

BULLETIN TYPE: NOTICE TO ISSUERS

BULLETIN DATE: June 25, 2001

RE: Issuers with a 'Significant Connection to Ontario'

The Exchange has had a number of inquiries regarding the application of the Significant Connection to Ontario policy amendments (the 'Policy Amendments') to CPCs and the procedures and method of calculating a 'significant connection to Ontario' as prescribed in the Policy Amendments. In light of these inquiries, the Exchange, in consultation with staff of the Ontario Securities Commission ('OSC'), has conducted a review of the Policy Amendments. The following reflects the outcome of those discussions:

Capital Pool Companies and Reverse Takeovers

OSC staff has advised the Exchange that prior to implementation of the CPC program in Ontario OSC staff will not recommend that a CPC be deemed a reporting issuer in Ontario.

Accordingly, the Exchange has advised, and OSC staff has agreed, that until such time as the OSC has adopted the CPC program in Ontario, the Policy Amendments will not apply to a CPC notwithstanding the definition of Issuer and section 12.6 of Policy 2.4 will not be effective. However, where an Issuer upon Completion of a Qualifying Transaction is aware that it has a Significant Connection to Ontario, the Issuer must immediately notify the Exchange and make application to the OSC to be deemed a reporting issuer pursuant to section 19.2 of Policy 3.1.

The Exchange is currently in discussions with OSC staff regarding the adoption of the CPC program in Ontario and, in particular, the stage at which OSC staff, in circumstances where Issuers file a CPC in either British Columbia, Alberta, Manitoba or Saskatchewan both prior to and after the implementation of the CPC program in Ontario, will recommend that a CPC be deemed a reporting issuer in Ontario and the nature of the application.

Section 10.6 of Policy 5.2 – *Changes of Business and Reverse Takeovers*, which section provides that 'where, pursuant to an RTO, a Resulting Issuer will have a Significant Connection to Ontario, it must be a reporting issuer in Ontario at the Completion Date of the RTO', **will not be put into effect June 30, 2001 and will be deleted from the Policy Amendments. However, where an Issuer upon completion of an RTO is aware that it has a Significant Connection to Ontario, the Issuer must immediately notify the Exchange and make application to the OSC to be deemed a reporting issuer pursuant to section 19.2 of Policy 3.1.**

Calculation of 'Significant Connection to Ontario'

In anticipation of the implementation of the Policy Amendments, OSC staff has requested that the Exchange amend the Policy Amendments in order to effect the spirit and intent of the Policy Amendments and to ensure that Issuers understand that in determining whether they have a 'Significant Connection to Ontario' they must ascertain the residency of and include:

- (a) the registered shareholders who are beneficial owners of equity securities of the Issuer ('RHs'); **and**
- (b) those beneficial shareholders of the Issuer that are included in either:
 - (i) the 'Demographic Summary Report' or 'DSR' that may be obtained from the International Investors Communications Corporation ('IICC') (see Exchange Bulletin dated June 8, 2001) and whose shares were disclosed in the Issuer's books and records or list of registered shareholders as being held by an intermediary; or

- (ii) the lists of non-objecting beneficial owners ('NOBOs') that may be obtained following the implementation of National Instrument 54-101, *Communication With Beneficial Owners of Securities of a Reporting Issuer* ('National Instrument 54-101')

and who are collectively defined as 'BH's.

The Exchange and OSC staff recognize that neither the DSR nor the NOBO lists will permit the Issuer to assess the residency of all of the beneficial shareholders, but are satisfied that the information provided by either of these two alternatives is sufficient for the purposes of determining whether a Significant Connection to Ontario exists.

Until such time as National Instrument 54-101 is implemented, Issuers must complete the Significant Connection to Ontario assessment using the DSR for the purposes of determining the number and residency of the BHs of the Issuer. Once National Instrument 54-101 is implemented, Issuers may elect to complete the assessment using **either** the DSR or the NOBO lists as described in National Instrument 54-101.

The following example illustrates how the Exchange would expect an Issuer to make an assessment of whether it has a Significant Connection to Ontario using **either** the DSR or the NOBO lists. The Exchange recognizes that the number of BHs identified in the DSR will likely differ from the number of BHs identified in the NOBO lists, but has assumed in the following example that those numbers would be identical.

Example:

The Issuer must first look to its registered shareholder list (obtained from the Issuer's transfer agent) for information regarding total shares issued and outstanding as follows:

500,000 shares are held by RHs resident in Ontario
400,000 shares are held by RHs resident in British Columbia
100,000 shares are held by RHs resident in Alberta
2,000,000 shares are held by BHs
3,000,000 total shares outstanding.

