

ASC POLICY 1.2
RESTRICTED SHARES

(incorporating amendments up to March 30, 2004)

1. APPLICATION AND DEFINITIONS

1.1 This policy applies to securities of companies that are reporting issuers but does not apply to:

1.1.1 shares offered by mutual funds,

1.1.2 shares that carry a right to vote subject to some limit or restriction on the number or percentage of shares that may be voted or owned by persons or companies that are not Canadian citizens or residents, or

1.1.3 shares of financial institutions subject to statutory restrictions on the level of ownership by a person or company but only to the extent of such ownership restrictions.

1.2 In this policy,

1.2.1 “Class” includes a series of a class of shares;

1.2.2 “Common Shares” means Equity Shares to which are attached voting rights exercisable in all circumstances, irrespective of the number of shares owned, which voting rights are not less, on a per share basis, than the voting rights attaching to any other shares of an outstanding class of shares of the issuer;

1.2.3 “Equity Shares” means shares of a company that carry residual right to participate to an unlimited degree in earnings of the issuer and in its assets upon liquidation or winding up;

1.2.4 “Non-Voting Shares” means Restricted Shares that do not carry the right to vote except for a right to vote in certain limited circumstances (e.g., to elect less than 50% of the board of directors or to vote in circumstances where the governing corporate law provides the right to vote for shares that are otherwise non-voting);

1.2.5 “Preference Shares” means shares to which there is attached a preference or right over any class of shares of the issuer, but does not include Equity Shares;

1.2.6 “Restricted Share Term” refers to the terms “Non-Voting Shares”, “Subordinate Voting Shares”, “Restricted Voting Shares” and such other

terms as the Director may determine for Restricted Shares that are not appropriately described by the foregoing terms;

- 1.2.7 “Restricted Shares” means Equity Shares that are not Common Shares;
 - 1.2.8 “Restricted Voting Shares” means Restricted Shares that carry a right to vote subject to some limit or restriction on the number or percentage of shares that may be voted by a person or company or group of persons or companies (except where the restriction or limit is applicable only to persons or companies that are not Canadian citizens or residents); and
 - 1.2.9 “Subordinate Voting Shares” means Restricted Shares that carry a right to vote where there is another class of shares outstanding that carries a greater right to vote, on a per share basis.
- 1.3 The Director (the “Director”) of the Alberta Securities Commission (the “Commission”), in his discretion, may determine that, for the purposes of this policy, shares of a particular class shall be deemed to be Common, Preference or Restricted Shares, as the case may be, notwithstanding that a literal application of the above definitions would produce a different result. The Director may determine the Restricted Share Term that is appropriate for a class of Restricted Shares. In exercising his discretion, the Director will be guided by the principles underlying this policy.
- 1.4 As a general rule, Equity Shares will be considered to be Restricted Shares where the allocation of voting rights does not relate reasonably to the equity interests of the various classes of shares. Shares will generally be considered to be Restricted Shares where they have provisions that tend to nullify or restrict their voting rights or where there is another class of shares that have provisions producing a similar effect. For example, shares that carry a right to vote will be considered to be Restricted Shares where,
- 1.4.1 there is a class of Preferred Shares that carry a disproportionate vote per share, or
 - 1.4.2 there is a class of Preferred Shares that carry one vote per share but that were issued for a disproportionately low consideration per share (and hence, per vote) in relation to the other outstanding shares of the issuer, or
 - 1.4.3 there is another class of Equity Shares that carry one vote per share but that are entitled to only a fraction of a right to participate in earnings or assets to which the first class of Equity Shares is entitled.
- 1.5 In the case of companies listed on The Alberta Stock Exchange (the “ASE”), where that body would normally exercise its discretion as to listing, the ASE will determine whether a particular class of shares shall be deemed to be Common,

Preference or Restricted Shares. The staffs of the Commission and the ASE will co-operate in making such determinations where both are involved.

2. DESCRIPTION OF SHARES

2.1 Description and Legal Designation

2.1.1 [Repealed.] as amended March 30, 2004

2.1.2 For all shares that are to be offered pursuant to a prospectus filed with the Commission a receipt will not be issued therefore if the legal designation of the shares,

2.1.2.1 includes the word “common” and such shares are not Common Shares,

2.1.2.2 includes the word “preference” or “preferred” and such shares are not Preference Shares, or

2.1.2.3 in the case of Restricted Shares, does not include the appropriate Restricted Share Term,

In each such case notwithstanding permissive, but subject to mandatory, provisions or applicable legislation relating to the legal designation of such shares, the foregoing applies to all shares issuable upon the conversion or exchange of securities, or the exercise of rights or warrants, offered pursuant to a prospectus.

2.1.3 Where an issuer that has not yet complied with item 2.1.2 proposes to issue Restricted Shares pursuant to the rights offering exemption contained in the Alberta Securities Act (the “Act”), the Director will require appropriate undertakings in respect of changing the legal designation of such shares at the issuer's next shareholders' meeting.

