

BRITISH COLUMBIA SECURITIES COMMISSION

BC INSTRUMENT 45-509

On November 30, 2001, the British Columbia Securities Commission made BC Instrument 45-509 entitled "Short Form Offerings of Listed Securities and Units by Qualifying Issuers" (the original instrument).

The Commission, having considered that to do so would not be prejudicial to the public interest, orders that effective April 3, 2002:

1. the attached BC Instrument 45-509 entitled "Short Form Offerings of Listed Securities and Units by Qualifying Issuers" is made; and
2. the original instrument is revoked.

April 3, 2002

Douglas M. Hyndman
Chair

(This part for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and sections:- *Securities Act*, sections 76 and 171

Other (specify):-

BC INSTRUMENT 45-509

Short form offerings of listed securities and units by qualifying issuers

Order under section 76 of the *Securities Act*

Definitions

1. In this Instrument

"Act" means the *Securities Act* (British Columbia);

"Commission" means the British Columbia Securities Commission;

"Current AIF" means a current AIF as defined in MI 45-102;

"Designated Hold Purchaser" means a purchaser that is an insider or promoter of the issuer, the issuer's underwriter or a member of the Professional Group of that underwriter;

"Designated Threshold Purchaser" means a purchaser who either would be entitled to purchase securities of the issuer under section 74(2)(1) or 74(2)(3) of the Act or is a "Sophisticated Purchaser" as defined below, other than a member of the Professional Group;

"Exchange" means the Canadian Venture Exchange Inc.;

"Exchange Policy" means Exchange Policy 4.6 *Public Offering by Short Form Offering Document* and Exchange Form 4H *Short Form Offering Document*, subject to any material amendment that has been filed with the Commission and not objected to by the Commission within 30 days of filing;

"Gross Proceeds" means the gross proceeds that are required to be paid to the issuer for Listed Securities distributed under a Short Form Offering Document;

"Listed Security" means a security of a class listed on the Exchange;

"NI 43-101" means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

"MI 45-102" means Multilateral Instrument 45-102 *Resale of Securities*;

"Prior Offering" means a distribution of securities by an issuer under a Short Form Offering Document that was completed during the 12 month period immediately preceding the date of the Short Form Offering Document;

"Professional Group" means the professional group as defined in proposed Multilateral Instrument 33-105 *Underwriting Conflicts* in its most recently published form or in the form adopted by the Commission from time to time;

"Qualifying Issuer" means an issuer that meets the requirements of a qualifying issuer as set out in MI 45-102;

"Rules" means the British Columbia *Securities Rules*;

"Short Form Offering Document" means a short form offering document that complies with the Exchange Policy, subject to any waiver or variation the Exchange permits;

"Sophisticated Purchaser" means a purchaser that, in connection with a distribution, gives an acknowledgement in BC Form 45-903F1 or BC Form 45-903F2, as appropriate, to the issuer, if the issuer does not believe, and has no reasonable grounds to believe, that the acknowledgement is false, acknowledging both that

- (a) the purchaser is able, on the basis of information about the investment provided by the issuer, to evaluate the risks and merits of the prospective investment because of
 - (i) the purchaser's financial, business or investment experience, or
 - (ii) advice the purchaser receives from a person that is registered to advise, or is exempted from the requirement to be registered to advise, in respect of the security that is the subject of the trade and that is not an insider of, or in a special relationship with, the issuer of the security, and
- (b) the purchaser is one of the following:
 - (i) a person registered under the Act;
 - (ii) an individual who
 - (A) has a net worth, or net worth jointly with the individual's spouse, at the date of the agreement of purchase and sale of the security, of not less than \$400,000, or
 - (B) has had in each of the 2 most recent calendar years, and reasonably expects to have in the current calendar year
 - (1) annual net income before tax of not less than \$75,000, or
 - (2) annual net income before tax, jointly with the individual's spouse of not less than \$125,000;
 - (iii) a corporation, partnership or trust that
 - (A) has net assets of not less than \$400,000, or
 - (B) has had in each of the 2 most recent calendar years, and reasonably expects to have in the current calendar year, net income before tax of not less than \$125,000;
 - (iv) a corporation in which all of the voting shares are beneficially owned by Sophisticated Purchasers or which the majority of the directors are Sophisticated Purchasers;
 - (v) a general partnership in which all of the partners are Sophisticated Purchasers;
 - (vi) a limited partnership in which a majority of the general partners are Sophisticated Purchasers;

