

A.S.C. POLICY 4.10
PROSPECTUSES - GENERAL GUIDELINES

1. PRE-FILING CONFERENCES WITH ISSUERS

1.1 Staff of the Alberta Securities Commission (the "Commission") are available for conferences with prospective issuers or their representatives, in advance of filing a prospectus, for the purpose of

1.1.1 discussing any major problems confronting an issuer involving a proposed prospectus filing,

1.1.2 resolving specific problems of an unusual nature which sometimes arise by complicated financial transactions, and

1.1.3 raising material questions involving the public interest and questions of interpretation not previously considered by the Commission in the context of section 96(4) of the Alberta Securities Act (the "Act").

Issuers or their representatives should identify proposed departures from Commission policy or practice as well as unusual proposals.

1.2 Issuers or their representatives have occasionally requested Commission staff to draft certain wording which will comply with some requirement or request for disclosure. The staff cannot undertake to prepare material for filing but limits itself to stating the kind of disclosure required and leaves the drafting to the issuer and its representatives.

1.3 A written submission outlining the specific problems to be discussed in the pre-filing conference should be submitted in advance to the Deputy Director, Securities, in Edmonton.

1.4 In respect of national filings where Alberta is designated as the principal jurisdiction, any resolution or arrangement made will be binding in Alberta only and, accordingly, issuers or their representatives should also discuss their concerns referred to in item 1.1 with other jurisdictions in which the prospectus is proposed to be filed. Commission staff will relay, to other jurisdictions, any resolution or arrangement made where the staff considers the matter of sufficient significance to do so.

Note: By Notice published in the ASC Summary of April 3, 1987, the ASC noted that a request for a review of a draft prospectus is not a proper purpose of a pre-filing conference.

2. BEST EFFORTS OFFERING

- 2.1 In a best efforts offering, other than an offering of securities to be distributed continuously, the minimum amount of funds required to be raised to accomplish the purposes of the issue shall be stated in the prospectus.
 - 2.2 Section 92(2)(h) and (i) of the Regulations made under the Act restricts the distribution period to 90 days or such extension thereof as the Director of the Commission (the "Director") may consent. If the minimum amount of funds is not reached within the 90 day period, the offering may continue if the Director has given his consent to an extension of time and an amendment to the prospectus has been filed with the Commission and sent to all subscribers who subscribed during the 90 day period. It should be noted that such subscribers have the right of withdrawal under section 106(l) of the Act after receipt of the amendment. Such right of withdrawal shall be included in the amendment.
 - 2.3 An executed agreement, between the issuer, its agent, and a trustee acceptable to the Director, must be filed with the prospectus substantiating that the trustee, which will usually be a licensed trust company, has agreed that it
 - 2.3.1 will hold the proceeds raised from the offering until the minimum amount of funds has been raised, and
 - 2.3.2 will not release the proceeds to the issuer until the agent's contractual obligations have been met.
- The Commission considers that it is the responsibility of the issuer, its agent, and the trustee to satisfy themselves that
- 2.3.3 based on their review of the list of subscribers, a distribution has been made and that warehousing of the securities has not taken place, and
 - 2.3.4 all necessary conditions precedent to the closing have been satisfied.
- 2.4 If the minimum amount of funds is not received within the time specified, the trustee must then return the subscriptions to the subscribers without any deductions.

3. OFFERING CONDITIONAL ON REGISTRATION OR LICENSING

- 3.1 If the purpose of the issue is to fund a new loan, trust or other business which requires licensing or registration by another government agency such as under the authority of the Superintendent of Insurance or the Director of Trust Companies, etc., a receipt for the prospectus, if issued, will be issued subject to the condition, which shall be set out in the prospectus, that the subscriptions shall be held by a trustee, acceptable to the Director, for not longer than a specified period. If, during that period, the license is issued or registration is granted by that other government agency, the trustee shall transmit the subscription proceeds to the issuer. If, at the end of that period, the license has not been issued or the registration has not been granted, the subscription proceeds must be returned to the

individual subscribers.

- 3.2 If an issuer is a regulated company or controls a regulated company, the issuer must provide evidence to Commission staff that the offering document has been submitted to the regulator and that the regulator has no objections to the proposed distribution of securities.

