

A.S.C. POLICY 4.9
ESCROW GUIDELINES - INDUSTRIAL ISSUERS

1. INTRODUCTION

1.1 Section 96(2)(f) of the Alberta Securities Act (the "Act") provides that the Director (the "Director") of the Alberta Securities Commission (the "Commission") shall direct the Registrar not to issue a receipt for a prospectus if it appears to the Director that an escrow or pooling agreement that the Director considers necessary or advisable with respect to securities has not been entered into. The purpose of this policy is to set out circumstances in which the Director will usually consider an escrow of securities of an industrial issuer to be necessary or advisable, along with general guidelines which, once an escrow agreement has been executed, will govern the release and transfer of the escrowed securities. This policy applies to any issuer that files a prospectus in accordance with Form 12 of the regulations to the Act (the "Regulations") as an industrial issuer.

2. DEFINITIONS

2.1 In this Policy, the following definitions apply:

2.1.1 "Consideration" means the fair market value of tangible assets, at the time of their acquisition by an issuer, (as are acceptable to the Director) that a related security holder has transferred to the issuer.

2.1.2 "Escrowed Securities" means those securities that are subject to the escrow agreement referred to in item 9 at the time of its execution.

2.1.3 "Equity Security" means a common share or any share of any class or series of the issuer which by its terms confers on the holder thereof the right to participate in the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding-up of the issuer beyond a fixed sum or a fixed sum plus accrued dividends.

2.1.4 "Final Receipt Date" means the date on which the Registrar issues a receipt for the prospectus.

2.1.5 "Legal for Life Securities" means securities that have been conditionally approved for listing by a Canadian stock exchange and in respect of which the prospectus states that named legal counsel are of the opinion that the securities are eligible investments without resorting to the so-called "basket provisions" but subject to general investment provisions for insurance companies registered under the Canadian and British Insurance Companies Act (Canada).

2.1.6 "Net Proceeds per Security" means the offering price minus the amount on a per security basis of the underwriter's or sales agent's commission.

2.1.7 "Net Tangible Assets Per Equity Security" means

2.1.7.1 the total net tangible assets of the issuer based on its latest financial statements plus the net proceeds of any offering made prior to the closing of the distribution under the prospectus and minus the paid-up capital attributable to all securities ranking senior to the equity securities

divided by

2.1.7.2 the number of equity securities outstanding prior to the closing of the distribution under the prospectus

and

2.1.7.3 where there are outstanding currently exercisable rights to purchase, convert or exchange relating to the equity securities, the calculation shall be made on the basis that each such right, the exercise price of which is less than the net proceeds per security of the related equity security, has been exercised.

2.1.8 "Offering Price" means the price at which the securities offered by the prospectus may be purchased by the public.

2.1.9 "Preliminary Receipt Date" means the date on which the receipt is issued for the preliminary prospectus which relates to the prospectus.

2.1.10 "Prospectus" means, where the execution of an escrow agreement is a condition of issuance of a receipt for a prospectus, that prospectus.

2.1.11 "Related Security Holder" means:

2.1.11.1 a promoter of the issuer,

2.1.11.2 a director or officer of the issuer who holds beneficially, directly or indirectly, more than 5% of any class of equity securities of the issuer, or

2.1.11.3 any person or company who holds beneficially, directly or indirectly, more than 10% of any class of equity securities of the issuer.

2.2 A person or company who has a right under a contract, whether written or oral and

whether express or implied, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire or dispose of, equity securities of a company, or to control the voting rights attaching to equity securities of a company (except any such right that provides that the right is not exercisable until the death of an individual designated therein) shall be deemed to have the same position in relation to the equity securities of the company as if he owned the equity securities.

3. APPLICABILITY OF ESCROW REQUIREMENTS

3.1 *Securities and Security Holders*

3.1.1 Subject to item 3.1.2, normally only equity securities, the beneficial ownership of which is held by related security holders, need be the subject of an escrow agreement. Securities other than equity securities and securities held by persons or companies who are not related security holders will generally be exempt from all escrow requirements.

