

Note: [01 Jan 1998] - The following is 46-501CP immediately prior to its withdrawal.

ALBERTA SECURITIES COMMISSION COMPANION POLICY 46-501CP

TO ALBERTA SECURITIES COMMISSION RULE 46-501

JUNIOR CAPITAL POOL OFFERINGS

PART 1 INTRODUCTION

- 1.1 Purpose** - The purpose of this Policy is to state the Commission's interpretation of certain provisions of Rule 46-501 (the "Rule").

PART 2 GENERAL

- 2.1 Related Regulatory Requirements** - Rule 46-501 should be read in conjunction with all applicable Circulars of the ASE, in particular Circulars 1, 2, 3, 5, 7, 12 and 18.
- 2.2 Applicable Regulatory Requirements** - In addition to complying with the Rule, a JCP must comply with all otherwise applicable requirements of securities legislation, including the provisions of the Act, the regulations and rules under the Act, the blanket rulings and orders issued by the Commission and national instruments relating to all matters including material changes, insider reporting and proxy solicitation.

PART 3 APPLICATION OF THE RULE

- 3.1 Transition** - Subsection 2.2(2) and section 10.1 of the Rule together provide that JCPs that have received a final receipt for a JCP prospectus prior to January 1, 1998 will continue to be governed by A.S.C. Policy 4.11 as it read on December 31, 1997. Accordingly, JCPs which have received a receipt for only a preliminary prospectus prior to January 1, 1998 will be governed by the Rule rather than by A.S.C. Policy 4.11.

In an application for revocation of a cease trade order applicable to a JCP which continues to be governed by A.S.C. Policy 4.11, the Executive Director may consider the length of time which has passed before the revocation is sought in determining whether compliance with the Rule may be imposed as a condition of the reactivation of the JCP.

- 3.2 Reactivations** - The effect of section 2.3 of the Rule is that all of the requirements of the Rule apply until a Bulletin has been issued by the ASE confirming that the major transaction has been completed and the company is no longer considered a JCP (after which time only Parts 7 and 9 continue to apply). Accordingly, a JCP which is delisted from the ASE or which is subject to a cease trade order of the Commission, and which subsequently is

“reactivated”, continues to be subject to the Rule until the major transaction is completed and the applicable Bulletin has been issued by the ASE.

PART 4 FOREIGN TRANSACTIONS

4.1 Foreign Directors and Officers - The integrity of management, including a history of regulatory compliance, is an important element of any public company. Given that a JCP has no significant assets, the integrity of management of a JCP is even more significant. The Commission conducts background checks of all directors and officers of listed companies. Such checks can be extremely difficult and time-consuming in some foreign jurisdictions.

Subsections 3.2(1) and (2) of the Rule have the effect of restricting the number of directors and officers of a JCP who may reside outside of Canada to a minority of the directors and a minority of the officers. Regulatory checks can be conducted by the Commission relatively quickly for individuals resident in the United States. In order to assist in reducing the length of time required for regulatory checks for directors and officers who are not resident in Canada or the United States, issuers may wish to request the appropriate local government authorities in the jurisdiction of the director or officer’s residence to send to the Executive Director a statement confirming whether the director or officer has a record of any criminal, quasi-criminal, corporate or securities convictions.

Ideally, this statement should be received by the Executive Director when a preliminary prospectus is filed by the JCP or, if the individual is elected or appointed subsequent to the filing of the preliminary prospectus, when the individual is first elected a director or appointed an officer of the JCP. This statement may be considered by the Executive Director in assessing the suitability of management, but will not exempt the issuer from the requirements of subsections 3.2(1) and (2) of the Rule and will not bind the discretion of the Executive Director.

4.2 Foreign Assets - Subsection 3.2(6) of the Rule provides that a JCP shall not acquire rights or assets unless the rights or assets will be used, operated or located entirely within Canada. Reference is made to section 9.1 of the Rule which provides for applications for exemptions from the Rule. Where there is a legitimate business purpose for a JCP to hold an immaterial amount of assets outside of Canada, issuers may wish to consider applying to the Executive Director for an exemption from the requirements of subsection 3.2(6).

PART 5 PRIVATE PLACEMENTS FOR CASH

- 5.1 Private Placements for Cash** - Section 3.3 of the Rule provides certain requirements which must be met in connection with certain private placements for cash, including prior ASE approval, shareholder approval by means of the majority of minority test, restrictions on the use of proceeds, and the escrow requirements which would otherwise apply to shares issued by a JCP. However, it should be noted that “cash” is specifically excluded from the types of assets included in the definition of “significant assets” in section 1.1 of the Rule, and that all types of “major transactions” require the acquisition of “significant assets”. The definition of "major transaction" in section 1.1 also specifically excludes a transaction whereby, prior to completion of the major transaction, a JCP issues for cash securities representing more than 25 percent of its securities issued and outstanding immediately prior to the issuance. Accordingly, a private placement for cash will not constitute a “major transaction”.

PART 6 FAILURE TO MAINTAIN LISTING

- 6.1 Interim Cease Trade Order** - Subsections 3.4(2) and 3.4(3) of the Rule provide that in certain circumstances an interim cease trade order will or may be issued. Reference is made to section 21 of the Act relating to interim orders.

