

ALBERTA SECURITIES COMMISSION

NOTICE

Repeals and Amendments to Alberta Securities Laws Related to Proposed National Instrument 45-106 *Prospectus and Registration Exemptions* and Request for Comment Regarding Transitional Relief for \$97,000 Minimum Investment and \$100,000 Asset Purchase Exemptions

July 8, 2005

Overview

On June 8, 2005 the Alberta Securities Commission (ASC) approved certain repeals and consequential amendments to Alberta securities laws in conjunction with the approval of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) and related repeals and consequential amendments to certain national and multilateral instruments to come into effect on September 14, 2005. Similar consequential amendments to local securities legislation are being adopted by other members of the Canadian Securities Administrators (CSA).

Background

On December 17, 2004, the ASC published for a 90 day comment period a notice outlining proposed repeals and consequential amendments to Alberta securities laws. The ASC received no written submissions on the proposed repeals and consequential amendments.

NI 45-106 consolidates and harmonizes the prospectus and registration exemptions found in various provincial statutes and national, multilateral and local instruments into a single national instrument. In order to facilitate full implementation of NI 45-106, the ASC and other members of the CSA are concurrently repealing or amending a number of national, multilateral and local instruments and other local requirements.

Amendments to the *Securities Act* (Bill 19)

To facilitate full implementation of NI 45-106 in Alberta, the Alberta Government has passed, but not yet proclaimed, provisions of the *Securities Amendment Act, 2005* (Bill 19) that will result in the repeal the registration and prospectus exemptions currently found in sections 85, 86, 87 and 131 of the *Securities Act* and related transitional provisions and filing requirements. The ASC will coordinate the repeal of the statutory registration and prospectus exemptions with the implementation of NI 45-106.

Summary of Key Proposed Amendments to Alberta Securities Laws

This notice identifies the repeals and consequential amendments to Alberta securities laws that will come into effect on September 14, 2005. The text of the repeals and amendments to Alberta securities laws are set out in the attached Schedules A to D.

The repeals and amendments that will take effect on September 14, 2005 include:

- ◆ **the repeal of those statutory registration and prospectus exemptions being carried forward in the form of harmonized exemptions in NI 45-106 and related filing provisions currently located in Parts 6 and 10 of the ASC General Rules-** these include the following registration and prospectus exemptions contained in the Alberta Securities Commission Rules (General) (ASC General Rules) that are being replaced by harmonized exemptions in NI 45-106:
 - section 65 - portfolio manager exemption,
 - section 66 - additional registration exemptions,
 - section 66.2 - \$97,000 exemption,
 - section 122 - additional prospectus exemptions], and
 - section 122.2 - \$97,000

The text of the amendments to the ASC General Rules is set out in Schedule A to this notice.

- ◆ **the repeal of existing statutory exemptions that are being moved into the ASC General Rules along with related transitional provisions** - these include the exempt purchaser, promoter, cooperatives under the *Cooperative Act* and corporations under the *Rural Utilities Act* exemptions. Several of these exemptions have been modified before being re-enacted in the rules. For example, the current exemption in section 87(h) of the Act will only apply to issuers under the Rural Utilities Act as the *Co-operative Associations Act* was repealed effective March 31, 2005. Alberta cooperatives issuing membership and investment shares will now look to the cooperative exemptions in sections 69.3 and 69.4 of the ASC General Rules, which have undergone some modification since being published for comment.

The cooperative membership share exemption (section 69.3) has been revised to permit cooperatives a reasonable opportunity to raise sufficient capital for start-up costs through member loans during the first 18 months (\$10,000 cap) and on an annual basis based on the size (cooperatives with 100 or less members/cooperatives with more than 100 members). The exemption for investment shares purchased by cooperative members (section 69.4) is now subject to a 12-month membership restriction and an annual cap on the total value of investment shares issued to members based on the size of the cooperative membership.

The text of the amendments to the ASC General Rules is set out in Schedule A to this notice.

