

Alberta Securities Commission Notice

Proposed Amendments to Alberta Securities Commission Rule 41-501 *Use of Prospectus Complying with Ontario Securities Commission Requirements* and Request for Comments

Background

On December 31, 2000, ASC Rule 41-501 *Use of Prospectus Complying with Ontario Securities Commission Requirements* (the “ASC Rule”) became effective. The ASC Rule permits issuers to satisfy certain of the prospectus requirements under Alberta securities law by complying with Ontario Securities Commission (“OSC”) Rule 41-501 *General Prospectus Requirements* (the “OSC Rule”). Essentially, issuers filing a prospectus with the Commission were provided with the option of either fully complying with the existing requirements under Alberta securities law or the requirements under the OSC Rule. The Commission is now proposing to make certain amendments to the ASC Rule.

Summary of Amendments

The proposed amendments are summarized below.

1. ***Amendment for Capital Pool Companies*** - Section 6.4 of the OSC Rule requires an issuer to provide financial statements in its prospectus for any “significant probable acquisition”. A “significant probable acquisition” refers generally to a proposed acquisition of a business that satisfies certain significance tests and “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high”.

The proposed amendment, in effect, will provide an exemption for the initial public offering prospectus of a Capital Pool Company (as defined in Policy 2.4 of the Canadian Venture Exchange Inc.) from the requirement under section 6.4 of the OSC Rule to provide financial statements for a significant probable acquisition and from the requirement under section 5.2(1)(a) of OSC Form 41-501F to provide specified disclosure of a significant probable acquisition for which financial statements are required.

The rationale for the exemption is that Capital Pool Companies are subject to their own unique regulatory regime, including a requirement that in order to be eligible to use the Capital Pool Company program, they must conclude that they have not yet reached an Agreement in Principle (as defined in Policy 2.4 of the Canadian Venture Exchange Inc.).

2. ***Filings with Executive Director*** - The ASC Rule contemplates that certain filings and deliveries may be made with the Commission. The proposed amendments add reference to filings and deliveries with the Executive Director.
3. ***Mutual Funds*** - The proposed amendment will clarify that a mutual fund cannot satisfy the requirements of Alberta securities law by complying with the OSC Rule.

4. ***Extension of 90 Day Offering Period*** - The proposed amendment will indicate that an issuer complying with the OSC Rule is not required to obtain prior consent of the Executive Director in connection with an extension of a 90 day offering period under a best efforts offering.

Issuers are reminded that the Executive Director generally considers an extension of the offering period to be a material change requiring the filing of a prospectus amendment. Further, issuers are reminded that the Executive Director must still assess whether the extension of the offering period is not in the public interest. To assist the Executive Director in making the assessment, issuers that are conducting a best efforts offering in compliance with the OSC Rule and that seek to extend the offering period beyond 90 days should explain in the cover letter accompanying their prospectus amendment why the extension is necessary and confirm that the issuer has complied with section 19.5 of OSC Form 41-501F.

Text of Proposed Amendment

The proposed amendments to the ASC Rule are set out in Appendix A to this Notice.

Comments

Interested parties are invited to make written submissions with respect to the proposed amendments. Submissions received by January 17, 2002 will be considered. Submissions should be sent to:

Denise Hendrickson
Legal Counsel
Alberta Securities Commission
4th Floor, 300 - 5th Avenue S.W.
Calgary, Alberta
T2P 3C4

Submissions may be delivered by mail to the above address or sent by fax to (403) 297-6156 (Attention: Denise Hendrickson) or by e-mail to denise.hendrickson@seccom.ab.ca.

We will place comment letters submitted in response to this Notice on the public file and they will form part of the public record, unless confidentiality is requested. Although we will not place comment letters requesting confidentiality on the public file, freedom of information legislation may require that the Commission make these comment letters available. As a result, the press and members of the public may be able to obtain access to any comment letter.

Dated: December 18, 2001

Appendix A

Amendment to Alberta Securities Commission Rule 41-501 *Use of Prospectus Complying with Ontario Securities Commission Requirements*

Section 2.1 is deleted in its entirety and the following is substituted:

2.1 Alternative Prospectus Form and Content Requirements

Notwithstanding Part 8 of the Alberta Securities Commission Rules (“ASC Rules”), and subject to sections 2.2, 2.3 and 2.4 of this Rule, the requirements under Part 8 of the Act as to the form and content of a preliminary prospectus, a prospectus or an amendment to a prospectus, accompanying filings or deliveries to the Commission or Executive Director, and consents to extensions of time under subsection 92(2)(i) of the ASC Rules may be satisfied, in respect of

- (a) any distribution, other than by a mutual fund, by complying with the requirements under OSC Rule 41-501 as to form, content and accompanying filings or deliveries to the Commission or Executive Director applicable to a preliminary prospectus, a prospectus or an amendment to a prospectus, as the case may be; or
- (b) the initial public distribution by prospectus by a “capital pool company”, as that term is defined in Policy 2.4 of the Canadian Venture Exchange Inc., by complying with the requirements, except section 6.4(1), under OSC Rule 41-501, as to form, content and accompanying filings or deliveries to the Commission or Executive Director applicable to a preliminary prospectus, a prospectus or an amendment to a prospectus, as the case may be.