

**A.S.C. POLICY 2.7**  
**SHARES FOR DEBT APPLICATIONS**

1. INTRODUCTION

1.1 The Alberta Securities Commission (the "Commission") has established the following guidelines to assist issuers proposing to submit an application to the Commission (a "Shares for Debt Application") for a discretionary order pursuant to subsection 116(1) of the Securities Act, S.A. 1981, c. S-6.1, as amended (the "Act") to permit the issuance of securities to creditors of the issuer in settlement of a bona fide outstanding debt of the issuer (an issuance of "Shares for Debt").

2. GENERAL CONSIDERATIONS

2.1 Prior to submitting a Shares for Debt Application, an issuer should consider whether it is able to issue Shares for Debt in reliance on an available exemption to the registration and prospectus requirements contained in the Act. Where an issuer is able to rely on an exemption from sections 54 and 81 of the Act to issue Shares for Debt, then the staff of the Commission will generally not support a Shares for Debt Application by the issuer;

2.2 The staff of the Commission is also of the view that, generally, an issuer should be able to finance its business operations without the need to issue Shares for Debt. Accordingly, a Shares for Debt Application should only be made by an issuer in those limited circumstances where an issuer has exhausted all other sources of financing and has no other available alternative; and

2.3 A Shares for Debt Application should be prepared in accordance with the procedures set forth in A.S.C. Policy 2.1.

3. REQUIREMENTS

In general, the staff of the Commission shall support a Shares for Debt Application if the issuer making the application (the "Applicant") meets all of the following requirements:

3.1 The Applicant is in dire financial circumstances and is able to demonstrate that no other source of funding is available to it to settle the debts owed to its creditors;

3.2 The proposed issuance of Shares for Debt, either alone or in combination with other activities undertaken by the Applicant, will place the Applicant in a positive working capital position or otherwise enable the Applicant to continue as a going concern;

- 3.3 The debts owed by the Applicant are bona fide, accrued debts which are evidenced by documentation acceptable to the staff of the Commission;
- 3.4 The transactions giving rise to the debts have not have been structured on a shares for debt basis (although the staff of the Commission will consider varying this requirement for debts incurred specifically for the purpose of enabling the Applicant to obtain funds necessary to proceed with the Shares for Debt Application);
- 3.5 The Applicant offers the proposed shares for debt settlement on identical terms to each creditor of a class of creditors;
- 3.6 The Applicant has obtained a signed acknowledgement in the form attached as Schedule A hereto from each creditor of the Applicant that has agreed to accept Shares for Debt prior to the issuance of the Shares for Debt;
- 3.7 If the securities of the Applicant to be issued under the proposed Shares for Debt Issuance are to be listed on a stock exchange in Canada, the Applicant has obtained the written conditional approval of the exchange for the proposed issuance of Shares for Debt; and
- 3.8 If the securities of the Applicant to be issued under the proposed issuance of Shares for Debt are to be listed on a stock exchange in Canada, then the issue price of the securities may be calculated in accordance with the rules of the exchange. If there is no published market for the securities of the Applicant to be issued under the proposed issuance of Shares for Debt, then the issue price of the securities is approximately equal to the fair market value of the securities. The staff of the Commission may require evidence from the Applicant as to the manner in which the fair market value of the securities was calculated.

#### 4. RESALE RESTRICTIONS

The staff of the Commission will recommend that a Shares for Debt order pursuant to subsection 116(1) of the Act that contains a condition that the first trade in the securities acquired by creditors of the Applicant in reliance on the Shares for Debt order shall be a distribution unless it is made in reliance on subsection 109(2) of the Act as if the securities had been issued under an exemption referred to in subsection 109(1) of the Act.

#### 5. DOCUMENTS TO BE FILED

In addition to any documents required to be filed by the Applicant pursuant to A.S.C. Policy 2.1, the following documents are to be submitted to the Commission in connection with a Shares for Debt Application:

- 5.1 A copy of the agreement with the creditor of the Applicant wherein the creditor has agreed to accept full settlement of the debt;
- 5.2 An acknowledgement in the form attached as Schedule A hereto signed by each creditor of the Applicant that has agreed to accept Shares for Debt;
- 5.3 Where applicable, written conditional approval from each stock exchange in Canada on which the securities to be issued pursuant to the proposed issuance of Shares for Debt are listed.

Effective date: October 10, 1995

## **SCHEDULE A TO A.S.C. POLICY 2.7**

### **ACKNOWLEDGEMENT OF CREDITOR**

TO: Alberta Securities Commission

I, (Creditor), hereby acknowledge that:

1. this Acknowledgement is given in connection with an application by (issuer) (the "Issuer") for the issue of (description and number of securities) in satisfaction of (amount of debt) owed to me by the Issuer;
2. the debt I am owed is a bona fide, accrued debt of the Issuer;
3. I have been informed and fully understand that by accepting shares of the Issuer in satisfaction of the debt I will become a shareholder of the Issuer and may receive less proceeds in the event of dissolution or liquidation of the assets of the Issuer than I would receive by remaining a creditor of the Issuer;
4. I have been informed and fully understand I will receive securities pursuant to a discretionary order granted under subsection 116(l) of the Securities Act (Alberta) (the "Act") and as a consequence:
  - (a) I do not have certain protections, rights and remedies provided under the Act to purchasers of shares distributed by way of prospectus, including statutory rights of rescission and damages;
  - (b) I may not receive information that would otherwise be required to be provided to me under securities legislation;
  - (c) the Issuer is relieved of certain obligations that would otherwise apply under securities legislation; and
  - (d) resale of the securities is restricted for a certain period of time;

5. I have been informed and fully understand that I may seek independent legal, accounting or financial advice as to the merits of accepting securities in satisfaction of the debt.
6. DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Creditor