- ◆ **the repeal of existing statutory exemptions that are not being retained either as harmonized national exemptions or local Alberta exemptions** - these include
 - section 86(1)(g) - trade by pledgee, mortgagee or encumbrancer to liquidate a debt,

- section 86(1)(k) - execution of unsolicited orders through a registered dealer by a financial institution,
 - section 86(1)(l) - trade in a bond or debenture by way of an unsolicited order given to a financial institution if the financial institution is acting as principal and the bond or debenture is (i) acquired from a registered dealer for the trade, or (ii) sold to a registered dealer for the trade,
 - section 86(1)(hh) - trade by a trust corporation if (i) the trade is through its offices in securities of a mutual fund that is promoted, managed and administered by the trust corporation, and (ii) no sales or other acquisition charges are levied,
 - section 87(j) - securities bought and sold by a prospector to finance a prospecting expedition,
 - section 143 (b) - options to sell or purchase securities known as puts and calls, and
 - sections 66(a) and 122(a) of the ASC (General Rules) - di minimus rights offering exemption.
- ◆ the restatement of ASC Rule 45-502 *Trade with RRSP, RRIF or RESP* to strike all references to RRSPs and RRIFs as the exemptions for RRSPs and RRIFs are being incorporated into NI 45-106. The text of the restated ASC Rule 45-502 *Trade with RESP* is set out in Schedule B to this notice.
 - ◆ the amendment of ASC Rule 72-501 *Distributions to Purchasers Outside Alberta* to update securities legislation and form references. The text of the amendments to ASC Rule 72-501 is set out in Schedule C to this notice.
 - ◆ the repeal of several ASC blanket orders, relating to the TSX Venture Exchange short form offering document and transitional provisions for the existing capital raising exemptions contained in MI 45-103 *Capital Raising Exemptions* and ASC Blanket Order dated October 10, 1991 dealing with Self-Directed Registered Education Savings Plans. The repeals are itemized in Schedule D to this notice.
 - ◆ the restatement of a number of registration and prospectus exemptions that are being moved from Parts 6 and 10 of the *Securities Act* into the ASC General Rules as local exemptions. The full text of these restated exemptions is set out in Schedule A to this notice.

Capital Accumulation Plan Exemption

The ASC has decided to defer repeal of the capital accumulation exemption found in sections 68 and 123 of the ASC General Rules until the ASC and other members of the CSA have adopted an updated, harmonized capital accumulation plan exemption (in the form of a blanket exemption from the dealer registration and the prospectus requirements for certain trades in

mutual fund securities in most jurisdictions) similar to the proposed exemption published for comment on May 28, 2004.

Transition - \$97,000 minimum purchase and \$100,000 asset purchase exemptions

As the minimum thresholds under the *asset purchase* and *\$97,000 minimum investment* exemptions (the Old Exemptions) will increase to \$150,000 under the *asset acquisition* and *minimum amount investment* exemptions in NI 45-106, the Commission has concluded that it would be appropriate to provide short-term transitional relief similar to that provided by section 8.3 of NI 45-103 to permit those issuers that have commenced but not completed an offering of their securities in reliance on the Old Exemptions prior to their repeal on September 14, 2005 to continue to rely on the Old Exemptions up to November 30, 2005.

The Commission proposes to provide an interim exemption by way of either order or rule from the registration and prospectus requirements for any trade in a security if the trade complies with and is completed in accordance with the Old Exemptions, as applicable, by November 30, 2005.

Rescission of ASC Policy 2.7 Shares for Debt Applications

As NI 45-106 contains an exemption for securities for debt, issuers will no longer have to seek exemptive relief to issue securities in payment of outstanding debt. As ASC Policy 2.7 *Shares for Debt Applications* will become redundant, it is being rescinded concurrently with the implementation of NI 45-106.

