

National Instrument 45-101
Rights Offerings

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FORM 45-101F

National Instrument 45-101
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PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION

1.1 Definitions - In this Instrument

“acceptance date” means

- (i) the date that is 10 days after the date the issuer gives the notice referred to in the rights offering prospectus exemption, or
- (ii) if the reviewing authority has objected to the proposed trade under the rights offering prospectus exemption, the date the reviewing authority notifies the issuer by written notice that it no longer objects to the use of the rights offering prospectus exemption;

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

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

“class” includes a series of a class of securities;

“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;

“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:
 - 1. The average of the closing bid and closing ask prices for each day on which there was no trading.
 - 2. If the published market
 - (i) provides a closing price of securities of the class for each day that there has been trading, the closing price, or
 - (ii) 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 have traded that discloses regularly in a publication of general and regular paid circulation or in a form that is broadly distributed by electronic means the prices at which those securities have traded;

“reviewing authority” means

- (a) in all jurisdictions except British Columbia and Alberta, the securities regulatory authority or regulator; and
- (b) in British Columbia and Alberta, the regulator;

"rights offering" means the issuance by an issuer to existing security holders of a right to purchase additional securities of the issuer's own issue;

“rights offering prospectus exemption” means the exemption in securities legislation from the prospectus requirement for a rights offering;

“rights offering registration exemption” means the exemption in securities legislation from the trading registration requirement for a rights offering;

“soliciting dealer” means a person or company the interest of which in a rights offering is limited to participating in the solicitation of 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; and

“subscription price” means the price per security at which the securities issuable on the exercise of rights may be subscribed for under a rights offering.

1.2 Interpretation - For the purpose of the definition of “market price”, if there is more than one published market for a security,

- (a) if only one of the published markets is in Canada, the market price shall be determined solely by reference to that market;
- (b) if there is more than one published market in Canada, the market price shall be 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) if there is no published market in Canada, the market price shall be 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.

1.3 Application - This Instrument applies to an issuer that trades in a local jurisdiction, by way of a rights offering, securities of its own issue to a beneficial holder of its securities.

PART 2 REMOVAL OF RIGHTS OFFERING PROSPECTUS EXEMPTION

2.1 General - The rights offering prospectus exemption is not available to an issuer unless the issuer and the rights offering comply with the requirements of Parts 3, 5, 6, 7 and 8 of this Instrument.

2.2 Restricted Offerings - The rights offering prospectus exemption is not available to an issuer for a rights offering in any of the following circumstances:

1. The issuer is a reporting issuer in any jurisdiction and there would be an increase of more than 25 percent in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class to be issued upon the exercise of rights, assuming the exercise of all rights issued under the rights offering and the exercise of any other rights issued by the issuer under the rights offering prospectus exemption during the 12 months immediately before the acceptance date.
2. The issuer has entered into an agreement to compensate a person or company for soliciting the exercise of rights issued under the rights offering that provides for payment of a higher fee for soliciting the exercise of rights by holders of rights that were not securityholders of the issuer immediately before the rights offering than the fee payable for soliciting the exercise of rights by holders of rights that were securityholders at that time.
3. The rights offering is conditional on a minimum amount of proceeds being raised and the exercise period for the rights is more than 45 days after the acceptance date.
4. The issuer is not a reporting issuer in any jurisdiction and the exercise period for the rights is more than 60 days after the acceptance date.
5. The issuer is a reporting issuer in any jurisdiction and the exercise period for the rights is more than 90 days after the acceptance date.
6. The issuer is a reporting issuer in any jurisdiction and the exercise period for the rights is less than 21 days after the date on which the rights offering circular is sent to securityholders under paragraph 3.2(a).
7. The issuer is a reporting issuer in any jurisdiction and has not filed financial statements required to be filed under Canadian securities legislation.

PART 3 PROSPECTUS EXEMPT OFFERINGS

3.1 Deliveries to the Reviewing Authority

- (1) An issuer that is relying on the rights offering prospectus exemption shall send to the reviewing authority the following documents:
 1. A rights offering circular in draft and final form prepared in accordance with Form 45-101F.