PART 7 LISTING REPRESENTATIONS

- 7.1 Listing Representations** - Section 4.2 of the Rule requires conditional listing approval of the ASE for securities offered under a JCP prospectus. Reference is made to the blanket permission under subsection 70(3) of the Act effective November 22, 1996, which permits representations in a prospectus as to the listing of securities being offered on a stock exchange, provided that certain conditions are met.

PART 8 USE OF PROCEEDS

- 8.1 Balance of Proceeds** - The prohibition against payments to related parties and the other restrictions on expenditures in Parts 3 and 6 of the Rule continue to apply until “completion of the major transaction”. As a result of the definition of “completion of the major transaction”, these restrictions on expenditures continue to apply following shareholder approval of the proposed major transaction if the transaction fails to close and the ASE does not issue a Bulletin confirming that the company is no longer considered a JCP. Accordingly, the principals of a JCP who identify a potential major transaction prior to spending the entire amount of proceeds raised by the JCP and who, after shareholder approval, spend the balance of the proceeds for purposes which are otherwise prohibited

under the Rule, risk being in breach of the Rule if the major transaction subsequently does not close.

The following is an example of disclosure which the Executive Director would consider acceptable in the notes to the Use of Proceeds section of a JCP prospectus as to the use of the balance of the proceeds:

In the event the Corporation completes an approved major transaction prior to spending the entire \$C on identifying and evaluating properties or businesses, the Corporation may use the remaining funds to finance or partially finance the acquisition of, or participation in, such properties or businesses.

- 8.2** **Payments to Related Parties** - Expenditures which are set out in section 6.2 of the Rule are expressly subject to the provisions of sections 6.3 and 6.4 of the Rule. Accordingly, any payments to related parties must still meet the requirements of sections 6.3 and 6.4 of the Rule.
- 8.3** **Reasonable Expenses** - Section 6.2 of the Rule permits certain expenditures for "reasonable expenses". In determining whether expenses are reasonable, the Commission may take into consideration whether the expenses would be deductible under the Income Tax Act, for example, a claim for mileage if a personal car is used for business travel.
- 8.4** **Deposits** - Subsection 6.3(b) of the Rule permits the expenditure of up to an aggregate of \$25,000 on deposits. Accordingly, if only part of this amount is spent on a deposit, a second deposit may be made for the balance of the \$25,000. Similarly, if a deposit or part of a deposit is refunded, the refunded amount can be "reused" up to the maximum of \$25,000 in aggregate.

Section 6.3 of the Rule is subject to the provisions of section 6.1, which expressly prohibits the payment of deposits or similar payments referred to in subsection 6.3(b) to parties related to the JCP.

PART 9 ESCROW REQUIREMENTS

- 9.1** **Escrowed Securities** - Section 7.3 of the Rule requires the escrow of "all" securities acquired by a control person in the secondary market prior to completion of the major transaction. Where a party holds securities and subsequently acquires additional securities of the JCP which results in their holding more than 20% of the outstanding shares of the JCP, the Rule requires the escrow of "all" securities then held by the party, not merely those acquired in the transaction that takes them over the 20% threshold.

- 9.2 Transfers within Escrow** - Sections 7.1, 7.2, 7.3 and 7.4 of the Rule require that certain shares be held in escrow. All transfers within escrow require the prior written consent of the Executive Director and the filing of Form 18 with the Executive Director, which evidences the consent of the transferee to be bound by the terms and conditions of the original escrow agreement.

In certain cases where an individual wishes to transfer escrowed shares to that individual's RRSP, the Commission's Blanket Order dated June 8, 1995 addresses the application of certain sections of the Act to that "trade". However, the consent of the Executive Director continues to be required for any transfers within escrow to the holder's RRSP.

- 9.3 Holding Companies** - Subsection 7.4(1) of the Rule is intended to prohibit a holding company that holds escrowed shares of a JCP from circumventing the purpose of the escrow. Staff will normally require from the holding company an undertaking not to carry out any transactions in contravention of subsection 7.4(1) of the Rule.

Examples of transactions contemplated by subsection 7.4(1) of the Rule include issuances of shares from treasury and redemptions or repurchases of shares that have the effect of changing control of the holding company.

- 9.4 Release from Escrow** - Section 7.6 of the Rule provides the schedule for releases of shares from escrow on certain anniversaries of the completion of the major transaction. Accordingly, if a major transaction is not completed by a JCP, the escrowed securities will not be released from escrow.

Since section 7.6 of the Rule provides for the release of securities from escrow based on the passage of time and does not require any additional securities regulatory consents to the release of securities held in escrow, a trustee may use as evidence of the completion of the major transaction a copy of the ASE Bulletin confirming that the major transaction has been completed and that the company is no longer considered a JCP. Reference is also made to the definition of "completion of the major transaction" in section 1.1 of the Rule. The ASE Bulletin will also set out the date of the shareholder meeting approving the major transaction, which is necessary for determining the date of "completion of the major transaction" for purposes of section 7.6 of the Rule.