Comments or Questions

If you have comments on the proposed transitional exemption for the \$97,000 minimum investment and \$100,000 asset purchase exemptions or have questions or require further information about these amendments or repeals, please provide written submissions to or contact:

Marsha Manolescu
Deputy Director, Legislation
Alberta Securities Commission
Phone: (403) 297-2091
Fax: (403) 297-3679
e-mail: marsha.manolescu@seccom.ab.

Schedule A

AMENDMENTS TO ALBERTA SECURITIES COMMISSION RULES (GENERAL)

PART 1 AMENDMENTS TO ALBERTA SECURITIES COMMISSION RULES (GENERAL)

1.1 Amendment - The Alberta Securities Rules (General) are amended by;

- (a) repealing sections 65, 66, 66.1, 66.2, 70, 122, 122.1, 122.2, 123.1 and 126.
- (b) amending section 4 by
 - (i) striking “Multilateral Instrument 45-102 Resale of Securities” and substituting “National Instrument 45-102 Resale of Securities” in the introduction and in clause (f); and
 - (ii) striking “pursuant to section 131(1) of the Act” in subclause (ii) of section 4(f) and substituting “under an exemption referred to in these Rules”.

- (c) adding the following provision before section 69:

68.1 Registration exemption for exempt purchaser - The dealer registration requirement does not apply to a trade of a security if the party purchasing as principal is recognized by the Commission as an exempt purchaser.

- (d) adding the following after section 69:

69.1 Registration exemption for promoter - The dealer registration requirement does not apply to a trade by an issuer in securities of its own issue with a promoter of the issuer or by a promoter of an issuer in securities of the issuer with another promoter of the issuer.

69.2 Registration exemption for issuers under the Rural Utilities Act - The dealer registration requirement does not apply to a trade of a voting security of a corporation to which the *Rural Utilities Act* applies.

69.3 Registration exemption for cooperative membership shares - The dealer registration requirement does not apply to a trade of membership shares, including member loans deemed to be membership shares as defined in the *Cooperatives Act*, issued by a cooperative to which that Act

applies, if the aggregate acquisition cost for membership shares and member loans

- (a) for the first 18 months following incorporation is not greater than \$10,000 per member and not more than \$1,000 of that amount is payable for membership shares, and
- (b) in any subsequent year is not greater than
 - (i) \$5,000 for cooperatives with 100 members or less, or
 - (ii) \$2,500 cooperatives with more than 100 members.

69.4 Registration exemption for cooperative investment shares - The dealer registration requirement does not apply to a trade in investment shares as defined in the Cooperatives Act, issued by a cooperative pursuant to that Act, other than a cooperative under Division 1 or 4 of Part 18 of that Act, if

- (a) the investment shares are purchased only by members of the cooperative who have been members of the cooperative for at least 12 months before the share purchase, and
- (b) the aggregate acquisition cost to the members in any one year is not greater than
 - (i) \$10,000 for cooperatives with 100 members or less, or
 - (ii) \$5,000 for cooperatives with more than 100 members.

69.5 Transitional: exemption of trades

(1) In this section,

- (a) "eligible party" means,
 - (i) with respect to a trade in a previously traded section 86(1)(y) security,
 - (A) in the case of a person or company disposing of a previously traded section 86(1)(y) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a

previously traded section 86(1)(y) security, a person or company that already holds or has held a previously traded section 86(1)(y) security of the kind that is being acquired;

- (ii) with respect to a trade in a previously traded section 86(1)(z) security,
 - (A) in the case of a person or company disposing of a previously traded section 86(1)(z) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a previously traded section 86(1)(z) security, a person or company that already holds or has held a previously traded section 86(1)(z) security of the kind that is being acquired;
- (b) "previously traded section 86(1)(y) security" means a security that was traded pursuant to the exemption contained in section 86(1)(y) prior to the repeal of that provision by section 9 of the *Securities Amendment Act, 2003*;
- (c) "previously traded section 86(1)(z) security" means a security that was traded pursuant to the exemption contained in section 86(1)(z) prior to the repeal of that provision by section 9 of the *Securities Amendment Act, 2003*.