- (vii) a trust in which all of the beneficiaries are Sophisticated Purchasers or the majority of the trustees are Sophisticated Purchaser;

"Subsequently Triggered Report" means a material change report that must be filed no later than 10 days after a material change under section 85(1)(b) of the Act as a result of a material change that occurs after the date the Short Form Offering Document is certified but before a purchaser enters into an agreement of purchase and sale;

"Threshold Amount" means the greater of \$10,000 and 2% of the Gross Proceeds; and

"Warrant" means a warrant of an issuer distributed under a Short Form Offering Document that entitles the holder to acquire a Listed Security, or portion of a Listed Security, of the same issuer.

Exemption

2. Section 61 of the Act does not apply to a distribution by a Qualifying Issuer of securities of its own issue if

- (a) the issuer has filed a Current AIF;
- (b) the issuer has filed
 - (i) all documents that it is required to file under Part 12 of the Act and the Rules, including annual and interim financial information and annual reports, press releases disclosing material changes and material change reports,
 - (ii) all technical reports and consents required under NI 43-101, and
 - (iii) any Subsequently Triggered Report;
- (c) the distribution is of Listed Securities or units consisting of Listed Securities and Warrants;
- (d) the issuer has filed with the Exchange, and the Exchange has accepted, a Short Form Offering Document in respect of the distribution, which
 - (i) incorporates by reference the following documents of the issuer filed with the Commission:
 - (A) the Current AIF,
 - (B) the most recent audited annual financial statements,
 - (C) all unaudited quarterly financial statements, quarterly reports and material change reports filed after the date of the Current AIF but before or on the date of the Short Form Offering Document, and
 - (D) all technical reports and consents required under NI 43-101 filed on or after the date of the Current AIF but before or on the date of the Short Form Offering Document,
 - (ii) deems any Subsequently Triggered Report required to be delivered to a purchaser under this Instrument to be incorporated by reference,
 - (iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the Exchange Policy,
 - (iv) grants to purchasers contractual rights of withdrawal, as required by the Exchange Policy, and

- (v) contains all the certificates required by the Exchange Policy;
- (e) the distribution is conducted in accordance with the Exchange Policy, subject to any waiver or variation the Exchange permits;
- (f) the issuer or the underwriter delivers the Short Form Offering Document and any Subsequently Triggered Report to the purchaser either
 - (i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the Short Form Offering Document, or
 - (ii) not later than midnight on the second business day after the agreement of purchase and sale is entered into;
- (g) the Listed Securities issued under the Short Form Offering Document, when added to the Listed Securities of the same class issued under Prior Offerings, do not exceed the number of securities of the same class outstanding at the later of the following dates:
 - (i) the date the issuer first distributed securities of the same class under a Prior Offering, and
 - (ii) the date that is 12 months prior to the date of the Short Form Offering Document;
- (h) the Gross Proceeds under the Short Form Offering Document, when added to the Gross Proceeds from Prior Offerings, do not exceed \$2 million;
- (i) the aggregate acquisition cost to a purchaser under the Short Form Offering Document, other than a Designated Threshold Purchaser or Designated Hold Purchaser, is no more than the Threshold Amount;
- (j) no purchaser acquires more than 20% of the securities distributed under the Short Form Offering Document; and
- (k) no more than 50% of the securities distributed under the Short Form Offering Document are subject to the four month hold period imposed under MI 45-102.

Due diligence report

3. An underwriter who qualifies as a "Sponsor" under the Exchange's Policy 2.2 *Sponsorship and Sponsorship Requirements* must sign the Short Form Offering Document and comply with Exchange Appendix 4A *Due Diligence Report* in connection with the distribution.

Report on distribution

4. If an issuer distributes a security under a Short Form Offering Document, the issuer must file a report in the form required under section 139 of the Rules on or before the 10th day after the distribution.

Resale Restrictions

5. Any trade in a security acquired under this Instrument or any predecessor instrument or order

- (a) where the seller was, at the time the seller acquired the security, a Designated Hold Purchaser; or

(b) that was acquired by a Designated Threshold Purchaser in excess of the Threshold Amount (as defined in the applicable instrument or order) is subject to section 2.5 of MI 45-102.