



## POLICY 4.2

# PROSPECTUS OFFERINGS

### Scope of Policy

This Policy addresses the filing and procedural requirements for Issuers proposing to distribute securities to the public pursuant to a Prospectus. This Policy applies to public offerings of securities carried out by Issuers whose securities are already listed for trading on the Exchange. It does not apply to an Issuer proposing to carry out an Initial Public Offering of its securities concurrent with an Application for Listing using a prospectus, which is governed by Policy 2.3 - *Listing Procedures*, or to an Initial Public Offering by a Capital Pool Company which is governed by Policy 2.4 - *Capital Pool Companies*.

The main headings in this Policy are:

1. Public Offering by Prospectus – All Jurisdictions

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### 1.1 General

A Prospectus offering conducted by an Issuer must be prepared in accordance with the requirements of applicable Securities Laws and will be vetted by the applicable Securities Commissions. The Securities Commission designated as the principal regulator under National Policy 11-202 - *Process for Prospectus Reviews in Multiple Jurisdictions* is the primary reviewing authority for a Prospectus. When conducting a public offering by Prospectus, an Issuer must comply with the provisions of applicable Securities Laws. However, a Prospectus must also be filed with the Exchange to obtain the Exchange's consent to the issuance of securities and the additional listing of the securities offered under the Prospectus.

The following provisions apply to all Prospectus filings, except where specifically provided.

### 1.2 Exchange Filing Requirements

- (a) An Issuer conducting a Prospectus offering must file the following with the Exchange:
  - (i) a copy of the Issuer's submission letter to the principal regulator and a copy of the preliminary Prospectus (including all financial statements, reports, certificates, and other documents which are required to accompany the Prospectus);

- (ii) a copy of the Issuer's material agreements not previously filed with the Exchange, including the Issuer's agreement with the Agent who will conduct the public offering;
- (iii) a copy of all of the Issuer's letters to and from each Securities Commission relating to the Prospectus offering;
- (iv) a copy of the Issuer's final Prospectus and any amendments (including all financial statements, reports and other documents which are part of the Prospectus);
- (v) a copy of each Securities Commission receipt for the final Prospectus; and
- (vi) the applicable filing fee as prescribed by Policy 1.3 - *Schedule of Fees*.

### **1.3 Agent Requirements**

Unless the Exchange Requirements applicable to a particular offering require otherwise, the Agent must sign the Prospectus certificate in connection with a Prospectus. The Agent must be either a Member or a Participating Organization provided that it is registered under the applicable Securities Laws to sell securities in the jurisdiction in which the offering is taking place.

### **1.4 Minimum Subscription**

The Exchange will require, unless the Distribution is entirely a secondary Distribution, a minimum amount net to the Issuer's treasury of \$200,000 either as an underwritten or as an agency offering. The minimum amount of the offering must be sufficient to accomplish the purposes of the offering and such minimum must be specified. The offering may be cancelled by the Exchange if the minimum amount is not reached.

### **1.5 Pricing**

- (a) If Listed Shares are being offered, then the offering price will generally be the Market Price at the date of the final receipt for the Prospectus. While the offering price will not normally exceed a 20% discount to the Market Price, it must in no case be less than \$0.05.
- (b) At the time the pricing decision is made, an announcement, by news release, will be made immediately by the Issuer or the Agent to announce the terms of the offering. The Agent will immediately reconfirm any order received subject to price by directly conveying the terms of the offering to any potential purchaser whose order was received subject to price.
- (c) The Exchange may require that the offering price be amended if there is Material Information regarding the affairs of the Issuer between the date the offering price is fixed and the closing of the offering.

- (d) If the class of securities being offered is not a class of Listed Shares, then the minimum offering price must be \$0.05.

## **1.6 Unit Offering**

The following requirements apply to unit offerings that include Warrants:

- (a) The total number of additional securities which may be issued pursuant to the exercise of Warrants cannot exceed the total number of securities initially issued as part of the unit offering;
- (b) A Warrant in a unit offering must have an exercise price which is no less than the unit price and, if the unit price is at a discount to the Market Price, then the exercise price of the Warrant must be not less than the Market Price;
- (c) A Warrant comprising part of a unit must not entitle the holder to acquire a Warrant upon exercise;
- (d) Where the Warrants are trading, there shall be not less than 200,000 transferable Warrants in a unit offering;
- (e) The maximum term of a Warrant shall be limited to five years commencing from the offering day;
- (f) The transferable Warrants shall commence trading upon completion of the offering unless the Agent has advised the Exchange, before such time, that less than 75 persons, including Agents, hold at least one Board Lot of such Warrants;
- (g) If the Exchange is of the opinion that there is an insufficient distribution of the outstanding transferable Warrants for an orderly market, the Exchange may declare that the remaining Warrants may only be traded on a cash basis. In any event, during the last four trading days, such Warrants shall only trade on a cash basis;
- (h) In the event that, due to the exercise of the transferable Warrants, the number of issued Warrants which have been trading is reduced to less than 75,000, such Warrants shall be delisted from trading on the Exchange;
- (i) If the Warrants which form part of the unit offering are not transferable, then:
  - (i) the certificates representing the non-transferable Warrants shall be issued in the name of the holder and shall have the words "non-transferable" prominently displayed thereon,
  - (ii) the Prospectus qualifying the unit offering shall clearly disclose the non-transferable nature of such Warrants, and
  - (iii) the Exchange shall not list or trade such Warrants.