(2) The dealer registration requirement does not apply to the following trades in securities:

- (a) with respect to a previously traded section 86(1)(y) security, a trade in that security if all the parties to that trade are eligible parties;
- (b) with respect to a previously traded section 86(1)(z) security, a trade in that security if all the parties to that trade are eligible parties.

(3) Section 86(2) of the Act, as it existed prior to its repeal by section 14 of the *Securities Amendment Act, 2005*, applies to subsection (2) of this section in the same manner as it applied to section 86(1) prior to the repeal of that provision by section 14 of the *Securities Amendment Act, 2005*.

- (e) adding the following provisions before section 127.1

127.01 Prospectus exemption for exempt purchaser - The prospectus requirement does not apply to a distribution of a security if the party purchasing as principal is recognized by the Commission as an exempt purchaser.

127.02 Prospectus exemption for promoter - The prospectus requirement does not apply to a trade by an issuer in securities of its own issue with a promoter of the issuer or by a promoter of an issuer in securities of the issuer with another promoter of the issuer.

127.03 Prospectus exemptions for cooperatives and corporations under the Rural Utilities Act - The prospectus requirement does not apply to a distribution of securities referred to in sections 69.2, 69.3 and 69.4 of the Rules.

127.04 Transitional: exemption of trades

(1) In this section,

- (a) "eligible party" means,
 - (i) with respect to a trade in a previously traded section 131(1)(q) security,
 - (A) in the case of a person or company disposing of a previously traded section 131(1)(q) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a previously traded section 131(1)(q) security, a person or company that already holds or has held a previously traded section 131(1)(q) security of the kind that is being acquired;
 - (ii) with respect to a trade in a previously traded section 131(1)(r) security,
 - (A) in the case of a person or company disposing of a previously traded section 131(1)(r) security, the person or company that holds that security, and
 - (B) in the case of a person or company acquiring a previously traded section 131(1)(r) security, a

person or company that already holds or has held a previously traded section 131(1)(r) security of the kind that is being acquired;

- (b) "previously traded section 131(1)(q) security" means a security that was traded pursuant to the exemption contained in section 131(1)(q) prior to the repeal of that provision by section 13 of the *Securities Amendment Act, 2003*;
- (c) "previously traded section 131(1)(r) security" means a security that was traded pursuant to the exemption contained in section 131(1)(r) prior to the repeal of that provision by section 13 of the *Securities Amendment Act, 2003*.

(2) The prospectus requirement does not apply to the following distributions:

- (a) with respect to a previously traded section 131(1)(q) security, a trade in that security if all the parties to that trade are eligible parties;
- (b) with respect to a previously traded section 131(1)(r) security, a trade in that security if all the parties to that trade are eligible parties.

(3) Section 131(2) of the Act, as it existed prior to its repeal by section 19 of the *Securities Amendment Act, 2005*, applies to subsection (2) of this section in the same manner as it applied to section 131(1) prior to the repeal of that provision by section 19 of the *Securities Amendment Act, 2005*.

(f) repealing and restating section 127.1 as follows:

127.1 Offering memorandum required for exempt purchaser and minimum amount investment exemptions

(1) If any document purporting to describe the business and affairs of the issuer and prepared for review by prospective purchasers to assist in making an investment decision in respect of the securities being sold is delivered to a purchaser under section 127.01 of the Rules or section 2.10 of National Exemption 45-106 *Prospectus and Registration Exemptions* (NI 45-106), in respect of an offering commenced on or after September 14, 2005, the issuer must deliver to the purchaser, at the same time or before the purchaser signs the agreement to purchase the security, an offering memorandum in a form that

- (a) complies with sections 2.9 (11) to (14) and 6.4 of NI 45-106, or
- (b) includes
 - (i) the certificate required by section 2.9(11) to(14) and
 - (ii) a statement describing the rights of actions provided by section 204 of the Act and the time limits specified by section 211 of the Act in which an action to enforce a right under section 204 must be commenced.

