

2.3 ASC Rule 45-501 and 45-501CP - System for Shorter Hold Period for Issuers Filing an AIF

ALBERTA SECURITIES COMMISSION RULES

RULE 45 - 501

SYSTEM FOR SHORTER HOLD PERIOD FOR ISSUERS FILING AN AIF

PART 1 DEFINITIONS

1.1 Definitions - in this rule

"AIF" means an annual information form prepared in accordance with the provisions of Appendix A to NPS 47 or the form required under any successor instrument or any alternate form permitted under section 3.4 of this rule;

"Canadian securities regulatory authorities" shall be defined in accordance with National Instrument 14-101;

"current AIF" means

- (a) during the period of 140 days following an issuer's most recently completed financial year
 - (i) if an issuer's AIF for its most recently completed financial year has been filed in accordance with section 3.1 or accepted for filing under NPS 47, the AIF of the issuer for that financial year, or
 - (ii) if an issuer's AIF for its most recently completed financial year has not been filed in accordance with section 3.1 or under NPS 47, the AIF of the issuer for its immediately preceding financial year provided that AIF has previously been filed in accordance with section 3.1 or under NPS 47, and
- (b) at any other time, the AIF of the issuer for its most recently completed financial year provided it has been filed in accordance with section 3.1 or under NPS 47;

"JCP information circular" means an information circular filed and accepted by the Alberta Stock Exchange in connection with a "major transaction" under the JCP rule;

"JCP rule" means Alberta Securities Commission Rule 46-501 - Junior Capital Pool Offerings;

"NPS 2A" means National Policy Statement No. 2A or any successor instrument;

"NPS 2B" means National Policy Statement No. 2B or any successor instrument;

"NPS 47" means National Policy Statement No. 47 or any successor instrument;

"POP issuer" means an issuer that meets the eligibility criteria required to participate in the POP System and that has a Current AIF as defined in NP 47;

"qualifying issuer" means an issuer that

- (a) is a reporting issuer under the Act;
- (b) has equity securities listed or quoted on a recognized market;
- (c) the issuer's consolidated audited financial statements for the most recent year report
 - (i) revenues of at least \$100,000, or
 - (ii) expenditures of more than
 - (A) \$100,000 on exploration and development, in the case of a resource issuer, or
 - (B) \$200,000 directly related to the development of the business disclosed in the AIF, in the case of a non-resource issuer; or
- (d) if an issuer's consolidated financial statements for an interim period subsequent to its most recent year end that are subject to a review engagement or which are included in a prospectus or JCP or VCP information circular report
 - (i) revenues of at least \$100,000 or
 - (ii) expenditures of more than
 - (A) \$100,000 on exploration and development, in the case of a resource issuer, or
 - (B) \$200,000 directly related to the development of the business disclosed in the AIF, in the case of a non-resource issuer;

"recognized market" means the Alberta Stock Exchange, the Vancouver Stock Exchange, The Toronto Stock Exchange, the Montreal Exchange, the New York Stock Exchange, the American Stock Exchange, the London Stock Exchange, the NASDAQ National Market and the NASDAQ Small Cap Market;

"regulator" shall be defined in accordance with National Instrument 14-101;

"reserves" means ore, proven reserves or proved reserves as defined in NPS 2A or NPS 2B;

"supporting documents" means

- (a) for a non-POP issuer
 - (i) signed consent letter from any professional person or company named in the current AIF in a form prescribed by section 85 of the rules
 - (ii) where a natural resource issuer is filing a current AIF disclosing reserves and the reserves are represented as being based on estimates prepared or reviewed by an independent engineer or other qualified person, a signed copy of the technical or engineering report of that engineer or other qualified person on each of the properties that are material to the issuer and for which reserves are disclosed in accordance with NPS 2A or NPS 2B and section 90 of the rules, as the case may be; and
 - (iii) a certificate in the form prescribed by section 90 of the rules.

(b) for a POP issuer those supporting documents required to be filed under NPS 47;

"SEC" means the Securities and Exchange Commission of the United States of America; and

"VCP information circular" means an information circular filed and accepted by the Vancouver Stock Exchange in connection with a "qualifying transaction" under the VCP policy;

"VCP policy" means the Vancouver Stock Exchange's Policy 30 - "Venture Capital Pool Companies";

"1934 Act" means the Securities Exchange Act of 1934 of the United States of America.

