

**ALBERTA SECURITIES COMMISSION
NOTICE**

**NATIONAL INSTRUMENT 45-101
RIGHTS OFFERINGS**

and

**REPEAL OF
UNIFORM ACT POLICY 2-05**

and

ALBERTA SECURITIES COMMISSION POLICY 5.2 *RIGHTS OFFERINGS*

1. Implementation of Instrument and Repeal of Existing Policies

The Alberta Securities Commission (the “Commission”) and other members of the Canadian Securities Administrators (the “CSA”) have implemented National Instrument 45-101 *Rights Offerings* (“NI 45-101”), Form 45-101F *Information Required in a Rights Offering Circular* (the “Form”) and Companion Policy 45-101CP (the “Policy”). In this Notice, NI 45-101, the Form and the Policy are referred to collectively as the “Instrument”.

The Instrument will become effective on July 25, 2001 (the “Effective Date”). In Alberta, NI 45-101 and the Form have been implemented as rules and the Policy has been adopted as a Commission policy.

In conjunction with the implementation of the Instrument, Uniform Act Policy 2-05 *Applications Under Sections 34(1)14 and 71(1)h of the Securities Act, R.S.O. 1980, c. 466 by a Company Wishing to Sell Additional Securities to its Security Holders* (“UAP 2-05”) and Commission Policy 5.2 *Rights Offerings* (“ASC Policy 5.2”) have both been repealed, with effect on the Effective Date.

2. Purpose and Substance of the Instrument

The Instrument sets out 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 in reliance on either or both of the rights offering registration exemptions and the rights offering prospectus exemptions found in Canadian securities legislation (in Alberta, under subparagraphs 65(1)(o)(i) and 107(1)(h)(i), respectively, of the *Securities Act*).

The Instrument is substantially similar to, and will replace, administrative practices and policies of the Canadian securities regulatory authorities including UAP 2-05, ASC Policy 5.2, British Columbia Securities Commission Policy Statement No. 3-05 and Ontario Securities Commission Policy Statement No. 6.2.

3. Summary of the Instrument

In keeping with CSA practice, mandatory elements of the Instrument are set out in NI 45-101 and the Form, while the Policy provides explanation and guidance.

The Instrument provides that an issuer wishing to rely on the rights offering registration exemption or the rights offering prospectus exemption must first send to the Canadian securities regulatory authority or regulator (the “reviewing authority”) information acceptable to the reviewing authority. A reviewing authority may object to the use of the rights offering registration or prospectus exemption.

More specifically:

- Issuers seeking to rely on the rights offering prospectus exemption must provide the reviewing authority in a jurisdiction in which the rights offering is to be effected a draft rights offering circular, prepared in accordance with the Form, and with additional information about the issuer (including information previously delivered to the issuer's securityholders but not available through SEDAR), to permit the reviewing authority to assess whether securityholders have been provided with current information about the affairs of the issuer and do not require a rights offering prospectus.
- The rights offering prospectus exemption is not available in circumstances including the following:
 - (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 (a change from the 50 percent limit under ASC Policy 5.2) in the number or, in the case of debt, in the principal amount, of the outstanding securities of the class to be issued upon the exercise of the rights (a restriction which inherently makes the exemption unavailable for an offering of rights exercisable for securities of a class not previously outstanding);
 - (b) 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;
 - (c) the rights offering would remain open for more than the prescribed period, namely:
 - (i) 45 days (a change from the 30-day period specified in ASC Policy 5.2), if a minimum amount of proceeds must be raised for the purpose for which the rights offering is made;
 - (ii) 60 days, if no minimum proceeds are necessary but the issuer is not a reporting issuer in any jurisdiction; or

- (iii) 90 days, if no minimum proceeds are necessary and the issuer is a reporting issuer in at least one jurisdiction.

- 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 rights offering prospectus will be evidenced by a receipt for the prospectus.
- Relief from requirements of NI 45-101 is provided in cases where there is only a minimal investor base in Canada and in a particular jurisdiction. This *de minimis* relief differs from that previously contemplated in ASC Policy 5.2.

The Policy discusses factors that the reviewing authorities will consider in determining whether to object to a rights offering proceeding in reliance on the rights offering prospectus exemption, or whether to refuse to issue a receipt for a rights offering prospectus. It also:

- provides guidance on matters such as the computation of certain thresholds under NI 45-101, information that may be used to establish that a person or company will be able to satisfy obligations under a stand-by commitment, and the availability of the rights offering registration exemption independently of the rights offering prospectus exemption;
- notes that an issuer may, in certain circumstances, need to institute a mechanism to “claw back” securities subscribed for by insiders; and
- cautions issuers that, as has been the case under ASC Policy 5.2, the exclusion of securityholders resident in a particular jurisdiction from participation in a rights offering, when there is a specified connection between the issuer and the jurisdiction, may prompt the Canadian securities regulatory authority in the jurisdiction to consider taking action against the issuer and its directors and officers.

4. Prior Publication and Public Comment

Earlier versions of the Instrument were published for comment on November 21, 1997 (the “1997 Proposal”, published in the Commission Summary at (1997) 6 ASCS 3182) and on August 11, 2000 (the “2000 Proposal”, published in the Commission Summary at (2000) 9 ASCS 2983). Changes from ASC Policy 5.2 were summarized in the notices accompanying publication of the 1997 and 2000 Proposals. The notice accompanying the 2000 Proposal also summarized the comments received from the five public commenters on the 1997 Proposal and CSA responses to those comments.

The CSA received one public comment on the 2000 Proposal. The commenter, Marcel de la Gorgendière, QC, supported the harmonization that will result from implementation of the Instrument but urged the prompt implementation of a mutual reliance review system to accompany the Instrument. The CSA agree with the Commentator that a mutual reliance review system would increase the harmonization achieved by the National Instrument. However, the

CSA are of the view that this harmonization might best be achieved through the extension of National Policy 43-201 *Mutual Reliance Review System ("MRRS") For Prospectuses and Annual Information Forms* to 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.

Because no material changes have been made from the 2000 Proposal, the Instrument is not being republished for comment.

5. Further Information

Questions may be referred to either of:

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