



## Section D Financing

### Policy 14: Public Offerings

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#### ***Scope of Policy\****

**\*Policy last amended June 1999**

The Securities Act provides that a person shall not distribute securities without filing and obtaining a receipt for a Prospectus unless exempted under the Act or the Securities Regulation. A Prospectus, including an EOP, is the securities offering document which an investor purchasing a listed company's securities is entitled, under the Securities Act, to receive in connection with their purchase. Section 83 of the Securities Act requires delivery of the Prospectus including an EOP to a purchaser and provide rights of rescission to purchasers.

One of the advantages of a listing on the Exchange is the use of an Exchange Offering Prospectus (EOP). The EOP is vetted by the Exchange, although the BC Securities Commission retains the discretion to refuse to issue a receipt. An EOP facilitates a company doing a public distribution of its securities through a Member acting as the agent of the listed company to sell the securities. The EOP may also be used to effect a shareholder offering or to qualify the conversion of special warrants or filed as a prospectus in other jurisdictions. A major advantage of issuing securities using either a Prospectus or an EOP is that the shares may be immediately traded in the secondary market through the Exchange, with no hold period.

The Short Form Offering Document provides another way for companies to sell securities to the public. The Short Form is not a Prospectus; it is a brief disclosure document which supplements a company's existing continuous disclosure information. Eligible companies can use the Short Form to raise a limited amount of funds from the public on a more timely and less costly basis than the preparation of a Prospectus or EOP would require. As with a Prospectus and EOP, the shares sold pursuant to a Short Form Offering are immediately tradable in the secondary market, with no hold period.\*

**\*Last amended April 1999**

The following topics form the substance of this Policy. The main headings are:

- 14.1 Public Offering by non-EOP Prospectus
- 14.2 Exchange Offering Prospectus Treasury Offerings
- 14.3 General Requirements for Prospectuses including EOPs
- 14.4 Shareholder Offerings
- 14.5 Special Warrant Conversions by Prospectus including EOP
- 14.6 Public Offering by Short Form Offering Document

## **14.1 Public Offering by non-EOP Prospectus**

14.1.1 The BC Securities Commission is the primary reviewing authority for Prospectuses (in Form 12, 12A, 14, or 14A) other than EOPs. A company which seeks to do a public offering by Prospectus must comply with the provisions of the BC Securities Commission's Local Policy Statement 3-02 (*Prospectus Filing Requirements*). These prospectuses must be filed with the Exchange to obtain the Exchange's consent to the issuance and additional listing of the securities.

14.1.2 A company which proposes to effect its IPO by Prospectus through the facilities of the Exchange must do so in accordance with the Exchange's Conditional Listing System, which merges the IPO with a listing application. The BC Securities Commission and the Exchange review the required documentation simultaneously, and after the BC Securities Commission has receipted the company's Prospectus, the Exchange lists the company's securities, subject to the condition that the offering described in the Prospectus is completed and the Exchange's financial and distribution requirements are met.

\*\* See Policy 2.2 (Conditional Listing Application).

14.1.3 A company proposing to conduct a public offering, a class of whose securities is already listed on the Exchange, will be required, unless filing an EOP, to file an ordinary Prospectus with the relevant Securities Commission(s) and the Exchange. For non-EOP Prospectuses, the Exchange's review is of the transactions disclosed and not yet accepted for filing, not of the Prospectus itself. The Exchange requires that the company file the following with its Corporate Finance Services Department:

- a) a copy of the company's submission letter to the Securities Commission(s) and a copy of the preliminary Prospectus (including all financial statements, reports, certificates, and other documents which may form a part thereof);
- b) a copy of all of the company's material agreements not previously filed, including the company's agreement with the agent or underwriter who will conduct the public offering;
- c) a copy of all the company's letters to and from the Securities Commission(s) relating to the offering;
- d) a copy of the company's final Prospectus and any amendments thereto (including all financial statements, reports and other documents which may form a part thereof); and
- e) a certified copy of the Securities Commission's receipt for the final Prospectus.

