

**Proposed
BC Instrument 51-509**

Issuers Quoted in the U.S. Over-the-Counter Markets

PART 1 – DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions

1.1 In this Instrument,

“**OTC issuer**” means an issuer that has

- (a) a class of OTC quoted securities, and
- (b) no class of securities listed or quoted on the TSX-Venture Exchange, The Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, or the NASDAQ Stock Market; and

“**OTC quoted securities**” means a class of securities of an OTC issuer that has been assigned a ticker symbol on the OTC Bulletin Board or the Pink Sheets.

Interpretation – public issuer

1.2 In this Instrument, an OTC issuer becomes a public issuer when it is assigned a ticker symbol for any class of its securities on the OTC Bulletin Board or the Pink Sheets.

National Instrument definitions apply

1.3 Terms used in this Instrument that are defined or interpreted in National Instrument 14-101 *Definitions* or National Instrument 51-102 *Continuous Disclosure Obligations* have the same meaning in this Instrument.

Application

1.4(1) This Instrument applies to an OTC issuer if

- (a) its business is directed or administered in or from British Columbia,
- (b) investor relations activities, by or on behalf of it, are carried out in or from British Columbia,
- (c) a control person of the issuer is resident in British Columbia,
- (d) at the time it became a public issuer, a promoter of the issuer was resident in British Columbia,

- (e) excluding securities sold to directors, officers or control persons of the issuer from the numerator and denominator of the calculation, before it became a public issuer, the issuer sold the majority of securities of the class of securities that became the issuer's OTC quoted securities to persons resident in British Columbia, or
 - (f) excluding directors, officers or control persons of the issuer from the numerator and denominator of the calculation, before it became a public issuer, the majority of the persons to whom the issuer sold securities of the class of securities that became the issuer's OTC quoted securities were resident in British Columbia.
- (2) Despite subsection (1) (d), (e) and (f), this Instrument does not apply to an OTC issuer if
- (a) it has been a public issuer for more than one year,
 - (b) its business is not directed or administered in or from British Columbia,
 - (c) investor relations activities, by or on behalf of it, are not carried out in or from British Columbia,
 - (d) the issuer has no control person resident in British Columbia, and
 - (e) it has filed a notice in the required form that it meets the conditions in paragraphs (a) to (d).

PART 2 – DISCLOSURE

Division A – Continuous Disclosure

Disclosure rules

2.1 The following rules apply to an OTC issuer

- (a) the provisions of National Instrument 13-101 *System for Electronic Data Analysis and Retrieval (SEDAR)* that apply to an electronic filer, despite section 2.1 of that Instrument;
- (b) the provisions of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* that apply to a reporting issuer engaged, directly or indirectly, in oil and gas activities;
- (c) the provisions of National Instrument 51-102 *Continuous Disclosure Obligations* that apply to a reporting issuer that is a venture issuer;

- (d) Part 6 of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (e) if the OTC issuer has a class of securities registered under section 12 of the 1934 Act, the provisions of National Instrument 51-102 *Continuous Disclosure Obligations* that apply to an SEC issuer;
- (f) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;
- (g) the provisions of National Instrument 52-108 *Auditor Oversight* that apply to a reporting issuer;
- (h) Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*; and
- (i) the provisions of National Instrument 58-101 *Disclosure of Corporate Governance Practices* that apply to a reporting issuer that is a venture issuer.

Division B – Insider Reports

Reporting requirement

2.2 An insider of an OTC issuer must comply with section 87 of the Act as if the OTC issuer were a reporting issuer.

Electronic filing

2.3 Despite the definition of “SEDI issuer” in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*, an OTC issuer must comply with the provisions of that Instrument that apply to a SEDI issuer.

Form

2.4 For the purposes of section 2.2, references in Form 55-102F2 *Insider Report* to the reporting issuer of the securities that are the subject of the insider report, are references to the OTC issuer of the securities that are the subject of the insider report.

Division C – Registration Statement

Filing requirement

2.5 An OTC issuer must file, within five days of becoming a public issuer, a copy of the most recent registration statement it filed with the SEC.

Exception

2.6 Section 2.5 does not apply to an OTC issuer that became a public issuer before this Instrument came into force.

Division D – Investor Relations Information

Notice requirement

2.7 (1) If an OTC issuer enters into an agreement with another person under which the person agrees to engage in investor relations activities in relation to the securities of the issuer, the issuer must file a notice in the required form describing the agreement.

(2) The OTC issuer must file the notice within five days of entering into the agreement.

(3) If, at the time this Instrument first applies to an OTC issuer, the issuer is a party to an agreement for investor relations activities, the issuer must file the notice described in subsection (1) within five days of the date this Instrument first applies to it.