2. If the issuer is not a reporting issuer in any jurisdiction, a statement of the issuer signed on its behalf by a senior officer confirming:
 - (a) that the issuer is in compliance with the requirements of its incorporating legislation concerning the distribution of information to its security holders; and
 - (b) no material change has occurred that has not been previously disclosed in writing to its security holders.
3. A copy of any agreement entered into, or proposed to be entered into, by the issuer with a managing dealer.
4. A copy of the technical reports and certificates prepared under National Instrument 43-101 Standards of Disclosure for Mineral Projects.
5. If the issuer is engaged in oil and gas activities (as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*) and the rights offering circular is sent to the reviewing authority on or before June 30, 2005, an oil and gas report prepared in accordance with National Policy Statement No. 2-B *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators*, unless the issuer has filed or is required to have filed (or has included or is required to have included in another filed document) the statement referred to in Item 1 of section 2.1 of National Instrument 51-101.
6. The details of any other rights offering completed by the issuer within the 12 months immediately preceding the date the rights offering circular in draft form is sent to the reviewing authority.

- (2) A rights offering circular in draft form may exclude information about the subscription price and other matters dependent on the subscription price.

3.2 Delivery to Securityholders - An issuer that is required to provide notice under the rights offering prospectus exemption shall send

- (a) to each securityholder entitled to receive rights under the rights offering a rights offering circular to which the reviewing authority has not objected or has confirmed its acceptance; and
- (b) to each securityholder entitled to receive rights under the rights offering and to each registered rights holder, a copy of any amendment under section 3.3.

3.3 Amendments

- (1) An issuer that has sent to its securityholders a rights offering circular under paragraph 3.2(a) may amend the rights offering circular, for the purpose of updating information, by sending to the reviewing authority an amendment to the rights offering circular in draft and final form or an amended rights offering circular in draft and final form blacklined to the previously filed rights offering circular.
- (2) Despite subsection (1), after the acceptance date, an issuer shall not amend the rights offering circular to change the terms of the rights offering.

PART 4 PROSPECTUS OFFERINGS

- 4.1 Reliance on Registration Exemption** - An issuer that files a prospectus for a rights offering and intends to rely on the rights offering registration exemption shall state that it intends to rely on the exemption in a letter accompanying the filing of the preliminary prospectus.
- 4.2 Prospectus** - An issuer shall 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 the exercise of the rights;
 - (b) if there is a managing dealer, the managing dealer has signed the underwriter's certificate in the prospectus; and
 - (c) if the issuer is a reporting issuer, the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to securityholders.
- 4.3 Compliance with Instrument** - An issuer shall not file a prospectus or an amendment to a prospectus for a rights offering unless the issuer and the rights offering comply with the requirements of Parts 5, 6, 7 and 8.
- 4.4 Amendment** - An issuer shall not file an amendment to a prospectus for a rights offering to change the terms of the rights offering.

PART 5 INSIDER SUBSCRIPTIONS

5.1 Insider Subscriptions

- (1) If there is no published market or the subscription price is greater than the market price, for securities of the class of securities issuable on the exercise of the rights, no insider of the issuer shall be permitted to increase its proportionate interest in the issuer through the exercise of the rights under the rights offering or through a stand-by commitment.
- (2) Subsection (1) does not apply if there is no published market and the issuer, at the time that the rights offering circular in final form or the rights offering prospectus under which the rights are to be issued is sent to the reviewing authority, by notice in writing confirms to the reviewing authority that the subscription price for the securities issuable on the exercise of the rights is not greater than the fair value of the securities on the day before the date the subscription price is established.

PART 6 STAND-BY COMMITMENTS

- 6.1 Stand-By Commitments** - If there is a stand-by commitment for a rights offering, the issuer shall deliver to the reviewing authority at the time the rights offering circular in final form or the rights offering prospectus is sent to the reviewing authority evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment.

PART 7 ADDITIONAL SUBSCRIPTION PRIVILEGE

- 7.1 Additional Subscription Privilege** - An issuer shall not grant an additional subscription privilege to a holder of a right unless the issuer grants the additional subscription privilege to all holders of rights.

- 7.2 Stand-by Commitment** - If there is a stand-by commitment for a rights offering, the issuer shall grant an additional subscription privilege to all holders of rights.