- 14.1.4 Reference should be made to Policy 14.3 and Exchange Rule B.3.06 in Appendix 1A, which limits the ability of listed companies to do public offerings other than through the facilities of the Exchange.

## **14.2 Exchange Offering Prospectus Treasury Offerings**

### ***Introduction***

- 14.2.1 The Exchange rather than the BC Securities Commission is the primary reviewer of EOPs. The Commission and Exchange have an agreement with respect to the Exchange's review of EOPs. The Exchange's vetting of EOPs is expected to improve market efficiencies without reducing the degree and quality of disclosure to the public. However, either the Exchange or the Commission may, at any time after receiving a preliminary EOP, advise the company's Filing Solicitor that the Commission will complete the review.
- 14.2.2 EOPs may be filed to qualify for distribution in British Columbia securities of Qualifying Issuers. "**Qualifying Issuer**" is defined in the BC Securities Commission's Local Policy Statement 3-02 ("**LPS 3-02**") to be a reporting issuer whose securities are listed on the Exchange, and that satisfies any one of the following requirements:
- (i) the issuer is listed as an Advanced Company of the Exchange;
  - (ii) the issuer allocates a significant portion of the proceeds raised under the EOP to fund a specific project, property or business undertaking;
  - (iii) the issuer has not raised, by way of prospectus, statement of material facts or rights offering during the previous 12 months, together with the proceeds to be raised under the EOP, more than \$250,000; or
  - (iv) the issuer has received the BC Securities Commission's Executive Director's approval to file an EOP.

For clarification of this or any other matter within the jurisdiction of the Executive Director, Filing Solicitors should call the Commission's Director, Corporate Finance.

- 14.2.3 An EOP must be either in Form 12B or 14B, or a summary prospectus and base disclosure document prepared in accordance with the requirements set out in **LPS 3-02**. An EOP is a type of Prospectus. It must be fully in compliance with all "**Statutory Requirements**" which means the Securities Act, Regulation, Commission Rules (including those entitled the "Securities Rules"), Forms and decisions.

- 14.2.4\* An EOP is a full prospectus, it may be filed as a prospectus in other provinces, although Filing Solicitors should not assume it may be filed in other provinces under National Policy 1 with BC (the Exchange) as "prime" as other provincial securities commissions are not obligated to accept the Exchange's vetting under National Policy 1.

\*Last amended March 1999

- 14.2.5 Where the Executive Director has authority under the Securities Act to waive a Statutory Requirement applicable to the EOP or any accompanying document, which waiver may be evidenced by the issuance of a receipt for the EOP, the Filing Solicitor must:

- (a) identify the waiver requested in the covering letter to the Exchange and the Commission; and
- (b) demonstrate to the Exchange in the particular filing where relief is requested that it would not be prejudicial to the public interest to waive the requirement.

If the Exchange agrees with the submission, it will request, in writing, that the Executive Director waive the requirement, indicating the reasons for the request. Upon making a determination with respect to the request for a waiver, the Executive Director shall advise the Exchange in writing. If the Executive Director does not concur with the request, the Exchange shall advise the **Qualifying Issuer** that the request has been denied.

- 14.2.6 Where a distribution of securities by a **Qualifying Issuer** requires an exemption from the **Statutory Requirements** in order for the **Qualifying Issuer** to comply with the **Statutory Requirements**, the **Qualifying Issuer** must make an application to the Commission or Executive Director, as appropriate, requesting the relief.

