

CANADIAN SECURITIES ADMINISTRATORS NOTICE 46-302

Consent to Amend Existing Escrow Agreements

The Canadian Securities Administrators (CSA) have developed guidelines under which securities regulators and securities regulatory authorities will permit existing escrow agreements to be amended to reflect the release terms included in the proposed uniform escrow regime outlined in CSA Notice 46-301 *Proposal for Uniform Terms of Escrow Applicable to Initial Public Distributions*.

Background

In May 1998, the CSA published for comment a proposal for uniform terms of escrow applicable to initial public offerings by prospectus (IPOs). Since then, issuers conducting IPOs could choose to follow either the proposed uniform escrow regime or the escrow policy in effect in their own jurisdictions.

On March 17, 2000, we published CSA Notice 46-301 describing a revised proposal for an IPO escrow regime and permitting issuers to use it at their option. After publication of that Notice, the Canadian exchanges began requiring issuers to enter into escrow agreements based on the revised proposal as a condition of listing.

We expect to implement a uniform IPO escrow policy this summer. We will also seek public comment to determine whether further changes are necessary. We anticipate that the uniform escrow policy will include some changes from the March 2000 proposed uniform escrow regime reflecting our response to public comment, but we do not anticipate making any changes to the release terms.

After publishing our earlier proposals we received requests to approve amendments to existing agreements to permit the release of escrow shares on the terms in the proposals. We generally considered that it would be premature to do so because the uniform escrow terms had not been finalized.

Given the widespread application of the March 2000 proposed uniform escrow regime, and our intention to implement the uniform escrow policy this summer, we believe that amendments to the release terms in existing escrow agreements should now be permitted for reasons of fairness and uniformity.

Amendments

The securities regulators and securities regulatory authorities consent to amendments to escrow agreements to reflect the release terms of the March 2000 proposed uniform escrow regime on the following conditions:

- The issuer's directors must have approved the amendment.
- All parties to the existing escrow agreement, except parties whose shares are no longer in escrow, must have agreed to the amendment.
- The issuer must have obtained any exchange approvals required by the existing escrow agreement.

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- The amendment must have been approved by a majority vote of the shareholders of the issuer, or consented to by shareholders holding a majority of the shares of the issuer, excluding in each case escrow shareholders and their affiliates and associates.
- The amendment to the release terms must apply to all shares in escrow.
- Once the escrow agreement has been amended and all conditions in this Notice have been met, the issuer must issue a news release at least 60 days prior to the first release under the amended escrow agreement notifying the market of the amendment and the new escrow release terms.
- The issuer's escrow classification must be determined at the date of the news release.
- The news release must set out the date of the first release under the amended escrow agreement. The first release date must be at least 60 days after the news release.
- If the issuer is an exempt issuer, all escrow shares may be released no earlier than 60 days after the news release, subject to the 10% limit below.
- If the issuer is an emerging or an established issuer, the new release schedules must be the schedules included in the March 2000 proposed uniform escrow regime for those issuers, subject to the 10% limit below.
- The number of shares to be released from escrow at any one time may not exceed 10% of the issuer's outstanding shares at the time of release. Shares remaining in escrow after the last scheduled release will continue to be released at 6 month intervals until all shares are released from escrow.
- Each release of escrow shares must be pro rata.
- The issuer must file with the securities regulator or securities regulatory authority in all jurisdictions where the original escrow agreement was filed:
 - a copy of the amended escrow agreement, and
 - a certificate of a director or senior officer of the issuer confirming that the escrow agreement has been amended in accordance with this Notice and that all conditions to the amendment have been met.

Our consent does not limit the right of an exchange to require additional conditions or more stringent release terms.

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