

**ALBERTA SECURITIES COMMISSION  
NOTICE**

***ESCROW FOR INITIAL PUBLIC OFFERINGS***

**Final Implementation of  
National Policy 46-201 *Escrow for Initial Public Offerings*  
and Form 46-201F1 *Escrow Agreement***

**Repeal of ASC Polices 4.2 and 4.9  
and ASC Forms 16, 17 and 18  
Withdrawal of Certain ASC and CSA Notices**

**ASC Staff Notice 46-705 *Escrow Releases and Amendment:  
Certain Old-Form Escrow Agreements***

**Proposed Repeal of ASC Rules Section 120**

**June 28, 2002**

**Uniform Escrow Regime - Final Implementation**

The Alberta Securities Commission (the "ASC") announces final implementation, effective on June 30, 2002, of the uniform escrow regime that came into effect on an interim basis on September 21, 2001.

The uniform escrow regime is set out in amended National Policy 46-201 *Escrow for Initial Public Offerings* ("NP 46-201") and Form 46-201F1 *Escrow Agreement* (the "Form").

Under NP 46-201, when an issuer conducts an initial public offering by prospectus (an "IPO") its directors, management and significant shareholders ("principals") will place their shares of the issuer in escrow, restricting their ability to sell the shares for a specified period. Requiring the principals to continue to hold shares in the issuer for a reasonable period after the IPO is intended to give them an incentive to continue devoting time and attention to the issuer's business and to the plans described in its IPO prospectus.

The NP 46-201 escrow regime replaces all prior policies of Canadian Securities Administrators ("CSA") jurisdictions governing escrow for IPOs. It does not, however, apply to capital pool companies.

In Alberta, NP 46-201, as amended, has been implemented as an ASC policy, and the amended Form has been implemented as an ASC form. NP 46-201 has been, or is expected to be, implemented as a policy in each other province and territory of Canada other than Québec, and as a regulation in Québec.

### **Changes to NP 46-201**

NP 46-201 and the Form incorporate changes from the interim versions implemented on September 21, 2001. We made the changes in response to public comments. Although the changes do not affect the substance of NP 46-201 or the Form, we believe that the changes will make them easier to understand and apply, and give added flexibility to issuers and escrow agents. We made three principal changes:

- In response to public comment, we eliminated many of the provisions of the standard form of escrow agreement governing specific responsibilities, remuneration, liabilities and indemnification of the escrow agent. Instead, the Form now gives issuers and escrow agents freedom to negotiate and incorporate administrative provisions of their choosing, provided that they are not inconsistent with NP 46-201.
- NP 46-201 now states that any references it makes to share certificates or other evidences of escrowed securities should not be construed as requiring the use of paper share certificates or other paper evidence of ownership of escrowed securities that are registered electronically.
- In an effort to make clearer the effect of the escrow release schedules in NP 46-201 and the Form, we have revised them to specify the fractions of then-remaining escrowed securities releaseable on each release date, with references to the percentage of originally-escrowed securities set out in footnotes.

### **Prior Instruments Replaced**

#### **(a) Local Escrow Policies and Forms Repealed**

In conjunction with final implementation of NP 46-201, the following ASC policies have been repealed, effective on June 30, 2002:

- *ASC Policy 4.2 Requirements for Escrow of Securities and for Releases from and Transfers within Escrow in Respect of Junior Natural Resource Issuers*
- *ASC Policy 4.9 Escrow Guidelines -- Industrial Issuers*

Also in conjunction with final implementation of NP 46-201, the following ASC forms have been repealed, effective on June 30, 2002:

- *ASC Form 16 Escrow Agreement for a Natural Resource Issuer*
- *ASC Form 17 Escrow Agreement for an Issuer Other Than a Natural Resource Issuer*
- *ASC Form 18 Acknowledgment by Transferee of Securities in Escrow*

**(b) Notices Withdrawn**

The following notices have been superseded by this Notice, amended NP 46-201 and the Form, and are withdrawn effective on June 30, 2002:

- the ASC Notice dated May 8, 1998 concerning the *Proposal for a National Escrow Regime Applicable to Initial Public Distributions*;
- CSA Notice 46-301 *Proposal for Uniform Terms of Escrow Applicable to Initial Public Distributions*, and the related ASC Staff notice specifying a standard form of escrow agreement, both dated March 17, 2000;
- CSA Notice 46-302 *Consent to Amend Existing Escrow Agreements*, dated June 15, 2001; and
- the ASC Notice dated September 21, 2001 announcing interim implementation of NP 46-201.

**Amendments to Outstanding Escrow Agreements**

NP 46-201 sets out the conditions on which CSA members consent to amendments to outstanding escrow agreements, to permit the release of escrowed securities on terms consistent with those specified in NP 46-201 for new escrow arrangements. These provisions are similar to, and supersede, those earlier set out in CSA Notice 46-302.

ASC Staff Notice 46-705 *Escrow Releases and Amendment: Certain Old-Form Escrow Agreements*, published concurrently with this Notice, sets out guidelines for making certain other amendments to outstanding escrow agreements entered into under ASC Policy 4.2 or ASC Policy 4.9, and for cancelling or transferring securities in escrow under such agreements.

**Repeal of ASC Rules Section 120**

In conjunction with final implementation of NP 46-201 and the Form, the repeal of ASC Policies 4.2 and 4.9 and ASC Forms 16, 17 and 18 and the issuance of ASC Staff Notice 46-705, we propose to repeal section 120 of the ASC Rules.

Section 120 prescribes the use of Form 16 or 17 in connection with escrow for purposes of prospectus offerings as well as in connection with the registration and prospectus exemptions referred to in sections 87(k) and 131(1)(m) of the *Securities Act*. Section 120 also prescribes the use of Form 18 for transfers within escrow.

For prospectus offerings, NP 46-201 and the Form, rather than Form 16 or 17, will apply to most IPO prospectus distributions. ASC staff do not consider that Forms 16 and 17 provide useful guidance as to terms of escrow that the Executive Director might consider necessary or appropriate in connection with other prospectus distributions, or in connection with the registration and prospectus exemptions under

sections 87(k) and 131(1)(m). NP 46-201 and the Form deal with transfers within escrow for new escrow arrangements, and ASC Staff Notice 46-705 deals with transfers and amendments affecting older escrow arrangements, rendering Form 18 unnecessary. For these reasons we propose to repeal section 120.

The ASC is also considering recognizing The Toronto Stock Exchange Inc. and the TSX Venture Exchange for the purposes of section 131(1)(m). Such recognition would provide an alternative to escrow as a factor in determining the availability of that prospectus exemption. ASC staff are also considering whether, in the same circumstances, the registration exemption under section 87(k) should also be made available.

We invite your comments on the proposed repeal of ASC Rules section 120. Please send your comments on this proposal, **by July 31, 2002**, to:

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### **Further Information**

Please direct your questions concerning NP 46-201 and the Form to any of:

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