2.1.4 The ASE requires similar legal designations for the listing of new classes of shares and requires listed companies with existing classes of such shares to amend the legal designation. The Commission will require issuers of ASE listed Restricted Shares to comply with the foregoing ASE requirements.

2.1.5 In all offering documents, each defined term used to refer to Restricted Shares shall include the applicable Restricted Share Term.

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2.2 Stock Quotations

The Commission is of the view that readers of stock quotations should be aware that certain shares are Restricted Shares. Therefore, in all stock quotations, such

as those listed in newspapers, there should be employed a code to identify Restricted Shares. A legend should explain the meaning of the code.

2.3 Dealer Confirmation

2.3.1 Under section 68 of the Act, a registered dealer who has acted in connection with a trade in a security shall promptly send or deliver to the customer a written confirmation of the transaction setting forth, among other things, the description of the security. The Commission is of the view that the description of Restricted Shares should include the appropriate Restricted Share Term. The Commission recognizes that compliance with this requirement could be difficult especially for securities that are not normally traded in Alberta. The ASE publishes a daily record of trading in shares listed on the ASE, which record includes, for Restricted Shares, a code that identifies such shares by the appropriate Restricted Share Term. The obligation of a registrant to comply with item 2.3 will be limited to securities set out in the foregoing documents and those identified on similar documents prepared by such other stock exchanges or self-regulatory organizations as are recognized by the Commission for the purposes of this policy. The Montreal Exchange, Toronto Stock Exchange, Vancouver Stock Exchange and Winnipeg Stock Exchange are hereby so recognized.

2.3.2 Where due to data processing restrictions the foregoing requirement cannot be satisfied, the registrant may use an abbreviation for the Restricted Share Term provided that an explanation of the abbreviation is given on the confirmation.

2.3.3 The same disclosure of the description of the security shall be included in all statements of transactions or security positions sent to the customer.

2.4 Dealer or Adviser Literature

2.4.1 In all recommendations, selling documents and other literature prepared by or for a dealer or adviser, any Restricted Shares referred to therein shall be described using the appropriate Restricted Share Term. This requirement shall be limited to those shares that appear on the documents referred to in item 2.3.1.

2.5 Reporting Issuer Disclosure Documentation

2.5.1 Directors' circulars shall include a statement describing,

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- 2.5.1.1 the restrictions on the voting rights of Restricted Shares, and
- 2.5.1.2 the rights of holders of such shares where a take-over bid is made for the securities of the reporting issuer having voting rights or superior voting rights, as the case may be,

provided that:

- 2.5.1.3 interim financial statements, annual financial statements (to which item 2.5.3 applies) and any accompanying discussion by management of such financial statements, need not include such a statement.

2.5.2 [Repealed.] as amended March 30, 2004

2.5.3 [Repealed.] as amended March 30, 2004

2.6 Minimum Disclosure in Offering Documents and Information Circulars

- 2.6.1 This item 2.6 sets out the minimum disclosure that will be required in all documents describing the issue of Restricted Shares filed with the Commission by a reporting issuer or by an issuer that will become a reporting issuer upon the acceptance for filing of such document by the Commission including any prospectus, short form prospectus, exchange offering prospectus, rights offering circular, securities exchange takeover bid circular or offering memorandum.

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- 2.6.2 The minimum disclosure that is detailed below as required in a prospectus is applicable to all other documents referred to in item 2.6.1 to the extent that the form of the document permits. Offering documents other than prospectuses usually do not include summaries, and may, depending on the nature of the document, not include financial statements.

2.6.2.1 Designation

The legal designation of the shares being offered or described shall be as set out in item 2.1.

2.6.2.2 Face Page

The heading showing the number and class of shares offered shall include the Restricted Share Term in the same type face as the rest of the heading. Any defined term used to refer to Restricted Shares shall include the applicable Restricted Share Term.

2.6.2.3 Summary

The summary shall include:

2.6.2.3.1 a summary of the voting rights attached to the shares being offered (or a statement that there are no voting rights) and to voting rights, if any, possessed by any other class of securities of the issuer that are greater on a per share basis than those attached to the shares being offered; and

2.6.2.3.2 a summary of any significant rights in applicable corporate or securities law that are not available to the holders of the shares being offered (e.g., rights under take-over bid legislation) and the extent of any rights provided in the constating documents for the protection of holders of the shares (e.g., provisions designed to ensure that the holders have an equal opportunity to participate in a take-over bid), with a cross-reference to a full explanation in the body of the prospectus.

2.6.2.4 Body

The body of the prospectus shall include full descriptions and explanations, where applicable, of the statements referred to in items 2.6.2.3.1 and 2.6.2.3.2.

2.6.2.5 Financial Statements

The financial statements shall be prepared in accordance with item 2.5.

3. DISSEMINATION OF INFORMATION

3.1 [Repealed.] as amended March 30, 2004

3.2 Forwarding of Information by Registrants

3.2.1 Subsection 79(2) of the Act requires a registrant, under the circumstances described in that subsection, to forward certain material to the beneficial owners of securities registered in its name. Registrants shall forward the information referred to in item 3. 1.1 to the beneficial owners of Restricted Shares registered in their name in accordance with subsection 79(2).