4. RIGHT TO REDEMPTION OR REPURCHASE

- 4.1 If less than all the securities of a class may be redeemed or repurchased, the method of selecting the securities to be redeemed or repurchased shall be clearly stated.

5. REPRESENTATIONS AS TO LISTING ON A STOCK EXCHANGE

- 5.1 Section 70(3) of the Act prohibits any representation that any security will be listed on any stock exchange or that an application has been or will be made to list the security upon any stock exchange except with the written permission of the Director. Before the Director will give his consent (as evidenced by a receipt for a prospectus containing the representation) he must be provided with a communication in writing from that stock exchange stating that the application for listing has been made and has been accepted subject to the issuer meeting the requirements for listing of the applicable stock exchange.

- 5.2 Unless the communication referred to in item 5.1 contains alternative wording acceptable to the Director, the following wording shall be used (in prospectuses, rights offering circulars, securities exchange take-over bid circulars, and information circulars concerning a proposed corporate reorganization or amalgamation that would result in the issue of new or additional securities) to refer to the proposed listing of securities on a stock exchange:

“(insert name) Stock Exchange has conditionally approved the listing of these securities. Listing is subject to the company fulfilling all of the requirements of the Exchange on or before (insert date), including distribution of these securities to a minimum number of public shareholders.”

6. AMALGAMATIONS - ESCROWED SHARES

- 6.1 If a natural resource issuer which has a portion of its issued shares held in escrow is amalgamated and such escrowed shares are not donated back for the benefit of the amalgamated company, then, unless upon application by the issuer the Director grants release of such shares from escrow, the shares in the amalgamated company for which the escrowed shares are exchanged shall be placed in escrow and a new escrow agreement filed prior to the issuance of a receipt for any prospectus relating to the amalgamated company.

7. GREEN SHOE OPTIONS, WARRANTS AND CONVERTIBLE FEATURES ADDED TO OR DELETED FROM A PRELIMINARY PROSPECTUS

- 7.1 Occasionally offerings are made which include an option or agency component (a so-called green shoe option) for which additional securities may be acquired by an underwriter or which include rights to convert into, or warrants to acquire, the same or different securities from those which are the main subject of the offering.
- 7.2 If a green shoe option, warrant or convertible feature is not included in a preliminary prospectus, such option, or warrant or convertible feature may be added to the prospectus without the necessity to file and distribute an amendment to the preliminary prospectus.
- 7.3 Where a green shoe option provided for in a preliminary prospectus is abandoned before the prospectus is filed, it may be deleted from the prospectus without the necessity to file and distribute an amendment to the preliminary prospectus.
- 7.4 If a warrant or convertible feature described in a preliminary prospectus is abandoned before the prospectus is filed, the abandonment of the warrant or convertible feature will require the filing and distribution of an amendment to the preliminary prospectus.
- 7.5 If a warrant or convertible feature is not mentioned in a preliminary prospectus but is intended to be offered in the prospectus, issuers are requested to file the additional disclosure to be added to the prospectus sufficiently in advance of filing the prospectus to allow Commission staff adequate time to review and comment on the additional disclosure. Adequate review time is particularly important where a convertible feature is to be added which relates to a class of securities different from the securities that are the main subject of the offering because the security into which conversion will be made must be satisfactorily described in the prospectus.

8. EXTENSION OF 75 DAY PERIOD FOR ISSUANCE OF FINAL RECEIPT

- 8.1 Section 92(2)(b) of the Regulations provides that a receipt for a prospectus shall not be issued if the receipt has not been issued within 75 days after the date of the receipt for the preliminary prospectus due to the inaction of the person or company filing the preliminary prospectus. The Commission considers that inaction may consist of the issuer failing to make reasonable and timely efforts to make acceptable responses to the comments of the Commission staff or delaying the filing of final material, after having satisfactorily dealt with such comments, for any reason including pending favorable market conditions.
- 8.2 Section 92(2)(b) of the Regulations permits the Director to close inactive files and, more importantly, to ensure that issues are not being marketed by means of preliminary prospectuses containing stale information including financial information. It should be noted

that section 92(3) of the Regulations gives the Director discretion to waive any provision of section 92(2) if he is satisfied that there is sufficient justification for so doing.