3.1.2 *Pledgees*

If at the time of the filing of a prospectus any related security holder has pledged all or any part of his equity securities, the pledgee will be subject to the same escrow requirements as would have been applicable to the related security holder had the securities not been pledged. Reference is made to item 8.2 regarding the ease of transfer within escrow of pledged equity securities.

3.1.3 *Issuers*

3.1.3.1 Generally, an escrow agreement will be required only when an issuer files its first prospectus. However, the Director has the discretion to require that an escrow agreement be entered into even though the issuer has previously filed a prospectus if an escrow agreement conferring authority upon the Director has not been previously executed or the existing agreement is considered inappropriate by the Director.

3.1.3.2 When a prospectus is filed by an amalgamated issuer, it will generally be regarded as the first prospectus filed by that issuer unless a prospectus has been previously filed by each issuer which has amalgamated to form the amalgamated issuer. However, there may be situations where only one of the amalgamating issuers has filed a prospectus but where that issuer's operations have contributed the bulk of the net assets of, generate a high percentage of the net income of, and effectively constitute the essence of the operations of the amalgamated issuer so that it is appropriate that the amalgamated issuer be regarded as having previously filed a prospectus.

3.1.4 *Exemption for Issuers Subject to TSE Escrow*

The Director will not consider an escrow agreement conferring authority upon the Director to be necessary if the issuer has entered into an escrow agreement conferring authority upon the Toronto Stock Exchange pursuant to The Toronto Stock Exchange Founder Stock Policy Statement.

3.1.5 *Exemption for Issuers With Certain Net Earnings*

3.1.5.1 The term "net earnings" as used in item 3.1.5.2 means the aggregate of net earnings less net losses for the 5 completed financial years and the current uncompleted financial year referred to item 3.1.5.2 after income tax but before extraordinary items and after all declared dividends.

3.1.5.2 Where the issuer's prospectus qualifies equity securities of the same class as those held by the related security holders and the net earnings, as defined in item 3.1.5.1, per equity security of such class, of the issuer based on its audited financial statements for the last 5 completed financial years preceding the filing of the prospectus and any unaudited financial statements included in the prospectus for the current uncompleted financial year is at least 50% of the offering price, an escrow agreement will not be required. The calculation of net earnings per equity security must be made on a fully-diluted basis and take into consideration all equity securities issued or proposed to be issued prior to the closing of the distribution made under the prospectus. Only net earnings related to the same class of equity securities as those offered under the prospectus may be taken into account.

4. NUMBER OF ESCROWED SECURITIES

4.1 The number of equity securities of the issuer to be escrowed shall be the aggregate number of equity securities held by all related security holders minus the number which may be deducted under items 4.1.1 and 4.2.

4.1.1 *Securities Represented by Net Tangible Assets*

In calculating the number of equity securities of related security holders to be escrowed, there may be deducted that number obtained by multiplying the number of equity securities owned beneficially by related security holders by the net tangible assets per equity security and dividing that number by the offering price.

4.2 *Securities for Which Consideration Is Sufficient*

4.2.1 In addition to any deduction permitted under item 4.1, in calculating the number of equity securities to be escrowed, the following may be deducted:

4.2.1.1 all equity securities which were acquired by related security holders more than one year prior to the preliminary receipt date for consideration equal to at least 60% of the offering price.

4.2.1.2 all equity securities which were acquired by related security holders more than two years prior to the preliminary receipt date for consideration equal to at least 45% of the offering price.

4.2.1.3 all equity securities which were acquired by related security holders more than three years prior to the preliminary receipt date for consideration equal to at least 25% of the offering price.

5. INFORMATION TO BE FILED

5.1 To assist in determining the number of shares subject to escrow, the staff of the Commission will request, when appropriate, the following information with respect to an issuer:

5.1.1 the names and addresses of

5.1.1.1 all related security holders, and

5.1.1.2 all associates and affiliates of related security holders who own beneficially, directly or indirectly, equity securities of the issuer;

5.1.2 the number of equity securities of the issuer held by the persons and companies referred to in item 5.1.1;

5.1.3 the date of acquisition of all equity securities referred to in item 5.1.2;

5.1.4 the purchase price or consideration allocated for the acquisitions of all equity securities referred to in item 5.1.2 and how the value was determined in each case.