## **Procedure**

14.2.7 The filing and acceptance process for an EOP involves the following steps:

<b>Step 1:</b>	Company's Filing Solicitor prepares documentation and preliminary EOP required by the Exchange and the BC Securities Commission and sends it to the Member acting as agent and its counsel for their due diligence review and their execution of the agency agreement and the certificate page of the EOP.
<b>Step 2:</b>	<b>Qualifying Issuer's</b> Filing Solicitor files the preliminary EOP and accompanying documentation with the Exchange and BC Securities Commission, and the Commission issues a preliminary receipt.
<b>Step 3:</b>	Exchange reviews the preliminary EOP and documentation submitted and responds to the <b>Qualifying Issuer</b> and the Commission with deficiencies.
<b>Step 4:</b>	<b>Qualifying Issuer's</b> Filing Solicitor cures deficiencies and responds to Exchange and BC Securities Commission. When all deficiencies are resolved, Filing Solicitor files the final EOP with the Exchange and the BC Securities Commission.
<b>Step 5:</b>	Commission issues a receipt for (i.e. accepts) the final EOP on the effective date, if not prejudicial to the public interest. <b>Qualifying Issuer</b> files further documents with the Exchange.
<b>Step 6:</b>	The agent advises the Exchange of the offering day before 11:00 a.m. and specifies a time between 10:00 a.m. and 1:00 p.m. at which trading in the securities of the issuer should be halted for determination of the average market price on the trading day immediately preceding the offering day. The Exchange notifies Members of the offering by issuing an Exchange Notice on the same day. Exchange offering must be effected by the agent within 90 days of the effective date. *
*Last amended February 26, 1997	
<b>Step 7:</b>	Agent effects the offering by distributing the securities to the purchasers on the offering day through VCT. Within the period specified in the agency agreement, the agent pays the company the net proceeds of the offering.

## **Preliminary Required Documentation**

14.2.8\* The **Qualifying Issuer's** Filing Solicitor must file the following with the Exchange's Corporate Finance Services Department:

- a) a copy of the preliminary EOP, signed by the **Qualifying Issuer's** officers, directors, promoters and each Member who is acting either as the **Qualifying Issuer's** agent or underwriter for the offering. These certificates must be signed within 3 days of the date of the preliminary prospectus and within 10 days of the date of filing;
- b) one copy of the signed preliminary EOP containing:
  - i) a copy of the financial statements;
  - ii) any future oriented financial information;
  - iii) any valuation or appraisal report or a summary thereof which is to form part of the EOP; and

- iv) any audited statement of costs required under Policy 18 or Policy 19;
- c) two copies of the certified preliminary summary prospectus (one blacklined to show edits from the sections in the base disclosure document, the other fully signed) required under **LPS 3-02**, if applicable, together with the solicitor's certificate described in s.11.4 of **LPS 3-02**;
- d) undertaking to deliver the base disclosure document as required under **LPS 3-02**, if applicable;
- e) a certified copy of the directors' resolution approving the preliminary EOP and authorizing the directors and officers to sign it;
- f) a sheet cross-referencing the disclosure in the preliminary EOP to the items set out in the applicable required form (i.e. Form 12B or Form 14B);
- g) an unsigned copy, in draft form, of the audited financial statements and any draft unaudited financial statements, together with a review engagement report by the **Qualifying Issuer's** public accountant, presented in accordance with sections 111 and 112 of the Securities Rules and paragraphs 7100.34 and 7100.35 of the CICA Handbook; note that audited financial statements filed with a prospectus should be in draft form and addressed to the directors, whereas audited financial statements filed for the purpose of continuous disclosure are addressed to the shareholders;
- h) with the prior consent of the Executive Director, an unsigned copy, in draft form, of any future-oriented financial information;
- i) any valuation or appraisal report, including a valuation opinion required under Policy 18 or Policy 19;
- j) any audited statement of costs required under Policy 18 or Policy 19;
- k) all Geological Reports referred to in the EOP, accompanied by the authors' certificates and consents as required by sections 106 to 110 of the Securities Rules);
- l) consultant's and specialist's (if applicable) certificates for any Assessment Reports required to be obtained by the agent pursuant to section 6.5 of Interim Local Policy Statement 3-17 (*Registrant Due Diligence*);
- m) in the case of an EOP involving resource properties, a title report relating to the status of the **Qualifying Issuer's** interest prepared by a qualified person on each property on which proceeds of the offering will be expended and the expiry dates of those interests;

- n) signed auditor's comfort letters for the audited statements, and for any FOFI and audited statement of costs provided, in accordance with section 119 of the Securities Rules;

\*\* see paragraph 49 of the Auditing and Related Services Guideline and section 7100 of the CICA Handbook for the applicable format.

