

**A.S.C. POLICY 5.2**  
**RIGHTS OFFERINGS**

1. APPLICATION OF POLICY

1.1 This policy is intended to incorporate and supplement the requirements of Uniform Act Policy 2-05.

2. INTRODUCTION

2.1 Sections 65(l)(o) and 107(l)(h) of the Alberta Securities Act (the "Act") provide an exemption (the "rights offering exemption") from registration and prospectus requirements for an issuer wishing to sell securities to its security holders by way of a rights offering. The issuer is required to give notice of a proposed rights offering to the Director (the "Director") of the Alberta Securities Commission (the "Commission"). The Director has 10 days from receipt of the notice in writing to notify the issuer in writing if he objects to the offering.

2.2 To assist the Director in determining whether he should object to the sale, provide the Director with information to demonstrate that:

2.2.1 the security holders have been supplied with current information concerning the affairs of the issuer on an ongoing basis (refer to item 3);

2.2.2 the Offering Circular (referred to in item 4) to be sent to the offeree security holders clearly stipulates the terms and conditions of the offering and provides sufficient additional information to allow security holders to make an informed decision whether to subscribe; and

2.2.3 the offering meets certain minimum procedural and substantive Standards to ensure the integrity and fairness of the offering (refer to items 5 and 9).

3. CURRENT INFORMATION AVAILABLE TO SECURITY HOLDERS

3.1 If an issuer proposes to make a rights offering, the Director will consider the following factors in determining whether security holders have been supplied with current information on an ongoing basis:

3.1.1 whether the issuer has been holding regular annual meetings;

- 3.1.2 whether the issuer has been distributing the information required by applicable securities legislation and the statute under which the issuer was incorporated or organized;
  - 3.1.3 whether there has been a change in effective control of the issuer or any significant change in management since the last annual meeting; and
  - 3.1.4 if the issuer is engaged in natural resource exploration and development, whether the security holders have been provided with adequate and timely disclosure of information on the issuer's resource properties.
- 3.2 For greater certainty, objection will ordinarily be taken to a proposed rights offering if the security holders have not been supplied with current information on an ongoing basis or if the issuer is in default in any material respect with applicable corporate or securities legislation.
- 3.3 To assist the Director in assessing the quality of the continuous disclosure made by the issuer, the notice to the Director of a proposed rights offering shall include the following documents:
- 3.3.1 draft offering circular;
  - 3.3.2 notice of the latest annual meeting;
  - 3.3.3 the latest annual report;
  - 3.3.4 the latest audited financial statements;
  - 3.3.5 if the offer is being made in another jurisdiction outside of Canada through a prospectus, a copy of the prospectus submitted for acceptance in that jurisdiction (which may be acceptable as an Offering Circular for the purpose of this policy);
  - 3.3.6 a copy of minutes of the latest annual meeting;
  - 3.3.7 a statement signed by a senior officer of the issuer that there has been no material change, not already disclosed, in the affairs of the issuer since the date of the latest audited financial statements delivered to the security holders;
  - 3.3.8 if proceeds from the rights offering are to be used by a junior resource issuer for exploration or development of resource properties, appropriate engineering reports which comply with national and local policies, and

3.3.9 a certified copy of the board of directors' resolution authorizing the rights offering and the giving of the written notice to the Director.

3.4 The documents listed in items 3.3.1 through 3.3.4, if not already provided to the security holders, shall be sent to them along with the Offering Circular. The balance of the documents need not be forwarded to the security holders unless requested to be forwarded by the Director.

#### 4. CONTENTS OF THE OFFERING CIRCULAR

4.1 The written notice required to be given to the Director under the rights offering exemption must state the date, amount, nature and conditions of the proposed rights offering including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up and paid for. Such information shall be included in the Offering Circular to be provided to offeree security holders, a draft of which shall be filed along with the notice to the Director.