6. CANCELLATION OF PREVIOUSLY ISSUED SECURITIES

6.1 Except with the consent of the Director, which will be granted only in unusual circumstances, the number of equity securities which are subject to the escrow agreement may not exceed 70% of the number of equity securities of that class outstanding after giving effect to the distribution to which the prospectus relates. If more than 70% would occur, the Director will consider whether it appears to him that it is not in the public interest to issue a receipt for the prospectus unless a sufficient number of equity securities are donated

back to the issuer for cancellation so that the number of equity securities which are subject to the escrow agreement does not exceed 70%.

7. RELEASES

7.1 *Legal for Life Securities*

7.1.1 If the escrowed securities are legal for life securities and if the issuer intends to use the proceeds of the offering to which the prospectus relates to carry on the same type of business as it has been engaged in for a period of at least three years immediately prior to the preliminary receipt date then the escrowed securities will be released as follows:

7.1.1.1 immediately after nine months following the final receipt date, 10% of the escrowed securities;

7.1.1.2 immediately after each of the first and second anniversaries of the initial release, 45% of the escrowed securities.

7.1.2 Item 7.1 may not be used in conjunction with item 7.2 or 7.3.

7.2 *Thirty Per Cent or Less Escrowed Securities*

7.2.1 Where the number of escrowed securities represents not more than 30% of the number of equity securities of the issuer which are issued and outstanding after giving effect to the distribution under the prospectus, the escrowed securities will be released as follows:

7.2.1.1 immediately after nine months following the final receipt date, 10% of the escrowed securities;

7.2.1.2 immediately after each of the first, second and third anniversaries of the initial release, 30% of the escrowed securities.

7.3 *More Than Thirty Per Cent Escrowed Securities*

7.3.1 Where the number of escrowed securities represents more than 30% of the number of equity securities of the issuer which are issued and outstanding after giving effect to the distribution under the prospectus, the escrowed securities will be released as follows:

7.3.1.1 immediately after nine months following the final receipt date, 10% of the escrowed securities;

7.3.1.2 immediately after each of the first, second and third anniversaries of the

initial release, 20% of the escrowed securities;

7.3.1.3 immediately after the fourth anniversary of the initial release, 30% of the escrowed securities.

7.4 *Releases on Death*

7.4.1 In addition to the releases provided in items 7.1, 7.2 and 7.3, upon the death of any related security holder who is an individual, escrowed securities may be released so that one-third of the escrowed securities of the related security holder have been released after the date of death, two-thirds of the escrowed securities of the related security holder have been released after the first anniversary of the date of death and all of the escrowed securities of the related security holder have been released after the second anniversary of the date of death, provided that prior to any release pursuant to this item the Director has been informed by notice in writing of the date of death of the related security holder.

7.5 *Discretionary Releases*

7.5.1 In exceptional cases, securities may be released from escrow with the written consent of the Director, if requested by letter signed by the issuer and affected related security holder(s) setting out the unusual circumstances which lead these parties to believe that a release of all or part of the escrowed securities is appropriate, together with a copy of the escrow agreement.

7.6 *Pro Rata Releases*

7.6.1 All releases, other than those prescribed under item 7.4, shall be made pro rata among the related security holders unless the related security holders or those affected related security holders agree otherwise in writing to an other than pro rata release of escrowed securities. If other than a pro rats, release is so agreed upon and provided for in the escrow agreement, such releases will be automatic; otherwise, the Director's consent will be required.

7.7 *Failed Distributions*

7.7.1 If the offering of securities to which the prospectus relates is not completed because the underwriter does not purchase the securities or the minimum number of securities which must be sold is not sold and if the issuer has become a reporting issuer as a result of the filing of the prospectus and the issuance of a receipt therefor, the escrow shall remain in full force and effect until after the Commission orders that the issuer shall be deemed to have ceased to be a reporting issuer. An issuer who obtains such an order from the Commission may file a copy of such order together with a copy of the escrow agreement and a written request for the

release from escrow of all escrowed securities with the Director who shall, after receipt of this material, consent to the release from escrow of all the escrowed securities.