8.3 When the 75 day period is near expiry, it is the responsibility of the issuer to ascertain whether the Director will refuse to issue a receipt for the prospectus pursuant to section 92(2)(b). If the Director takes such a position and if the issuer wishes to proceed with the issue, a new preliminary prospectus must be filed with the appropriate filing fee.

8.4 If the 75 day period has expired, but the Director does not refuse to issue a receipt for a prospectus on the basis of the inaction of the issuer, the Director may usually require that the prospectus contain updated financial statements and updated material facts and may require the updating of any reports filed under the Act and Regulations.

8.5 If the 75 day period is exceeded by more than a few days, the Director will, unless he is satisfied that

8.5.1 the preliminary prospectus is not being used to market the issue, or

8.5.2 the issuer is newly incorporated or organized and is not yet carrying on business to any significant extent,

require that an amendment to the preliminary prospectus or an amended preliminary prospectus be filed disclosing the updated information referred to in item 8A.

9. CERTIFICATE OF UNDERWRITER IN PROSPECTUS

9.1 An underwriter shall be required to be registered pursuant to section 54(1)(b) of the Act before it can offer securities in Alberta.

9.2 If there is an underwriter, section 91(1) of the Act requires that a preliminary prospectus and a prospectus contain a certificate signed by an underwriter who is in a contractual relationship with the issuer. This requirement

9.2.1 provides the benefits and protections which flow to investors from due diligence procedures followed by an underwriter, and

9.2.2 permits the statutory right of action against the underwriter under section 168(1) of the Act.

9.3 Accordingly, the Director will direct the Registrar not to issue a receipt for a prospectus which does not contain the signed certificate of an underwriter registered in Alberta, except where a prospectus is filed

- 9.3.1 pursuant to section 81(2) of the Act (a shelf prospectus),
- 9.3.2 by an issuer registered in Alberta as a security issuer,
- 9.3.3 with respect to a distribution exempt from the registration requirements of the Act,
or
- 9.3.4 by a mutual fund which proposes to distribute its securities in Alberta through registered dealers generally rather than through a designated registrant.

10. PROJECT FINANCINGS - RESPONSIBILITY FOR CONTINUOUS DISCLOSURE REQUIREMENTS

- 10.1 In respect of project financings it is the view of the Commission that it is not appropriate for an unincorporated association or co-tenancy comprised of the security holders to be responsible for its financial reporting requirements under the Act, given the passive nature of the investment and the absence of directors and officers who would otherwise assume such responsibility. The Commission believes it is appropriate for the person or company owning the property (the "promoter-vendor") prior to the issue of securities representing ownership interests therein, or other person or company benefitting from the public offering or the project, to assume such responsibility.
- 10.2 Accordingly, if a preliminary prospectus is filed with the Commission offering securities representing undivided interests in a property or properties, an application must be made to the Commission for an order under sections 123 and 184 of the Act providing that the promoter-vendor or other person or company referred to in item 10. 1 be exempted from the filing requirements of Parts 11, 12 and 14 of the Act subject to the condition that the promoter-vendor or other such person or company assume responsibility for the continuous disclosure requirements of the Act in respect of the affairs of the association or co-tenancy.
- 10.3 The order referred to in item 10.2 must be granted prior to the issuance of a receipt for the prospectus.
- 10.4 A request for exemption from filing with the Commission and delivering to security holders quarterly financial statements may be included in the application referred to in item 10.2.

11. DISCLOSURE OF MECHANISM FOR MONITORING LEVEL OF CANADIAN OWNERSHIP

- 11.1 If an offering requires constraints imposed on the ownership of the securities of the issuer to ensure that the issuer has a required level of Canadian ownership, the prospectus must describe the mechanism, if any, by which the level of Canadian ownership of the issuer's securities will be monitored and maintained.