4.2 The Offering Circular shall contain the following information:

4.2.1 the date of commencement and termination of the offering;

4.2.2 the number of rights to be received for each security held;

4.2.3 the number of rights and the amount of money required to purchase one new security;

4.2.4 the procedure for subscribing;

4.2.5 the procedure for selling or transferring rights;

4.2.6 a description of the rights;

4.2.7 the form of subscription rights certificate;

4.2.8 any change in the directors and officers of the issuer since the latest annual meeting;

4.2.9 particulars known to the issuer or its directors of any transfer of securities which has materially affected the control of the issuer since the latest meeting of security holders or alternatively a statement that no such particulars are known;



Offering Circular shall contain the information listed under item 4.2 with appropriate changes to provide sufficient information on the reporting issuer whose securities are being offered to allow security holders make an informed decision whether to subscribe.

## 5. PROCEDURES

5.1 The following procedures shall apply to rights offerings:

5.1.1 A draft Offering Circular of a proposed rights offering shall be provided with the notice to the Director. The offering material will be reviewed by Commission staff although it is not the Commission's intention that this material be reviewed in the same stringent fashion as filings under the prospectus requirements of the Act. If Commission staff have any comments on the offering material, objection will be taken to the offering and the comments provided to the issuer. Such objection will be withdrawn when the comments are resolved and the Offering Circular in final form is filed with and accepted by the Director;

5.1.2 If the securities offered are listed on a stock exchange or are convertible into listed securities, notice of the proposed rights offering shall be given to the stock exchange. Stock exchanges normally require that rights to purchase listed securities be transferable and may require that the rights be posted for trading on the exchange in question;

5.1.3 In order that unregistered security holders may have adequate notice of a rights offering:

5.1.3.1 the offering shall not commence until the expiration of 7 business days after acceptance of the Offering Circular in final form by the Director; and

5.1.3.2 forthwith after acceptance of the Offering Circular in final form, but in any event not later than 3 business days after acceptance of the Offering Circular in final form, the issuer shall publish notice of the rights offering in a daily newspaper having general circulation in the City of Edmonton and a daily newspaper having general circulation in the City of Calgary, addressed to its security holders, giving the date of commencement and termination of the offering;

5.1.4 If the issuer specifies a minimum amount is to be raised, the Director will consider reasonable any offer left open for not more than 30 days. If a minimum amount is not required, the Director will consider reasonable any offer left open for not more than 90 days;

- 5.1.5 If a minimum amount has been specified and the offering is being made on a best efforts basis, subscriptions shall be held in trust until that minimum amount is received. In the event the minimum amount is not reached during the time specified in the offer, the subscriptions shall be returned to the subscribers in full. An independent trustee satisfactory to the Director shall be named to administer these funds and the Director may require provision that he be notified of the release of the funds from trust;
- 5.1.6 If any party is giving a stand-by commitment in connection with the offering, the Director may require evidence of the financial ability of that party to meet the commitment. If the party is a registrant and subject to minimum capital requirements, favorable consideration will be given in this regard;
- 5.1.7 If, in connection with a stand-by commitment, there is an underwriting agreement which contains a "market-out" clause or similar provision, this must be disclosed together with the arrangements made to assure that subscriptions are returned to subscribers in full in the event the minimum amount required is not received. This would require the establishment of a trust as in item 5.1.5 above; and
- 5.1.8 If there is an agreement to compensate dealers for obtaining exercise of rights, there shall be no provision for payment of a higher fee for the exercise of rights by new security holders than is payable for the exercise of rights by existing security holders. Provision for payment of a higher fee is one indication of a distribution requiring a prospectus.

## 6. RESTRICTIONS ON USING RIGHTS OFFERINGS OF NON-REPORTING ISSUERS

- 6.1 In general terms, the Commission is of the view that a non-reporting issuer should not be able to distribute its securities to other than its existing security holders except through a prospectus or other statutory exemption. In the case of securities issued pursuant to the rights offering exemption, resale restrictions are applicable which, except in limited circumstances, would prohibit the transfer for value in Alberta of both the rights and the securities received upon the exercise of the rights if the issuer is not a reporting issuer in Alberta or has not been a reporting issuer in Alberta for at least 1 year. Accordingly, the Director will object to the use of the prospectus exemption in respect of a proposed rights offering by an issuer who is not a reporting issuer or has not been a reporting issuer for at least 1 year unless:
  - 6.1.1 the rights issued to its security holders resident in Alberta are not transferable in Alberta; and
  - 6.1.2 the Offering Circular clearly discloses the limits on the transferability of the rights and of the underlying securities (see Schedule A for sample wording),

6.1.3 the first trade is exempted by section 126(3) of the regulations under the Act,

or

6.1.4 an appropriate section 116 or section 117 Order has been obtained.