7.8 *Regulators Act Individually*

7.8.1 If the escrow agreement also confers authority upon other regulators, a release by the Director of the escrowed securities will not necessarily result in the release from escrow of such securities. The consent of each regulator named in the escrow agreement must be individually requested and obtained.

7.9 *Transitional Provisions*

7.9.1 Where an escrow agreement conferring authority upon the Director, has been entered into on or before January 1, 1985 by an industrial issuer, the issuer may apply to the Director for discretionary releases of the escrowed securities and the Director shall, in exercising his discretion, be governed by the provisions of item 7 so that the issuer and related security holders are placed in the same position as if this policy had been in force at the time the escrow agreement was executed.

8. TRANSFERS WITHIN ESCROW

8.1 *Transfer Only With Consent*

8.1.1 Unless an escrow agreement which has been accepted by the Director otherwise provides, escrowed securities may not be sold, assigned, pledged, hypothecated, alienated, transferred within escrow or in any other manner dealt with, without the written consent of the Director being first obtained or except as may be required by reason of the death or bankruptcy of any related security holder, in which case the escrowed securities shall be held subject to the escrow agreement for the person or company which shall be legally entitled to be or to become the registered owner thereof.

8.2 *Pledges*

8.2.1 Escrowed securities may only be pledged subject to the terms of the escrow agreement.

8.2.2 A pledgee who in the course of realizing upon his security has acquired beneficial ownership of escrowed securities shall hold them subject to the terms of the escrow agreement.

8.2.3 Except under unusual circumstances, the Director will consent to a request, by a pledger or pledgee, for a transfer of escrowed securities within escrow.

8.3 *Requests*

8.3.1 Where consent to transfer escrowed securities within escrow is required, the request for such consent shall be made in writing by letter signed by the issuer and the affected related security holder addressed to the Director and shall be accompanied by a copy of the escrow agreement. However, where the issuer refuses to sign the request letter, the letter may, in lieu of the signature of the issuer, contain the related security holder's explanation as to why the issuer has refused to agree to the request for transfer within escrow.

8.4 *Consent Only Relates to Escrow*

8.4.1 In some cases requests will be made to transfer within escrow securities, the transfer of which will be a distribution as defined in the Act because of the applicability of sections 109 to 112, inclusive, of the Act or of provisions of the Regulations. It is the responsibility of the related security holder to ensure that the requirements of sections 54 and 81 of the Act are complied with upon the transfer of securities within escrow. The consent of the Director to the transfer within escrow of escrowed securities does not in any way affect this responsibility.

8.4.2 When the related security holder requesting the transfer within escrow of securities is an insider of the issuer, he is obligated, if the transfer is approved and effected, to file an insider report disclosing such transfer in accordance with the provisions of Part 14 of the) Act. Neither the request to the Director for consent to the transfer within escrow of escrowed securities or the granting of such consent in any way affects the obligations of a related security holder to comply with the requirements of Part 14 of the Act.

9. FORM OF THE AGREEMENT

9.1 *Written Agreement*

9.1.1 Whenever an escrow is required of securities, the issuer and each related security holder whose securities are to be escrowed shall enter into a written escrow agreement which shall provide that the securities which are the subject of the escrow are to be held by a trust company, registered under the Trust Companies Act, which is independent of the issuer and all related security holders.

9.2 *Filing Copies*

9.2.1 One fully executed or notarial copy of the escrow agreement shall be filed with the Commission prior to the issuance of the receipt for the prospectus.

9.3 *Form*

9.3.1 The escrow agreement may be prepared in accordance with Form 17 of the Regulations or may be prepared in another form which incorporates the provisions

of this policy and is acceptable to the Director. The issuance by the Registrar of a receipt for the prospectus shall constitute evidence of acceptance by the Director of the form of the escrow agreement. If the escrow agreement is prepared in accordance with Form 17, the Director will, when exercising his discretion thereunder, be guided by the provisions of this policy.

Effective date: March 15, 1987