(2) Subsection (1) does not apply if the documents delivered consist only of one or more of the following

- (a) an annual report, annual information form, interim report,
- (b) information circular, take-over bid circular, issuer bid circular, prospectus, or
- (c) continuous disclosure document, the content of which is prescribed by Alberta securities law,

that has been filed.

(3) The issuer must update the offering memorandum and any required update of a previously filed offering memorandum on or before the 10th day after each distribution under the offering memorandum or an update of the offering memorandum.

- (g) repealing and restating section 127.2 as follows:

127.2 Offering memorandum filing requirements - An issuer that delivered an offering memorandum under

- (a) section 127.01 of the Rules,
- (b) section 2.10 of NI 45-106,
- (c) section 122.2 of the Rules, as it existed prior to its repeal on September 14, 2005,
- (d) section 131(c) of the Act as it existed prior to its repeal by section 19 of the *Securities Amendment Act, 2005*, or

- (e) section 131(d), (q), (r), (s), (t) or (bb) of the Act, as they existed prior to their repeal by section 13 of the Securities Amendment Act, 2003,

must file a copy of the offering memorandum and any required update of a previously filed offering memorandum on or before the 10th day after each distribution under the offering memorandum or an update of the offering memorandum.

- (h) repealing and restating section 129.1 as follows:

129.1 Report of exempt distribution - An issuer that makes a distribution under section 127.01 must, on or before the 10th day following completion of the distribution, file a report in accordance with Form 45-106F1 *Report of Exempt Distribution*.

- (i) repealing and restating section 129.2 as follows:

129.2 Transitional provision re report of exempt distribution

- (1) An issuer that makes a distribution under

- (a) section 131(1)(a), (d), (q), (r), (s), (t), (u), or (bb) of the Act, as they existed prior to their repeal by section 13 of the *Securities Amendment Act, 2003*,
- (b) section 131(b), (c), (l) or (m) of the Act, as they existed prior to their repeal by section 19 of the *Securities Amendment Act, 2005*,
- (c) section 122(d) or 122.2 of the Rules as they existed prior to their repeal on September 14, 2005,

must, on or before the 10th day following completion of the distribution, file a report in accordance with Form 45-106F1 *Report of Exempt Distribution*.

PART 2 EFFECTIVE DATE

- 2.1 Effective Date** - These amendments are effective September 14, 2005.

Schedule B

Restated Alberta Securities Commission Rule 45-502 *Trade with RESP*

PART 1 RESTATED ASC RULE 45-502

1.1 **Restatement** - Alberta Securities Commission Rule 45-502 *Trade with RRSP, RRIF or RESP* has been restated to apply solely to RESPs:

ALBERTA SECURITIES COMMISSION RULE 45-502 TRADE WITH ~~RRSP, RRIF OR~~ RESP

(incorporating amendments of September 14, 2005)

PART 1 DEFINITIONS

1.1 In this Rule:

- (a) "Beneficiary" means an individual who is:
 - (i) for the purpose of section 2.1, the beneficiary of an ~~RRSP, RRIF or~~ RESP to which a security is traded pursuant to that section; or
 - (ii) for the purpose of section 2.2, the beneficiary of an ~~RRSP, RRIF or~~ RESP which trades in a security pursuant to that section;
- (b) "prospectus exemption" means an exemption from the requirements of section ~~110 84~~ of the Act;
- (c) "RESP" means a registered education savings plan within the meaning of the term under the *Income Tax Act* (Canada);
- ~~(d) "RRIF" means a registered retirement income fund within the meaning of the term under the *Income Tax Act* (Canada);~~
- ~~(e) "RRSP" means a registered retirement savings plan within the meaning of the term under the *Income Tax Act* (Canada).~~

(as amended September 14, 2005)