12. USE OF THE WORD "TRUST" (subject to section 104 of the Regulations)

12.1 If a trust company registered under the Trust Companies Act or any affiliate of such trust company is

12.1.1 the promoter of an issuer whose securities are offered by a prospectus, or

12.1.2 the manager of or the portfolio manager of a mutual fund or a closed-end investment corporation or trust whose securities are offered by a prospectus, the issuer's prospectus shall have the following statement in bold face type on the face page:

12.1.3 **"(Insert description of security - e.g. Units of the Fund) are not "deposits" within the meaning of the Canada Deposit Insurance Corporation Act (Canada) and are not insured under the provisions of that Act or any other legislation."**

12.2 If the word "Trust" is used in the name of an issuer and the issuer is not a trust company, the following warnings shall, subject to alternative wording acceptable to the Director, be placed in bold print on the face page of the prospectus:

12.2.1 **"(Name of Issuer) is not a trust company and, accordingly, is not registered under the Trust Companies Act (Alberta) as it does not carry on or intend to carry on the business of a trust company."**

12.2.2 **"(Name of issuer) is a (mutual fund, closed-end investment corporation or trust) which offers and sells its (units/shares) to the public. (Description of securities) are not "deposits" within the meaning of the Canada Deposit Insurance Corporation Act (Canada) and are not insured under the provisions of that Act or any other legislation."**

13. FLOW-THROUGH SHARES

13.1 Subject to the proposed amendments to the Income Tax Act (Canada) pursuant to the February 26, 1986 Federal budget, the following concern will remain valid until such proposed legislation is passed. A major concern with flow-through shares is that they may be confused with shares of limited liability. A flowthrough share is issued for a temporary period only and carries a right to earn a limited liability share, and therefore carries with it the risk of unlimited liability until the limited liability share is earned. Until the limited liability share is earned, the investor may be liable to all risks associated with the investment program. Therefore, in respect to flow-through shares, the Commission requires

13.1.1 that the face page of the prospectus shall clearly state the unique characteristic that the flow-through share has of possible unlimited liability vis-a-vis the limited liability share. Reference shall also be made to the section in the prospectus which provides greater detail of the risks associated with the particular investment, and

13.1.2 that the prospectus shall contain

13.1.2.1 a section disclosing the liability or risks that could lead to the investor facing liabilities greater than his original investment, and

13.1.2.2 disclosure that the investor could be liable for damages greater than the insurance coverage carried by the issuer.

14. PROSPECTUS DISCLOSURE OF INCOME TAX MATTERS

14.1 In offerings where property has been rolled over into an issuer, disclosure must be provided in the financial statements, and in the body of the prospectus where discussion on the acquisition is provided, and under risk factors of the issuer's potential income tax liability resulting from the lack of tax deductions available with respect to such property.

14.2 In unit offerings where an allocation of the purchase price is required under the Income Tax Act for the purpose of income tax cost determination, disclosure of the method of allocation is required in the prospectus.

14.3 In offerings where the income tax aspects of the investment are particularly relevant to the investor, there must be a warning in bold print to the effect that investors are advised to consult their own tax advisors.

15. DATE OF CERTIFICATES

1.5.1 The certificates in the preliminary prospectus or prospectus shall be dated not more than 3 business days before the date of the filing of the preliminary prospectus or prospectus or such other time as the Director may accept.

16. FINANCIAL INFORMATION

16.1 Annual or interim financial statements approved by the board of directors of an issuer prior to filing a prospectus shall be included in the prospectus; interim financial statements may be summarized in the prospectus if appropriate.

16.2 Unaudited stub-period financial information filed pursuant to section 118(l) of the Regulations shall be clearly marked in the prospectus as "Unaudited" and shall be disclosed

on the same schedules as the audited financial statements.

17. LIMITED PARTNERSHIP AGREEMENTS

17.1 The limited partnership agreement must be attached to both the preliminary prospectus and the prospectus.

18. FEASIBILITY REPORTS

18.1 If the proceeds raised from an offering by a junior industrial issuer are to be expended on an unproven product, process or service, a current feasibility report shall be filed with the preliminary prospectus. This report shall be prepared by an independently qualified expert and the report shall contain a technical feasibility analysis or a market feasibility analysis, where appropriate.

18.2 The name of the author and all salient aspects of the feasibility report, including recommendations and conclusions, shall be disclosed in the prospectus, in layman's terms, and a copy of the report shall be provided to the Commission for review by the Commission staff and shall be placed on the Commission's public files.