7.3 Number or Amount of Securities

- (1) Under an additional subscription privilege, each holder of a right shall be entitled to receive, on exercise of the additional subscription privilege, the number or amount of securities that is equal to the lesser of
 - (a) the number or amount of securities subscribed for by the holder under the additional subscription privilege; and
 - (b) $x(y/z)$ 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.

- (2) Any unexercised rights shall be 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.

7.4 Price of Securities - The subscription price under an additional subscription privilege or a stand-by commitment shall be the same as the subscription price under the basic subscription privilege.

PART 8 APPOINTMENT OF DEPOSITORY

8.1 Depository

- (1) Subject to section 8.2, if a reporting issuer has specified in a rights offering circular or rights offering prospectus that no securities will be issued on the exercise of the rights unless proceeds at least equal to the specified minimum amount are received by the issuer under the rights offering, the issuer shall appoint one of the following to hold, as a depository, all money received on the exercise of the rights until that specified minimum amount is received or until the money is returned under the agreement referred to in section 8.2:
1. A Canadian financial institution.
 2. 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, who is acting as a soliciting dealer.
- (2) The issuer shall identify the depository appointed under subsection (1) in the rights offering circular or rights offering prospectus.

8.2 Release of Funds from Depository - The agreement between the depository and the issuer under which the depository referred to in section 8.1 is appointed shall provide that, if the specified minimum amount referred to in section 8.1 is not

received by the depository during the exercise period for the rights, the money held by the depository will be returned in full to the holders of rights that have subscribed for securities under the rights offering.

PART 9 LISTING REPRESENTATIONS

9.1 Listing Representations - A reviewing authority's written permission to include a listing representation that is not otherwise permitted under the securities legislation of the Jurisdictions in a rights offering circular or in a rights offering prospectus is evidenced by the acceptance of, or non-objection to, the circular or the issuance of a receipt for the prospectus by the reviewing authority.

PART 10 EXEMPTION

10.1 Connection Test

- (1) Parts 2, 3, 5, 6, 7 and 8 do not apply to an issuer effecting a rights offering if
 - (a) to the knowledge of the issuer after reasonable enquiry,
 - (i) the number of beneficial holders of the class for which the rights are issued resident in Canada does not constitute 10 percent or more of all holders of that class;
 - (ii) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class;
 - (iii) the number of beneficial holders of the class for which the rights are issued resident in the local jurisdiction does not constitute five percent or more of all holders of that class; and
 - (iv) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class; and

- (b) all materials sent to any other securityholders for the rights offering are concurrently sent to the reviewing authority and to each securityholder of the issuer resident in the local jurisdiction.
- (2) An issuer relying on the exemption in subsection (1) shall send to the reviewing authority a written notice that it is relying on the exemption and a certificate of an officer or director of the issuer, or if the issuer is a limited partnership, an officer or director of the general partner of the issuer, or if the issuer is a trust, a trustee or officer or director of a trustee of the issuer, that to the knowledge of the person signing the certificate, after reasonable inquiry that
- (a) the number of beneficial holders of the class for which the rights are issued resident in Canada does not constitute 10 percent or more of all holders of that class;
 - (b) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class;
 - (c) the number of beneficial holders of the class for which the rights are issued resident in the local jurisdiction does not constitute five percent or more of all holders of that class; and
 - (d) the number of securities of the issuer of the class for which the rights are issued beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class.

10.2 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

10.3 Evidence of Exemption - Without limiting the manner in which an exemption under section 10.2 may be evidenced, the issuance by the reviewing authority of a receipt for the rights offering prospectus or acceptance of, or non-objection to, the rights offering circular is evidence of the granting of the exemption if

- (a) the person or company that sought the exemption delivered to the regulator on or before the date the preliminary rights offering prospectus or rights offering circular in draft form was sent to the reviewing authority, a letter or memorandum describing the matters relating to the exemption application, and indicating why consideration should be given to the granting of the exemption; and
- (b) the regulator has not sent written notice to the contrary to the person or company that sought the exemption before or concurrently with the issuance of the receipt for the prospectus or acceptance of, or non-objection to, the circular by the reviewing authority.

PART 11 EFFECTIVE DATE

11.1 Effective Date of Instrument - This Instrument comes into force on July 25, 2001.

[Amended September 14, 2005]