PART 2 EXEMPTIONS FROM REGISTRATION AND PROSPECTUS REQUIREMENTS

2.1 Exemption for Trade to ~~RRSP, RRIF or~~ RESP by Beneficiary

Sections ~~75 and 110 54 and 84~~ of the Act do not apply to a trade in a security that was previously acquired under a prospectus exemption and that is subject to resale restrictions under National Instrument 45-102 *Resale of Securities* ~~under the Act or the regulations~~ if the trade:

- (a) is made to an ~~RRSP, RRIF or~~ RESP by:

- (i) the Beneficiary;
 - (ii) a company that is, directly or indirectly, beneficially owned and controlled solely by the Beneficiary; or
 - (iii) another ~~RRSP, RRIF or~~ RESP of which the Beneficiary is the beneficiary; and
- (b) does not otherwise result in a change in the beneficial ownership of the security.

(as amended September 14, 2005)

2.2 Exemption for Trade by ~~RRSP, RRIF or~~ RESP to Beneficiary

Sections ~~75 and 110 54 and 84~~ of the Act do not apply to a trade in a security that was previously acquired under a prospectus exemption and that is subject to resale restrictions in National Instrument 45-102 *Resale of Securities* ~~under the Act or the regulations~~ if the trade:

- (a) is made by an ~~RRSP, RRIF or~~ RESP to:
 - (i) the Beneficiary; or
 - (ii) a company that is, directly or indirectly, beneficially owned and controlled solely by the Beneficiary; and
- (b) does not otherwise result in a change in the beneficial ownership of the security.

(as amended September 14, 2005)

2.3 Further Trade a Distribution

A further trade in a security that was previously acquired by an ~~RRSP, RRIF or~~ RESP in a trade made in reliance on the exemptions provided in section 2.1, or previously disposed of by an ~~RRSP, RRIF or~~ RESP in a trade made in reliance on the exemptions provided in section 2.2, shall be a distribution unless made in compliance with Alberta securities laws ~~the Act and regulations~~ as if the person or company making the further trade had acquired the security on the date and in reliance on the prospectus exemption pursuant to which the security had been acquired by the person or company from whom the ~~RRSP, RRIF or~~ RESP, ~~as applicable,~~ acquired the security.

(as amended September 14, 2005)

PART 3 EFFECTIVE DATE

3.1 Effective Date

This Rule comes into force on September 30, 1999.

PART 2 EFFECTIVE DATE

2.1 Effective Date - These amendments are effective September 14, 2005.

Schedule C

Amendments to Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*

PART 1 AMENDMENTS TO ASC RULE 72-501

1.1 Amendment - Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta* is amended by:

- (a) in section 2.1, striking “sections 85 and 131” and substituting “sections 75 and 110”,
- (b) in section 2.3, striking “Form 45-103F4” and substituting “Form 45-106 F4”,
- (c) in section 3.1, striking “sections 54 and 81” and substituting “sections 75 and 110”,
- (d) in section 3.2, by striking “in section 2.5 of MI 45-102” and substituting “in section 2.5 of National Instrument 45-102”, and
- (e) in section 3.3, by striking “Form 45-103F4” and substituting “Form 45-106 F4”.

PART 2 EFFECTIVE DATE

2.1 Effective Date - These amendments are effective September 14, 2005.

Schedule D

REPEAL OF CERTAIN ALBERTA SECURITIES COMMISSION BLANKET ORDERS

PART 1 REPEAL OF CERTAIN ASC BLANKET ORDERS

1.1 Repeals - The following ASC Blanket Orders are repealed:

- (a) ASC Blanket Order 45-507 *Offerings by TSX Venture Exchange Short Form Offering Document*
- (b) ASC Blanket Order 45-510 *Transitional Provision regarding Multilateral Instrument 45-103 Capital Raising Exemptions*
- (c) ASC Blanket Order entitled *In the Matter of Self-directed Registered Education Savings Plans* dated October 10, 1991

PART 2 EFFECTIVE DATE

2.1 Effective Date - These amendments are effective September 14, 2005.