## 7. RESTRICTIONS ON USING RIGHTS OFFERING EXEMPTION FOR MAJOR FINANCINGS

7.1 The Commission is of the view that a major financing by way of a rights offering should be made pursuant to a prospectus in order that a potential investor has full information upon which to base an investment decision. Therefore, the Director will object to the use of the prospectus exemption in respect of a proposed rights offering in the following circumstances:

7.1.1 if the proposed offering, if completely subscribed, would result in an increase of more than 50% in the number of the outstanding securities of the class to be issued upon exercise of the rights or, in the case of debt, if the proposed offering if completely subscribed would result in an increase of more than 50% of the principal amount of the debt outstanding in the class of debt to be issued upon exercise of the rights. For the purpose of determining whether objection will be raised on this basis, the Director will consider:

7.1.1.1 the results of any rights offering by the issuer in reliance on the exemption during the previous 12 months so that the 50% limit will not be exceeded in any 12 month period; and

7.1.1.2 if the securities to be issued upon the exercise of the rights are convertible into securities of another class, whether the potential increase in outstanding securities as if conversion had occurred would exceed the 50% limit.

7.1.2 if the issuer has been dormant or inactive and the proposed offering is to finance the reactivation of the issuer; or

7.1.3 if the offering is for the purpose of financing a major new undertaking.

7.2 Notwithstanding item 7.1, objection will not normally be raised on the above bases if Alberta residents hold fewer than 5% of the outstanding securities of the class which is entitled to receive rights under the offering or if the issuer is not a reporting issuer in Alberta.

## 8. USE OF THE REGISTRATION EXEMPTION

- 8.1 If an issuer proposes a rights offering by way of prospectus, use of the exemption from the registration requirements continues to be available to the issuer notwithstanding that the issuer is not relying on the prospectus exemption. An issuer that wishes to rely on the registration exemption should so state in the material filed with the preliminary prospectus. The Director will not ordinarily object to use of the registration exemption in such cases.

## 9. FAIR DEALING - STAND-BY COMMITMENTS AND OPTIONS

- 9.1 The Commission is of the view that it is not in the public interest to allow rights offering to proceed which appears to grant

9.1.1 a special relationship person or company, or

9.1.2 an associate or affiliate of such special relationship person or company

of the issuer (a "related party") an advantage which is not available to other security holders. The Commission recognizes that related parties are often represented on the board of directors of an issuer and may have the advantage of access to accurate and current information which provides a better insight into an issuer's affairs. The apparent granting of such an advantage to a related party would therefore be of particular concern to other public security holders who do not have that advantage. An advantage may, appear to be given if a rights offering may result in a related party increasing its proportionate holdings in the issuer. In the absence of special circumstances which can be demonstrated to justify alternative arrangements, the Director will object to a rights offering if

9.1.3 the rights offering is priced at or above market thereby discouraging other security holders from exercising their rights;

9.1.4 a related party has agreed to provide a stand-by commitment to take up any securities not subscribed for by other security holders, unless a second stage right to take up any such unsubscribed securities is offered on an acceptable pro rata basis to all security holders who exercised their initial rights in full; or

9.1.5 the issuer has granted an option on additional securities to a related party as ostensible consideration for having undertaken a stand-by commitment.

- 9.2 The following will be considered an acceptable pro rata basis (although other bases may be acceptable):

9.2.1 Each security holder who has fully exercised his initial rights may take up, at the same price per security as in the initial offering, that number of securities available through unexercised rights that is obtained by multiplying:

9.2.1.1 the number which is obtained by dividing the number of rights exercised by such security holder in the initial stage by the aggregate number of rights exercised by all security holders in that stage

by

9.2.1.2 the total number of securities available through all unexercised rights.