- o) Form 4B's for:

- i) each Director, officer, promoter or control person; and
- ii) where a promoter or control person is not an individual, a Form 4B for any individual that has direct or indirect beneficial ownership of, control or direction over, or a combination of direct or indirect beneficial ownership of and control or direction over securities carrying more than 50% (or 20%, if no individual hold more than 50%) of the voting rights attached to securities issued by the promoter or control person; except
- iii) where a promoter or control person is a reporting issuer, no person is required to file a Form 4B with respect to that promoter or control person;

Alternatively, an individual required to file a Form 4B may make a statutory declaration that the individual has filed a Form 4B within the three year period preceding the date of the preliminary prospectus and that there has been no change in the information required to be disclosed in response to the questions dealing with change of name or business name, administrative proceedings, offenses, civil proceedings, bankruptcy and settlement agreements;

- p) signed underwriting or agency agreement (which may be in draft form so long as the underwriter or agent has signed the certificate in the preliminary EOP);
- q) signed or certified true copies of all material agreements not previously filed with the Exchange;
- r) where the **Qualifying Issuer** has a registrable interest in a patent or trademark that is material to the business of the company and disclosed in the preliminary EOP, a legal opinion relating to the registration of the **Qualifying Issuer** interest in the patent or trademark and the expiry date of that interest;
- s) schedule providing the background calculations to the percentages of securities quoted in the preliminary EOP;

- t) any other documentation required to be filed under any other Exchange policy which is not necessarily required to be filed with the EOP;
- u) a covering letter to the Exchange listing the documents enclosed and including:
  - i) written confirmation by the Filing Solicitor that s/he has filed with the Commission the documents required by **LPS 3-02** that are applicable to filings of preliminary EOPs, and
  - ii) identification of any **Statutory Requirements** or Commission policies for which the Qualifying Issuer has requested or will request a waiver, and include a copy of an application to the Commission for an exemption order, if applicable; and
- v) the prescribed filing fee.\*

\*(a), (b), (c), (g) and (h) Last amended June 1998

14.2.9 Upon receipt of a preliminary EOP and accompanying documents filed by a **Qualifying Issuer**, the Exchange will check that the documents are in the form required by the BC Securities Commission's policies and **Statutory Requirements** applicable to preliminary EOPs. If any of the documents filed are deficient, the Exchange shall notify the Executive Director and the **Qualifying Issuer's** Filing Solicitor and await receipt of correct documents.

Provided the preliminary EOP and accompanying documents filed by a **Qualifying Issuer** are in the form required by the BC Securities Commission's policies and **Statutory Requirements** applicable to preliminary EOPs, the Exchange shall request that the Executive Director issue a receipt for the preliminary EOP. The Executive Director will issue a preliminary receipt, as soon as practicable, provided:

- a) the documents required by **LPS 3-02**, and the fee prescribed by the Regulation has been filed by the **Qualifying Issuer** with the Commission, and
- b) the Executive Director does not consider it in the public interest to impose additional filing requirements and conditions.

\*\* See section 65 of the Securities Act

The Commission will provide the original preliminary receipt to the Filing Solicitor, one copy of the receipt shall be retained for the Commission's files and one copy shall be forwarded to the Exchange for its files.



14.2.10 As a Prospectus, an EOP receives a preliminary receipt on its initial filing with the Exchange and the BC Securities Commission. It is, therefore, a disclosure document that can be used by the underwriter/agent to solicit "expressions of interest" pending the issuance of a final receipt by the BC Securities Commission.

