BULLETIN TYPE: Policy Amendment
BULLETIN DATE: March 28, 2000

Re: Revised National Escrow Instrument to be Imposed on Initial Public Offerings

On March 17, 2000, the Canadian Securities Administrators ("CSA") published Notice 46-301, entitled *Proposal for Uniform Terms of Escrow Applicable to Initial Public Distributions* (the "Notice"). The Notice summarized the key elements of the revised proposal for uniform terms of escrow which would apply to initial public distributions of securities by prospectus ("the Revised Proposal"), and highlighted changes from the earlier proposal, published for comment in May 1998, entitled *Proposal for a National Escrow Regime Applicable to Initial Public Distributions"* (the "1998 Proposal").

The Notice stated that the CSA will develop and publish for comment a national instrument based on the Revised Proposal, and until such time as the national instrument is implemented as a rule or policy in each jurisdiction, the existing escrow policies will remain operative. However, the Notice also stated that where a preliminary prospectus in connection with an IPO is filed after the date of the Notice, securities regulatory staff will be guided by the Revised Proposal in exercising their discretion to accept escrow arrangements consistent with the Revised Proposal.

Notwithstanding that the CSA has indicated that the use of the Revised Proposal is optional, the Exchange will require all issuers undertaking an IPO on the Exchange which have not yet obtained a preliminary receipt for their prospectus prior to July 1, 2000 to structure their escrow pursuant to the Revised Proposal in order to obtain a listing on the Exchange.

By mandating the use of the Revised Proposal, all newly listed companies on the Exchange will be subject to a similar escrow regime, regardless of the jurisdiction in which they are reporting. The harmonization of escrow policies is consistent with the original intent of the Exchange escrow policy which currently applies to Reverse Takeovers and Qualifying Transactions. The effect of mandating the Revised Proposal will be that there will be no advantage in terms of escrow for companies using different methods of listing on the Exchange such as IPOs, Reverse Takeovers or Capital Pools, including the Qualifying Transaction. Capital Pool Companies, however, will also continue to be subject to the escrow requirements contained in Exchange Policy 2.4.

As a result of this requirement, section 2.1 of Policy 5.4, Escrow and Vendor Consideration is deleted in its entirety and replaced with the following text:

> "In regard to any Issuer seeking a listing on the Exchange in connection with an IPO, the Exchange will generally require the Issuer to have entered into an escrow agreement as described in the Canadian Securities Administrators Notice 46-301, dated March 17, 2000, *Proposal for Uniform Terms of Escrow Applicable to Initial Public Distributions* (the "Notice") unless a preliminary receipt for the IPO Prospectus is issued by a CSA Jurisdiction prior to July 1, 2000. Where an Issuer has received a preliminary receipt for its IPO Prospectus prior to July 1, 2000, the Exchange will not generally impose additional escrow and will defer to the escrow regime of the applicable Securities Commission(s)."

At this time, the Exchange will not consider applications to amend the terms of existing escrow agreements to conform to the Revised Proposal.

Summary of the Revised Proposal

- The Revised Proposal would apply to an IPO whether conducted by the issuer or as a secondary offering.

- A securities regulatory authority may impose escrow requirements additional to those described in the Notice if no underwriter is involved in an IPO, an issuer's equity securities will not be listed on a Canadian exchange upon completion of its IPO, or in other exceptional circumstances.

- Equity securities owned or controlled by principals (except for the exempt portion of each principal’s holdings, incentive options and securities sold in a permitted secondary offering) would be escrowed at the time of the issuer’s IPO.

- Principals would include all persons or companies that, on completion of the issuer's IPO, fall in one of the following categories:

    - directors and senior officers of the issuer or of a material operating subsidiary of the issuer, as listed in the IPO prospectus;

    - promoters of the issuer during the two years preceding the IPO;

    - those who own and/or control more than 10% of the issuer’s voting securities immediately after completion of the IPO if they also have appointed or have the right to appoint a director or senior officer of the issuer or of a material operating subsidiary of the issuer;

    - those who own and/or control more than 20% of the issuer’s voting securities immediately after completion of the IPO; and

    - associates and affiliates of any of the above.

- At the time of its IPO, an issuer will be classified for purposes of escrow as an "exempt issuer", an "established issuer" or an "emerging issuer".

- Uniform terms of automatic timed-release escrow would apply to principals of exchange-listed issuers, differing only according to the classification of issuer:

- for exempt issuers -- those conditionally listed or listed on the TSE in its exempt category, and those conditionally listed or listed on the TSE, the ME or CDNX that raised minimum gross proceeds of $75 million in their IPO: no escrow;

- for established issuers -- those conditionally listed or listed on the TSE in its non-exempt category, on Tier 1 of the CDNX, or on the ME that meet requirements equivalent to the CDNX's Tier 1 requirements: escrow releases in equal tranches at 6-month intervals over 18 months (*i.e.*, 25% of each principal's holding released in each tranche) with 25% of each principal’s holding exempt from escrow; and

- for emerging issuers -- those conditionally listed or listed on Tier 2 of the CDNX, or on the ME that meet requirements equivalent to the CDNX's Tier 2 requirements but not

Tier 1 requirements -- escrow releases in equal tranches at 6-month intervals over 36 months (*i.e.*, 15% of each principal's holding being released in each tranche) with 10% of each principal's holding exempt from escrow.

- An emerging issuer that achieves established issuer status during the term of its escrow would "graduate", resulting in a catch-up release and accelerated release of any securities remaining in escrow under the faster schedule applicable to established issuers as if the issuer had originally been classified as an established issuer.

- Escrowed securities could generally not be transferred or otherwise dealt with during escrow. Permitted transfers or dealings within escrow would include: (i) transfers to continuing or, upon their appointment, incoming directors and senior officers of the issuer or of a material operating subsidiary, with approval of the issuer's board of directors; (ii) transfers to an RRSP or similar trusteed plan provided that the only beneficiaries are the transferor or the transferor's spouse or children; (iii) transfers upon bankruptcy to the trustee in bankruptcy; and (iv) pledges to a financial institution as collateral for a *bona fide* loan, provided that upon a realization the securities remain subject to escrow. Tenders of escrowed securities to a take-over bid would be permitted provided that, if the tenderer is a principal of the successor issuer upon completion of the take-over bid, securities received in exchange for tendered escrowed securities are substituted in escrow on the basis of the successor issuer's escrow classification.

- A securityholder that is or would otherwise be a principal would be permitted to sell all or any portion of its securities of the issuer to the public at the time of the issuer's IPO provided that the secondary distribution is disclosed in the issuer's IPO prospectus and either:

- the issuer's IPO is firmly underwritten; or

- all securities offered in the IPO by the issuer are sold before any sale is completed under the secondary offering and no director, officer or promoter of the issuer or of a material operating subsidiary or any of their affiliates and associates, is a seller under the secondary offering.

For further information, please refer to the CSA Notice 46-301, dated March 17, 2000.

For questions related to the Exchange requirements regarding the Revised Proposal, please contact: Denise Hendrickson, Manager, Policy, Calgary Office at (403) 974-7442; or Susan Copland, Manager, Policy, Vancouver Office at (604) 643-6531.