PART 2 SYSTEM FOR SHORTER RESALE TIME RESTRICTIONS WITH AN ANNUAL INFORMATION FORM

2.1 Exemption for a first trade in a security acquired in connection with a distribution of securities by a qualifying issuer where a current AIF has been filed

Notwithstanding section 3.2 of Rule 72-501 and sections 109 and 109.1 of the Act, the first trade in securities previously acquired from an issuer under the statutory exemptions referred to in sections 107(1) (a), (b), (c), (d), (f)(iii), (l), (m), (p), (q), (t), (t.1), (u), or (z), sections 122(b) or (d) of the rules and section 3.1 of this rule will be a distribution unless

- (a) at the date of the initial exempt trade the issuer signs a certificate certifying that
 - (i) the distribution is made by the issuer in a security of its own issue,
 - (ii) the issuer is a qualifying issuer,
 - (iii) the issuer has filed a current AIF together with all supporting documents,
 - (iv) the issuer has filed all documents that it is required to file under the continuous disclosure provisions of the Act and the rules, including annual and interim financial information and annual reports, press releases disclosing material changes and material change reports,
 - (v) if the issuer has made a substantial transaction since the date of its current AIF, a material change report has been filed in accordance with section 3.6 of the rule, and
 - (vi) the Executive Director has not advised the issuer in writing that it is not eligible to rely on this exemption;
- (b) no unusual effort is made to prepare the market or to create a demand for the securities making up the distribution;
- (c) no extraordinary commission or consideration is paid to a person or company other than the vendor of the securities in respect of the trade;
- (d) the first trade is not from the holdings of a control person; and
- (e) a period of at least four months has elapsed from the date of the initial exempt trade.

2.2 Filing report of the trade

The issuer shall file a report of trade prepared and executed in accordance with Form 20 of the rules within 10 days from the beginning of the distribution under section 2.1 of the rule.

2.3 Issuer's Certificate

The issuer shall retain the certificate required under section 2.1 of the rule for a period of at least six years after the distribution.

PART 3 FILING REQUIREMENTS

3.1 Confirmation of Filing of AIF - The Executive Director will forward to the issuer a written confirmation of filing of its current AIF within 10 business days of the date the AIF is filed with the Commission.

3.2 POP issuers - The filing requirements and review procedures for current AIFs set out in this rule and companion policy 45-501 do not apply to POP issuers and POP issuers shall comply with, and be governed by, the filing requirements and review procedures of NPS 47.

3.3 Discretionary Powers - Notwithstanding that an issuer may satisfy the applicable eligibility criteria contained in section 2.1 of the rule, the Executive Director may, after the issuer has filed its current AIF, advise the issuer that it will not accept the current AIF for filing pursuant section 2.1 of the rule.

3.4 Alternative Forms of AIF

(a) **Prospectus** - An issuer that has filed a prospectus, other than a prospectus filed under the JCP rule or the VCP policy, and received a receipt from the Executive Director or a Canadian securities regulatory authority or regulator in another jurisdiction, may elect to use that prospectus as an alternative form of AIF for the financial year of the most recent year end financial statements included in the prospectus by filing a notice with the Commission through SEDAR not later than the date of the distribution of the issuer's securities under section 2.1 of the rule.

(b) **OSC Policy Statement No. 5.10** - An issuer that has filed an AIF under Ontario Securities Commission Policy Statement No. 5.10 may elect to use that AIF as an alternative form of AIF by filing a notice with the Commission through SEDAR not later than the date of the distribution of the issuer's securities under section 2.1 of the rule.

(c) **JCP or VCP Information Circular** - An issuer may elect to use a JCP or VCP information circular as an alternative form of AIF for the financial year of the most recent year end financial statements included in the JCP or VCP information circular by filing a notice with the Commission through SEDAR not later than the date of the distribution of the issuer's securities under section 2.1 of the rule.

(d) **US Registrant** - An issuer that has securities registered with the SEC may satisfy the requirement for filing a Current AIF by filing with the Commission a current annual report on Form 10-K or on Form 20-F filed with the SEC pursuant to the 1934 Act by filing a notice with the Commission through SEDAR not later than the date of the distribution of the issuer's securities under section 2.1 of the rule.

- 3.5 Fees** - An issuer filing a current AIF or a notice under section 3.4, other than a notice relating to a prospectus for which the Executive Director has issued a receipt, shall pay the filing fee required by section 9(1)(a) of the Fee Schedule. The issuer must pay the filing fee through SEDAR by an electronic payment authorized at the same time as the issuer files its AIF or notice.
- 3.6 Substantial Transaction** - As set out in section 2.1(a)(v) of Rule 45-501 if the issuer has made a substantial transaction since the date of its most recent AIF and still wants to be eligible to issue securities subject to the exemption contained in section 2.1 of the rule, the issuer must file a material change report disclosing the substantial transaction. In addition to the information required to be included in a material change report, the issuer must disclose the effect of the substantial transaction on the business of the issuer.
- 3.7 Currency of Information in AIF** - An Issuer must include in its Current AIF information as at the end of its most recently completed financial year. However, where material events or conditions arise after the end of the issuer's most recently completed financial year and before the date of the AIF, an issuer must update the information in its AIF to reflect these events or conditions.

PART 4 EXERCISE OF DISCRETION AND EXEMPTION

- 4.1 Decision of Executive Director Regarding Use of Section 2.1** - The Executive Director may, at any time prior to a distribution of securities pursuant to this rule, advise an issuer that it is no longer entitled to rely on the exemption in section 2.1 of Rule 45-501. The Executive Director will provide reasons for the decision and an opportunity for the issuer to be heard.
- 4.2 Exemption** - The Executive Director or the Commission may grant an exemption to this rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 5 EFFECTIVE DATE

- 5.1 Effective Date** - This rule comes into force on October 1, 1998.