Issuers then must look to **either** the DSR or the NOBO lists to obtain the following information regarding BHs:

300,000 shares are held by BHs resident in Ontario
900,000 shares are held by BHs resident in British Columbia
700,000 shares are held by BHs resident in Alberta
1,900,000 shares held by BHs pursuant to the DSR or the NOBO lists

The Issuer must then calculate whether it has a Significant Connection to Ontario by combining RHs and BHs as follows:

800,000 shares held by shareholders resident in Ontario (300,000 + 500,000)
1,300,000 shares held by shareholders resident in British Columbia (900,000 + 400,000)
800,000 shares held by shareholders resident in Alberta (700,000 + 100,000)
2,900,000 total shares held by BHs and RHs

800,000 shares held by or for shareholders resident in Ontario x 100% = 28%
2,900,000 total shares held by BHs and RHs

The Issuer in making the assessment of a Significant Connection to Ontario using the DSR (or NOBO lists) and the registered shareholder list would determine that it has more than 20% of its shareholders resident in Ontario (28%) and must make an application to and become a reporting issuer in Ontario.

Date of Shareholder Lists

When making an initial assessment pursuant to section 19.1 of Policy 3.1, Issuers must use a DSR dated not earlier than June 1, 2001 but may use a registered shareholder list dated not earlier than **March 1, 2001**. If, however, the Issuer has reason to believe that such registered shareholder list would not reflect material changes in the number of the Issuer's registered shareholders in Ontario, then the Issuer must obtain and use a current registered shareholder list.

When completing an annual assessment pursuant to section 19.3 of Policy 3.1, Issuers should use the registered shareholder list and DSR or, after implementation of National Instrument 54-101, either the DSR or the NOBO lists prepared in connection with the mailing of their annual financial statements.

Where an Issuer upon completion of an RTO or upon the Completion of a Qualifying Transaction is aware that it has a Significant Connection to Ontario, the Issuer must immediately notify the Exchange and make application to the OSC to be deemed a reporting issuer pursuant to section 19.2 of Policy 3.1. In making this assessment the Issuer will need to review a current registered shareholder list and a current DSR or, after implementation of National Instrument 54-101, either the DSR or the NOBO lists.

Policy Amendments

These amendments vary the 'Revisions to Corporate Finance Manual Re: Reporting Issuer Status of Exchange Listed Issuers' previously published as well as the proposed amendments outlined in Exchange Bulletin dated June 8, 2001 and will be effective June 30, 2001. **Until such time as the OSC has adopted the CPC program in Ontario, the Policy Amendments will not apply to a CPC notwithstanding the definition of Issuer and section 12.6 of Policy 2.4 will not be effective.**

Amendment to Policy 1.1 - Interpretation

Policy 1.1 – *Interpretation* will be amended as follows:

The following definitions will be added:

'**BHs**' means those beneficial shareholders of an Issuer that are included in either:

- (a) a DSR for the Issuer and whose shares were disclosed in the Issuer's books and records or list of registered shareholders as being held by an intermediary; or
- (b) after the implementation of National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer*, a NOBO list for the Issuer.

'**DSR**' means the Demographic Summary Report available from the International Investors Communications Corporation ("IICC").

'**NOBO list**' refers to a 'non-objecting beneficial owner list' as currently defined in Proposed National Instrument 54-101 or as defined in the final form of the instrument.

'**RHs**' means the registered shareholders of the Issuer that are beneficial owners of the equity securities of the Issuer. For the purposes of this definition, where the beneficial owner controls or

is an affiliate of the registered shareholder, the registered shareholder shall be deemed to be the beneficial owner.

The definition of 'Significant Connection to Ontario' will be deleted and replaced as follows:

'**Significant Connection to Ontario**' exists where an Issuer has:

- (a) RHs and BHs resident in Ontario who beneficially own more than 20% of the total number of equity securities beneficially owned by the RHs and the BHs of the Issuer; or
- (b) its mind and management principally located in Ontario and has RHs and BHs resident in Ontario who beneficially own more than 10% of the number of equity securities beneficially owned by the RHs and the BHs of the Issuer.

The residence of the majority of the board of directors in Ontario or the residence of the President or the Chief Executive Officer in Ontario may be considered determinative in assessing whether the mind and management of the Issuer is principally located in Ontario.

Amendment to Policy 3.1 – Directors, Officers and Corporate Governance

Section 19.3 of Policy 3.1 will be amended as follows:

All Issuers, that are not otherwise reporting issuers in Ontario, are required to assess on an annual basis, in connection with the preparation for mailing of their annual financial statements, whether they have a Significant Connection to Ontario. All Issuers must obtain and maintain for a period of three years after each annual review, evidence of the residency of the RHs and BHs of the Issuer.

Policy 5.2 – Changes of Business and Reverse Takeovers

The following section will **not be implemented and will be deleted from the Policy Amendments**:

10.6 Assessment of a Significant Connection to Ontario

- (a) Where, pursuant to an RTO, a Resulting Issuer will have a Significant Connection to Ontario, it must be a reporting issuer in Ontario at the Completion Date of the RTO.

If you have any questions relating to the content of this Bulletin, please contact:

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