3.3 [Repealed.] as amended March 30, 2004

4. MEETINGS OF SHAREHOLDERS

4.1 Every reporting issuer shall give notice of shareholders' meetings to holders of Restricted Shares and permit the holders of such shares to attend, in person or by proxy, and to speak at all shareholders' meetings to the extent that a holder of voting securities of that company would be entitled to attend and speak at

shareholders' meetings. For all new issues of Restricted Shares the constating documents must provide that the holders of such shares shall be given notice of and be invited to attend meetings of the voting shareholders of the reporting issuer.

5. VOLUNTARY OFFERS FOR RESTRICTED SHARES

5.1 The take-over bid rules, Part 13 of the Act, apply only to offers for voting securities. The Commission is of the view that the substantive and procedural protections provided by the take-over bid rules should apply where an offeror makes an offer to acquire all or a certain percentage or number of Restricted Shares that are not voting securities and the shares that are the subject of the offer, together with the offeror's presently owned shares of such class, will in the aggregate exceed 20 per cent of the outstanding shares of that class. Accordingly, the Commission will give consideration to exercising its cease trade power or other available sanctions where persons or companies purchasing Restricted Shares fail to conduct the purchases as though they were subject to Part 13 of the Act. The holders of Restricted Shares have as great a need for the substantive and procedural protections provided by Part 13 (including the information provided by a take-over bid circular and directors' circular, the time to digest and assess such information and the requirement that the same consideration be offered to all holders of the same class of securities) as do holders of voting securities.

5.2 As a corollary to the foregoing requirement, the exemption provisions contained in subsection 132(1) of the Act will apply mutatis mutandis to bids for Restricted Shares. In the case of purchases made through the facilities of a recognized stock exchange, such purchases would be exempt to the extent that, mutatis mutandis, they comply with the requirements relating to formal stock exchange take-over bids or fit within the limits for "normal course purchases" as that phrase is defined in the by-laws, regulations or policies of the relevant stock exchange.

6. MINORITY APPROVAL

6.1 No issuer, without minority approval in addition to any other required security holder approval, shall:

6.1.1 create a class of securities, either by amending its constating documents or by a resolution of the board of directors setting the terms of a series of a previously authorized class of shares, which are Restricted Shares or which have the effect of making another class of securities Restricted Shares;

6.1.2 effect a reorganization, arrangement, amalgamation or other form of combination the effect of which is that any outstanding securities become Restricted Shares, or

- 6.1.3 distribute Restricted Shares to holders of outstanding Equity Shares other than Restricted Shares, such as by way of stock dividend, which has the same effect as any of the transactions referred to in item 6.1.2.
- 6.2 For the purposes of items 6.1, 6.2, 6.3 and 6.4 “minority approval” means approval given by a majority of the votes cast at a shareholders' meeting called to consider the proposed reorganization, arrangement, amalgamation or other transaction, amendment to constating documents or setting of class terms, other than the votes attaching to:
 - 6.2.1 securities held by affiliates of the reporting issuer; and
 - 6.2.2 securities the beneficial owners of which, alone or in concert with others, effectively control the issuer.

The security holders whose votes are excluded for the purpose of the definition of minority approval are referred to in this policy as the “majority”.
- 6.3 The information circular in respect of the shareholders' meeting shall include, where known after reasonable inquiry,
 - 6.3.1 the name of each person or company in the majority and the number of securities beneficially owned, directly or indirectly, or over which control or direction is exercised, by the majority, and
 - 6.3.2 a statement indicating the number of votes attaching to securities that may not be counted for the purpose of minority approval.
- 6.4 Where a reporting issuer has a class of Restricted Shares outstanding prior to the reorganization, amalgamation or other distribution referred to in item 6.1, in addition to any other required security holder approval (including that required hereunder), the reporting issuer shall obtain minority approval from the holders of the outstanding Restricted Shares.

7. CONSULTATION WITH THE DIRECTOR

- 7.1 Issuers are invited to consult with the Director where there is doubt as to the application of this policy or where circumstances exist that would render compliance with this policy inappropriate. Where he deems that it is not prejudicial to the public interest to do so, the Director may exempt an issuer or a class of issuers from compliance with this policy or any requirement thereof subject to such terms and conditions as he may impose. An appeal from a decision of the Director under this policy may be made to the Commission. Such an appeal will be treated in the same manner as a review of a decision of the Director under subsection 24(1) of the Act.
- 7.2 The Director will give consideration to exempting an issuer from compliance with this policy where:

- 7.2.1 it is not a Canadian based issuer and less than 2% of any class of shares of the issuer is held in Alberta, or
- 7.2.2 the voting rights attaching to a class of shares carrying superior voting rights are not sufficient to materially affect control of the issuer.

Effective date: March 15, 1987 with amendments effective March 30, 2004.

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