PART 3 – CAPITAL RAISING

Offering memorandum exemption

3.1 An OTC issuer that has filed all the documents that it is required to file under Part 2 of this Instrument is a qualifying issuer for the purposes of section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

PART 4 – RESTRICTION OF EXEMPTIONS

Division A – Registration and Prospectus Exemptions

Resale of securities acquired in pre-public stage

4.1 The exemptions in securities legislation from the registration requirement and the prospectus requirement do not apply to a trade of a security of an OTC issuer acquired after this Instrument comes into force and before the issuer became a public issuer, except for the exemption in section 2.16 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

Exception

4.2 Section 4.1 does not apply to a trade by an OTC issuer in securities of its own issue.

Deemed distribution

4.3 The first trade of a security of an OTC issuer that a person acquired before the issuer became a public issuer is a distribution unless

- (a) the person trades the security through a registered investment dealer from an account at that dealer in the name of that person, and

- (b) the dealer executes the trade through an exchange or quotation and trade reporting system outside Canada.

Legends on certificates

4.4(1) An OTC issuer must place

- (a) a legend on each certificate representing a security issued before the issuer became a public issuer, and

- (b) a legend restriction notation on each ownership statement issued under a direct registration system or other electronic book entry system relating to a security issued before the issuer became a public issuer.

(2) The legend or legend restriction notation must state the following:

The securities represented by this Certificate/Ownership Statement may not be sold in British Columbia unless

(a) the security holder sells the securities through an investment dealer registered in British Columbia from an account at that dealer in the name of that security holder, and

(b) the dealer executes the trade through an exchange or quotation and trade reporting system outside Canada.

No seasoning period

4.5 Section 2.6 of National Instrument 45-102 *Resale of Securities* does not apply to the securities of an OTC issuer.

Resale of securities acquired in public stage

4.6(1) The prospectus requirement does not apply to the first trade of a security of an OTC issuer distributed to a person after the issuer became a public issuer under an exemption from the prospectus requirement only if

- (a) a 4-month period has passed from the date

- (i) the issuer issued the security, or

- (ii) a control person traded the security,

unless the security was were acquired under a director or employee stock option;

- (b) if the person is a control person of the issuer, the person has held the security for at least 6 months;

- (c) the number of securities the person proposes to trade under this exemption, plus the number of securities of the issuer of the same class that the person has traded in the preceding 12-month period, does not exceed 5% of the issuer's outstanding securities of the same class;
 - (d) the person trades the security through a registered investment dealer;
 - (e) the registered investment dealer executes the trade through the OTC Bulletin Board or the Pink Sheets;
 - (f) there has been no unusual effort made to prepare the market or create a demand for the securities;
 - (g) no extraordinary commission or other consideration is paid to a person for the trade; and
 - (h) if the person is an insider of the issuer, the person reasonably believes that the issuer is not in default of securities legislation.
- (2) If a security acquired under an exemption from the prospectus requirement is converted into or exchanged with another security, the converted or exchanged security is considered the same security under this exemption.

Securities for debt

4.7 Section 2.14 of National Instrument 45-106 *Prospectus and Registration Exemptions* does not apply to a trade of a security of an OTC issuer.

Employee, executive officer, director and consultant

4.8 Section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemption* does not apply to a trade of a security of an OTC issuer unless the conditions in section 2.25 of that Instrument are met.

Trades among employees, officers, etc.

4.9 Section 2.26 of National Instrument 45-106 *Prospectus and Registration Exemption* does not apply to a trade of a security in an OTC issuer.

Resale

4.10(1) Section 2.28 of National Instrument 45-106 *Prospectus and Registration Exemptions* does not apply to a trade of a security of an OTC issuer.

- (2) Sections 2.5 and 2.14 of National Instrument 45-102 *Resale of Securities* do not apply to the first trade of a security of an OTC issuer distributed under an exemption from the prospectus requirement after the OTC issuer became a public issuer.

Division C – Take Over Bid Exemptions

- 4.11 The following provisions do not apply to a take over bid for an OTC issuer
- (a) subsection 98(1)(c) of the Act, for two years after the OTC issuer became a public issuer, and
 - (b) subsection 98(1)(d) of the Act.

Division D – Continuous Disclosure and Other Exemptions

- 4.12 Part 5 of NI 52-107 *Acceptable Accounting Principles* does not apply to an OTC issuer.
- 4.13 Sections 4.1 and 4.2 of Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* do not apply to an OTC issuer.
- 4.14 Parts 14, 15, 16, of National Instrument 71-101 *The Multijurisdictional Disclosure System* do not apply to an OTC issuer.
- 4.15 Part 17 of National Instrument 71-101 *The Multijurisdictional Disclosure System* does not apply to an insider of an OTC issuer.

PART 5 – COMING INTO FORCE AND TRANSITION

Coming into Force

- 5.1 This Instrument comes into force on [*]

Transition – financial disclosure

- 5.2 For an issuer that does not have a class of securities registered under section 12 of the 1934 Act, the requirements of this Instrument concerning the filing of
- (a) annual financial statements or MD & A relating to those financial statements do not apply for financial years ending before January 1, 2008,
 - (b) interim financial statements or MD & A relating to those financial statements do not apply for interim periods in financial years ending before January 1, 2008, and
 - (c) AIFs do not apply for financial years ending before January 1, 2008.

Transition – insider reports

- 5.3 The requirements of this Instrument concerning the filing of insider reports do not apply until sixty days after this Instrument comes into force.

Transition – investor relations information

5.4 The requirements of this Instrument concerning the filing of investor relations information do not apply until sixty days after this Instrument comes into force.