

45-509 Short Form Offerings of Listed Securities and Units by Qualifying Issuers [BCI - Rescinded]

The British Columbia Securities Commission, having considered that to do so would not be prejudicial to the public interest, orders, effective March 8, 2001, that:

1. the attached BC Instrument 45-509 entitled "Short Form Offerings of Listed Securities and Units by Qualifying Issuers" is made; and
2. BOR#99/2 is revoked.

DATED at Vancouver, British Columbia, on March 15, 2001.

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*, section 76

Other (specify):-

BCI#45-509

BC INSTRUMENT 45-509 (Previously BOR#99/2)

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);

"BOR#99/2" means Blanket Order 99/2 *In the Matter of Short Form Offerings of Listed Securities and Units by Qualifying Issuers*;

"Commission" means the British Columbia Securities Commission;

"Current AIF" means a "current AIF" as defined in the SHAIF Policy;

"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 in the Rules, 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*, subject to any amendment that has been filed with the Commission and not objected to by the Commission within 30 days of filing;

"Gross Proceeds" means, in relation to a distribution under a Short Form Offering Document,

(a) the gross proceeds to the issuer that are required to be paid for securities distributed under the Short Form Offering Document; plus

(b) the maximum gross proceeds to the issuer that would be required to be paid if all Warrants distributed under the Short Form Offering Document were exercised;

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

"Listed Securities Issued and Issuable" means, in relation to a distribution under a Short Form Offering Document,

(a) the Listed Securities that are issued in the distribution under the Short Form Offering Document; plus

(b) the maximum number of Listed Securities that would be required to be issued if all Warrants distributed under the Short Form Offering Document were exercised;

"Offering" means an offering of securities by a Qualifying Issuer that, under this Instrument or BOR#99/2, is or was exempt from section 61 of the Act;

"Professional Group" means a group of persons as defined in proposed Multi-Jurisdictional 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 the SHAIF BOR and SHAIF Policy;

"SHAIF BOR" means BCI#45-506 *In The Matter Of The System For Shorter Hold Periods With An Annual Information Form* or any successor instrument;

"SHAIF Policy" means Local Policy Statement 3-27 *System For Shorter Hold Periods With An Annual Information Form And Exemption For Certain Distributions Outside British Columbia* or any successor instrument;

"Short Form Offering Document" means the form of offering document required by the Exchange Policy for the purposes of conducting an Offering, including any waiver or variation the Exchange permits;

"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 of the certification of the Short Form Offering Document but before an agreement of purchase and sale is entered into with a purchaser;

"Threshold Amount" means the greater of \$10,000 and 2% of the value of securities distributed under an Offering; and

"Warrant" means a warrant of an issuer distributed under an Offering 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, provided that the distribution meets all of the following conditions:

(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; and

(ii) 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 Offering, prepared by the issuer in accordance with the requirements of the Exchange and which

(i) incorporates by reference the following documents filed with the Commission: the issuer's Current AIF, its most recent audited annual financial statements, and all unaudited quarterly financial statements, quarterly reports and material change reports filed subsequent to the date of its 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 against the issuer and directors, officers and promoters of the issuer in the form required by the Exchange Policy;

(iv) grants to purchasers contractual rights of withdrawal against the issuer or the issuer's underwriter from an agreement of purchase and sale, in the form required by the Exchange Policy; and

(v) contains certificates of the issuer, directors, officers and promoters of the issuer, and a registered underwriter, all in the form required by the Exchange Policy;

(e) the Offering is conducted in accordance with the rules and procedures set out in the Exchange Policy, including any waiver or variation the Exchange permits;

(f) the issuer or its agent delivers the Short Form Offering Document and any Subsequently Triggered Report to the purchaser either

(i) before the issuer or its agent enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the Offering; 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 and Issuable under the Short Form Offering Document, when added to the Listed Securities Issued and Issuable of the same class as a result of Offerings completed during the twelve month period immediately preceding the date of the Short Form Offering Document, 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 this Instrument or BOR#99/2; and

(ii) the date that is twelve 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 Offerings completed during the twelve month period immediately preceding the date of the Short Form Offering Document, do not exceed \$1 million;

(i) the aggregate acquisition cost to a purchaser, 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 pursuant to the Offering;

(k) no more than 50% of the securities distributed pursuant to the Offering are subject to the four month hold period imposed pursuant to this Instrument; and

(l) the issuer files a report in the form required under section 139 of the Rules on or before the 10th day after the distribution.

Deemed Distribution

3. Any trade in a security acquired under this Instrument, Blanket Order 99/1 *In the Matter of Short Form Offerings by Qualifying Issuers* or BOR#99/2

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

(b) in excess of the Threshold Amount (as defined in the applicable instrument or order) by a Designated Threshold Purchaser

is deemed to be a distribution unless the resale requirements of sections 142 and 143 of the Rules that would have applied had the security been acquired under section 74(2)(4) of the Act are complied with, except that all applicable references to "12 month period" and "12 months" in sections 142 and 143 of the Rules are varied to "4 month period" and "4 months", respectively.