- (j) The Exchange will not accept for filing Warrants in respect of which the Warrant trust indenture (or equivalent document) entitles the directors of the issuer to change the exercise price (except for adjustments in the event of share consolidations, splits, amalgamations or other corporate reorganizations) or which provides for the possibility of an accelerated expiry date; and
- (k) The Exchange will cease trading of Warrants on the Exchange at 9:00 a.m., (Vancouver time), 10:00 a.m., (Calgary time), and 12:00 noon (Toronto time) on the expiry date.

## **1.7 Special Warrant Conversions Using a Prospectus**

- (a) A Prospectus can be used to qualify the units or shares to be issued upon exercise of special warrants issued by an Issuer.
- (b) The Prospectus must comply with section 2 of this Policy, as applicable, and the following additional requirements which apply to special warrant conversions:
  - (i) The Prospectus must be signed by an Agent;
  - (ii) the use of proceeds section of the Prospectus must disclose:
    - (A) the proceeds from the Private Placement of special warrants;
    - (B) whether any of the proceeds have been spent, and if so, a cross-reference to the detailed disclosure found elsewhere in the Prospectus; and
    - (C) the existing Working Capital as of a date within 30 days of the date of the final Prospectus, including the balance of the proceeds from the special warrant Private Placement;
  - (iii) if any placee will become an Insider on conversion of the special warrants, that fact must be disclosed in the Prospectus and the placee must submit an undertaking to file Insider reports with the appropriate Securities Commissions;
  - (iv) the Prospectus must disclose the number and dollar value of any special warrants acquired by the Agents; and
  - (v) an Agent who has purchased special warrants must provide a Prospectus to all subsequent purchasers of the securities acquired by the Agent on conversion of the special warrants as this trade is likely to be a “distribution” pursuant to applicable Securities Laws.

## **1.8 Secondary Distributions**

A secondary Distribution of securities is permitted to be effected pursuant to a Prospectus offering. However, if an offering consists of both a primary and a secondary Distribution, the primary Distribution must be completed before the commencement of the secondary Distribution and the price of the secondary Distribution must be the same as the primary Distribution. The selling Shareholders of any secondary offering must bear a proportionate share of the Agent's commission and offering costs.

## **1.9 Agent Compensation**

### **(a) Member's Commission**

A Member is free to negotiate its selling commission with the Issuer.

### **(b) Other Commissions**

If persons receiving commissions are not Members, refer to Policy 5.1 – *Loans, Bonuses, Finder's Fees and Commissions* for a calculation of the maximum commission that can be paid.

### **(c) Agent's Option**

An Agent may be granted a non-transferable Agent's Option entitling it to subscribe for up to 25% of the total number of securities offered for sale under a Prospectus. The minimum exercise price of the Agent's Option will be:

- (i) the offering price per share if the option is exercisable for shares only; or
- (ii) the offering price per unit if the option is exercisable for units. Any Warrants underlying the units will be exercisable at the same price as the Warrants underlying the units offered to the public. The maximum term of an Agent's Option is the earlier of five years from the date of issuance and the term of any Warrants issued to the public as part of the offering.

### **(d) Selling Group Compensation**

A Member may offer part of the commissions or Agent's Option from an offering to other licensed broker dealers and investment dealers who participate in a selling group. However, the allocation of the Agent's Option must be reported to the Exchange on conclusion of the offering.

### **(e) Greenshoe Option**

An Issuer may grant a greenshoe option to an Agent to acquire further securities offered under a Prospectus in accordance with the following:

- (i) the option must be limited to the lesser of 15% of the total number of securities involved in the offering or the actual number of securities sold by way of over-subscription;
- (ii) the number of securities under option will be determined on the date of listing in relation to an IPO prospectus, and on the offering date in other circumstances;
- (iii) the exercise price of the option must be at or above the same price as the net price of the securities to the Issuer's treasury;
- (iv) the exercise period cannot exceed 60 calendar days after the closing date; and
- (v) the Agent must advise the Exchange of the extent of any over-subscription at the time of closing of the offering.

### **1.10 Scope of Exchange Review**

The Exchange reviews the required materials in order to accept any transactions disclosed in the Prospectus which have not been previously filed with the Exchange and to accept the listing of any securities to be issued pursuant to the Prospectus. Any transactions disclosed in the Prospectus, which have not been previously filed with the Exchange for acceptance must comply with Exchange Requirements. A Securities Commission will generally not issue a receipt for a final Prospectus until the Exchange has conditionally accepted the listing of the securities offered under the Prospectus.

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