18.3 The provisions of sections 85 to 88, inclusive, of the Regulations shall be applicable and a certificate equivalent to that required by section 90(2) of the Regulations shall be filed.

19. ENGINEERING AND GEOLOGICAL REPORTS

19.1 The following matters shall apply to all engineering and geological reports filed under section 88 of the Regulations:

19.1.1 National Policies 2A or 2B shall apply, as appropriate.

19.1.2 Inclusion of the full report in the offering document is not acceptable. The disclosure in the document must provide the required information in layman's terms and be a concise summary providing full, true and plain disclosure of all material facts.

19.1.3 The date of the report shall be within one year of the date of the receipt for the preliminary prospectus.

20. ASSET AND EARNINGS COVERAGE

20.1 Where disclosure of asset and earnings coverage is required pursuant to the Regulations and less than a one time coverage is expected, disclosure of the estimated coverage shall accompany the filing of the preliminary prospectus.

21. SECONDARY OFFERING

Where a secondary offering is being made pursuant to the same prospectus as a primary offering, the secondary vendors must bear their proportionate share of the expenses of the distribution.

22. CONVERSION RIGHTS ON CONVERTIBLE DEBENTURES OR CONVERTIBLE PREFERRED SHARES

22.1 An issuer shall state in its prospectus and trust indenture that:

22.1.1 it will notify registered holders in Alberta of convertible debentures or convertible preferred shares of the date the conversion privilege is to expire. The notification shall be given within a reasonable time period prior to the expiry of the conversion privilege.

22.1.2 if during the conversion period there is an adjustment in the conversion terms to give effect to a stock split, share consolidation or other stated event, it shall send a notice to the registered holders in Alberta of the convertible debentures or convertible preferred shares advising them of the adjusted conversion terms, and

22.1.3 it will send prior notice to holders in Alberta of convertible debentures or convertible preferred shares of its intention to redeem such securities.

22.2 For purposes of item 22.1, notice to be sent to security holders in Alberta shall be sent by first class mail.

23. OPINIONS

23.1 Experts whose opinions are presented in a prospectus must be named in the prospectus.

24. PURPOSE OF ISSUE - EXPERIENCE OF OFFICERS, DIRECTORS AND PROMOTERS OTHER RESOURCES

24.1 Section 96(2)(c) of the Act requires the Director to direct the Registrar not to issue a receipt for a prospectus where it appears to the Director that the proceeds from the sale of securities to be paid to the treasury of the issuer, together with other resources of the issuer, will be insufficient to accomplish the purpose stated in the prospectus. One major resource is people. A sufficient number of directors, officers and promoters of the issuer should have knowledge and experience in the business for which funding is to be sought so that the Director will not conclude that the human and other resources are insufficient to accomplish the purpose stated in the prospectus. Where such knowledge and ability is not apparent in the directors, officers and promoters, the Director may be satisfied where it is shown that the issuer has contracted for such services.

24.2 In respect of each officer, director and promoter of junior issuers state the approximate amount of time each such individual intends to devote to the affairs of the issuer where such time will not be on a full time basis.

*24.3 In addition, Section 96(2)(d) and 96(2)(e) require the Director to assess the past conduct of the issuer and its directors, officers, promoters and control persons. In respect of each director, officer, promoter, and control person of a junior issuer, disclosure shall be made of the following:

24.3.1 For the previous five years, for each individual, disclose:

24.3.1.1 details of any bankruptcy proceedings,

24.3.1.2 any orders made against the individual by any securities commission, stock exchange or similar other body in any or foreign jurisdiction.

24.3.2 For the previous five years for each individual, disclose all associations with corporate or other entities including the period and nature of the association:

24.3.2.1 which have been the subject of a receivership or bankruptcy,

24.3.2.2 which have been the subject of any orders made against the corporation or other entity by any securities commission, stock exchange or similar other body in any Canadian or foreign jurisdiction.

24.3.3 For the previous five years, for each individual and for each corporate or other entity the individual is associated with, disclose:

24.3.3.1 details of any criminal charges or any convictions resulting from criminal proceedings,

24.3.3.2 details of any lawsuits, with respect to securities related matters.

Effective Date: March 15, 1987

*Effective Date: September 24, 1987