9.2.2 The party giving the stand-by commitment may take up all securities not taken up pursuant to the initial and second stage rights, at the same price per security as in the initial and second stages.

## 10. RIGHTS OFFERINGS NOT OFFERED IN ALBERTA

10.1 Since a rights offering, in contrast with a new offering of securities, is by definition an offering in which all security holders of the relevant class should have a right to participate, the Director would find objectionable a rights offering which excludes Alberta security holders if such an offering is made by:

10.1.1 a reporting issuer, or

10.1.2 a non-reporting issuer which has more than 5% of security holders of the relevant class resident in Alberta.

10.2 If an offering of this nature is made by any such issuer, the Commission would consider taking appropriate enforcement action, including the cease trade or denial of exemptions, against the issuer and its directors and officers.

## 11. EXERCISE OF DISCRETION AND RIGHT OF APPEAL

11.1 The Director may waive or vary compliance with any requirements of this policy in an appropriate case. The Applicant has a right to appeal the Director's decision to the Commission pursuant to section 24(l) of the Act.

11.2 Any issuer or security holder may apply to the Commission pursuant to section 116 of the Act for relief from the re-sale restrictions attaching to securities obtained under the rights offering exemption; for example, to allow residents of Alberta to re-sell securities through the facilities of a stock exchange or other established market outside of Alberta in accordance with the laws of the jurisdiction where the market is located. Factors which may be taken into account on such applications include the extent of the holdings by residents of Alberta of the class of securities in question and the availability of public disclosure with respect to the issuer.

## 12. DIVIDEND REINVESTMENT COMBINED WITH SHARE PURCHASE PLANS

12.1 Sections 65(l)(w) and 107(l)(x) of the Act currently exempt from the registration and prospectus requirements of the Act the issue of securities pursuant to a dividend reinvestment plan. These provisions also apply to certain plans ("combined plans") which include a cash payment option to purchase additional securities beyond the amount of the dividend, a feature of nearly an dividend reinvestment plans. The Commission anticipates that most combined plans accordingly will be exempt from the registration and prospectus requirements of the Act. If a particular plan would not fall within the terms of sections 65(l)(w) and 107(l)(x), the Commission will continue to deal with the offering material on an annual basis pursuant to sections 65(l)(o) and 107(l)(h) but will use its discretion in applying the requirements of this policy given the special characteristics of such plans.

### 13. VARIATION IN TERMS

13.1 The issuer shall notify the Director, in writing, of any proposed variation in the terms of a rights offering prior to the effective date of the variation.

13.2 The Commission considers it prejudicial to the public interest to permit certain variations in the terms of a rights offering because the rights trade at values determined in part from the terms of the offering (i.e. exercise price, expiry date, etc.) and any variation to these terms could affect the value of the rights. In the event of an unacceptable variation in the terms of a rights offering, the Commission may consider enforcement action, such as the cease trade and/or denial of exemptions, against the issuer and/or key officers, directors and insiders.

Effective date: March 15, 1987

#### **SCHEDULE A TO ITEM 4.2.14 OF A.S.C. POLICY 5.2**

(The following notice shall be included in rights offering circulars of non-reporting issuers in order to advise Alberta residents of re-sale restrictions on securities acquired pursuant to rights offerings)

#### **NOTICE TO RESIDENTS OF ALBERTA**

In order to comply with the Securities Act (Alberta) and the policies of the Alberta Securities Commission,

1. the rights issued pursuant to this offering to residents of Alberta are not tradeable in Alberta, and,
2. the securities issued to residents of Alberta upon exercise of the rights may not be sold or otherwise disposed of for value in Alberta

except pursuant to either a prospectus or a statutory exemption available only in specific and limited circumstances unless or until, among other things, the issuer has been a reporting issuer in Alberta for at least 12 months and disclosure to the Commission of the original purchase has been made.

The issuer is not now a reporting issuer in Alberta and does not now intend to become a reporting issuer in Alberta.