-101, 44-102 and 44-103

WHEREAS:

(A) The Manitoba Securities Commission (the "Commission") has published with the intention of enacting as rules National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101"), National Instrument 44-102 *Shelf Distributions* ("NI 44-102" and together with NI 44-101, the "POP System"), and National Instrument 44-103 *Post-Receipt Pricing* ("NI 44-103" and together with NI 44-101 and 44-102, the "Instruments");

(B) The Commission is desirous of permitting offerings of securities in accordance with the Instruments in Manitoba until such time as the Instruments come into force in Manitoba;

(C) Application has been made by the Director-Corporate Finance (the "Director") to the Commission pursuant to section 20 of the *Securities Act*, R.S.M. 1988, c.S50 (the "Act") for an order exempting distributions of securities effected in compliance with the Instruments, all as may be amended from time to time, which Instruments may, from time to time, in respect of a specific issuer, be varied by the Commission or the Director, from the requirements of section 37 of the Act only insofar as that section concerns the form and content of a preliminary prospectus and a prospectus;

(D) Application has been made by the Director to the Commission pursuant to section 20 of the Act for an order exempting the solicitation of expressions of interest with respect to distributions of securities to be made in compliance with the POP System from the requirements of section 37 of the Act, subject to certain conditions;

(E) Application has been made by the Director to the Commission pursuant to section 20 of the Act for an order exempting distributions of securities effected in compliance with the POP System from the requirements of section 37 of the Act, only insofar as that section requires, when read in conjunction with subsection 38(1) of the Act, that there must be an interval of at least ten days between the issuance by the Director of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by the Director of a receipt for the prospectus;

(F) Application has been made by the Director to the Commission pursuant to section 131 (1)(c) of the Act for an order which would provide relief from the obligation set out in Part XII of the Act to mail financial statements to securityholders concurrently with the filing of such financial statements with the Commission in connection with distributions of securities effected in compliance with the POP System;

(G) Application has been made by the Director to the Commission to revoke Commission Order No. 56/93 dated March 1, 1993 (the "Old POP Order") made under section 20 of the Act with respect to solicitations of expressions of interest; and

(H) The Commission is of the opinion that it would not be prejudicial to the public interest to issue this order and is satisfied that there is adequate justification for so doing.

IT IS ORDERED:

**1. THAT**, pursuant to section 20 of the Act, section 37 of the Act does not apply with respect to distributions of securities that are made in compliance with the POP System, only insofar as section 37 of the Act:

(a) concerns the form and content of a preliminary prospectus and a prospectus filed under section 37 of the Act; and

(b) when read in conjunction with subsection 38(1) of the Act, requires that there must be an interval of at least 10 days between the issuance by the Deputy Director of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by the Deputy Director of a receipt for the prospectus;

provided that the issuer upon filing its initial AIF in accordance with NI 44-101 is subject to Parts X, XI and XII of the Act and that all continuous disclosure documents referred to in subparagraph 2.2(1)(a)(ii) of NI 44-101 have been filed with the Director.

**2. THAT**, pursuant to section 20 of the Act, section 37 of the Act does not apply with respect to distributions of securities that are made in compliance with the NI 44-103, only insofar as section 37 of the Act concerns the form and content of a preliminary prospectus and a prospectus filed under section 37 of the Act.

**3. THAT**, pursuant to section 20 of the Act, section 37 of the Act does not apply to the solicitation of expressions of interest with respect to a distribution of a security to be made in compliance with the POP System, prior to the filing of a preliminary short form prospectus with respect to the security, provided:

(a) the issuer has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities;

(b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain a receipt for the preliminary short form prospectus from

(i) the 44-101 regulator dated not more than two business days after the date that the agreement is entered into, if the issuer has elected to use the MRRS as defined in National Policy 43-201; or

(ii) if the issuer has not elected to use the MRRS as defined in National Policy 43-201

(A) the regulator in at least one jurisdiction, dated not more than two business days after the date that the agreement is entered into, and

(B) the Canadian securities regulatory authorities in any other jurisdictions in which the distribution is to be made, dated not more than three business days after the date that the agreement is entered into;

(c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement;

(d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities; and

(e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

**4. THAT**, pursuant to section 131(1)(c) of the Act, an issuer is exempt from the requirement in section 120(1) of the Act to send its financial statements to each holder of its securities concurrently with the issuer filing its financial statements with the Commission, provided that:

(a) The issuer files the financial statements in the manner described in NI 44-101; and

(b) the financial statements are sent as required in the Act within 170 days from the end of that financial year.

**5. THAT** the Old POP Order be and is hereby revoked.

**6. THAT** this order be revoked on the date that the Instruments come into force in Manitoba.

BY ORDER OF THE COMMISSION

**Director - Legal**