

Annex A1

Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*

1. *National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.*
2. *The following Part is added after section 8.3:*

PART 8A: Rights offerings

Application

8.1A(1) This part applies to an issuer that files a preliminary or final prospectus to distribute rights.

(2) In this Part,

“additional subscription privilege” means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

“basic subscription privilege” means the privilege to subscribe for the number of securities set out in a rights certificate held by a holder of the rights certificate;

“managing dealer” means a dealer that has entered into an agreement with an issuer under which the dealer has agreed to organize and participate in the solicitation of the exercise of rights issued by the issuer;

“marketplace” has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

“market price” means for securities of a class for which there is a published market

(a) except as provided in paragraph (b)

(i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

- (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
- (b) if trading of securities of the class in the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:
 - (i) the average of the closing bid and closing ask prices for each day on which there was no trading;
 - (ii) if the published market
 - (A) provides a closing price of securities of the class for each day that there has been trading, the closing price, or
 - (B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there has been trading;

“published market” means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“soliciting dealer” means a person or company whose interest in a rights offering is limited to soliciting the exercise of rights by holders of those rights;

“stand-by commitment” means an agreement by a person or company to acquire securities of an issuer not issued under the basic subscription privilege or the additional subscription privilege available under a rights offering.

- (3) For the purpose of the definition of “market price”, if there is more than one published market for a security, and if
 - (a) only one of the published markets is in Canada, the market price is determined solely by reference to that market;

- (b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined; and
- (c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date on which the market price is being determined.

Filing of prospectus for a rights offering

8.2A (1) An issuer must not file a prospectus for a rights offering unless

- (a) in addition to qualifying the distribution of the rights, the prospectus qualifies the distribution of the securities issuable on exercise of the rights,
 - (b) if there is a managing dealer, the managing dealer complies with section 5.9 as if the dealer were an underwriter,
 - (c) the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to security holders, and
 - (d) the issuer sets the subscription price for a security issuable on exercise of the right distributed by the prospectus lower than
 - (i) the market price, as of the date of the final prospectus, if there is a published market for the security, or
 - (ii) fair value, as of the date of the final prospectus, if there is no published market for the security.
- (2) If subparagraph (1)(d)(ii) applies, the issuer must deliver to the regulator independent evidence of fair value.
- (3) Subparagraph 1(d)(ii) does not apply if all insiders of the issuer are prohibited from increasing their proportionate interest in the issuer through the exercise of rights under the offering or through a stand-by commitment.

Additional subscription privilege

8.3A An issuer must not grant an additional subscription privilege to a holder of a right unless

- (a) the issuer grants the additional subscription privilege to all holders of rights,
- (b) each holder of a right is entitled to receive, on exercise of the additional subscription privilege, the number or amount of securities that is equal to the lesser of
 - (i) the number or amount of securities subscribed for by the holder under the additional subscription privilege; and
 - (ii) $x(y/z)$ where
 - x = the aggregate number or amount of securities available through unexercised rights,
 - y = the number of rights previously exercised by the holder under the rights offering, and
 - z = the aggregate number of rights previously exercised under the rights offering by holders of rights that have subscribed for securities under the additional subscription privilege,
- (c) any unexercised rights are allocated on a pro rata basis to holders who subscribed for additional securities based on the additional subscription privilege up to the number of securities subscribed for by a particular holder, and
- (d) the subscription price of the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

Stand-by commitments

8.4A If there is a stand-by commitment for a rights offering,

- (a) the issuer must grant an additional subscription privilege to all holders of rights,
- (b) the issuer must deliver to the regulator evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment, and
- (c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

Appointment of depository

8.5A(1) If an issuer has stated in the prospectus that no securities will be issued on the exercise of the rights unless a stand-by commitment is provided or unless proceeds at least equal to the stated minimum amount are received by the issuer, all of the following apply:

- (a) the issuer must appoint a depository to hold all money received on the exercise of rights until either the stand-by commitment is provided or the stated minimum amount is received;
- (b) a depository appointed under paragraph (a) must be
 - (i) a Canadian financial institution, or
 - (ii) a registrant in the jurisdiction in which the funds are proposed to be held who is acting as managing dealer for the rights offering, or, if there is no managing dealer for the rights offering, who is acting as a soliciting dealer;
- (c) the issuer and the depository must enter into an agreement the terms of which require the depository to return the money in full to the holders of rights that have subscribed for securities under the distribution if either the stand-by commitment is not provided, or the stated minimum is not received by the depository during the exercise period for the rights.

Amendment

8.6A An issuer must not file an amendment to a final prospectus for a rights offering to change the terms of the rights offering.

3. *Paragraph 9.2(b) is amended by*

a. in subparagraph (iii), replacing “.” with “;”,

b. adding the following after subparagraph (iii):

(iv) **Evidence of financial ability** – the evidence of financial ability required to be delivered under section 8.4A if it has not previously been delivered; and

(v) **Evidence of fair value** – the evidence of fair value required to be delivered under subsection 8.2A(2) if it has not previously been delivered..

4. This Instrument comes into force on xx.