\*\* See section 78 of the Securities Act.

14.2.11 After issuance of the preliminary receipt, the Exchange will review and assess the preliminary EOP together with all accompanying documents filed by the **Qualifying Issuer**. Where the Exchange determines that the EOP and accompanying documents do not comply with the policies and Statutory Requirements or requires further information, the Exchange will issue written comments to the Filing Solicitor with a request for written responses. The Exchange will also review and assess whether the Exchange's policies have been followed and that the distribution is being done in accordance with Rule B.3.

14.2.12 The Exchange's comments on the documentation will be forwarded, after their reviews, to the Filing Solicitor, copying the BC Securities Commission, the **Qualifying Issuer**, the Member acting as agent or underwriter, and sometimes the auditor. The Filing Solicitor will in turn report these questions to the company's management for comment. These questions are commonly called "deficiencies", although they may not be deficiencies per se; they may be in the nature of requests for clarification or confirmation of certain matters. It is important for the company's management to be involved in the review of those comments. After a Filing Solicitor responds satisfactorily to all of the deficiencies, the BC Securities Commission may receipt and the Exchange accept the EOP. The date of receipt and acceptance is called the effective date.

14.2.13 The Exchange will consider whether there are serious disclosure problems with the preliminary EOP to warrant discussing with the Exchange's Director of Surveillance whether a trading halt or suspension would be appropriate in the circumstances, and if so, discussing with a Corporate Finance Services Department team Manager and the Executive Director whether a cease trade order under section 81 of the Securities Act would be appropriate in the circumstances, or if the filing is materially deficient and should be returned to the Filing Solicitor.

14.2.14 Some examples of common problems include:

- a) financial information in the preliminary EOP (e.g.: property expenditures, research and development expenditures, sales and net income, etc.) is not consistent with the information in the financial statements;
- b) disclosed terms do not agree with supporting material contracts or significant terms of material contracts are not fully disclosed;

- c) stated goals and objectives are not consistent with one another (e.g. **Qualifying Issuer** is proposing to raise funds for marketing but has not yet developed a prototype);
- d) the company's product or service, stage of development, and resources required to complete development are not fully and clearly described;
- e) competition, both direct and indirect, is not fully disclosed;
- f) significant and relevant risk factors are not disclosed and prioritized in order of importance;
- g) the disclosure in the company's news releases over the last 12 - 24 months was not balanced, is promotional and is inconsistent with the disclosure in the prospectus;
- h) the disclosure in the preliminary EOP is not balanced and is promotional and the preliminary EOP does not disclose all material facts relating to the **Qualifying Issuer** and its proposed offering;
- i) sufficient funds are not being raised to fund the purpose or achieve the business objectives of the offering as disclosed in the prospectus (see section 120 of the Securities Rule);
- j) unconscionable consideration was paid, or will be paid, for services or for the acquisition of capital assets (see section 120 of the Securities Rule and Policy 19);
- k) the **Qualifying Issuer's** directors and officers are not suitable (see section 120(2)(d), (e) and (f) of the Securities Rule);
- l) the **Qualifying Issuer's** proposed expenditure of funds, and the objectives that it expects to accomplish with these funds, do not appear to be logical and supportable.

14.2.15 When the Exchange is satisfied with the Filing Solicitor's responses and the Commission is ready for the Exchange to call for final materials, the Exchange will call for final materials and then the Executive Director, if the Executive Director does not consider it to be contrary to the public interest, will accept the final EOP by issuing its receipt.

## ***Amendments to Preliminary EOP***

14.2.16 Where an adverse material change occurs after a receipt is issued for a preliminary EOP but before a receipt is issued for the final EOP, the **Qualifying Issuer** must file an amendment to the preliminary EOP disclosing the change as soon as practicable and in any event no later than 10 days after the change occurs. Where a material change is not adverse the **Qualifying Issuer** may also file an amendment to the preliminary EOP.

\*\* See section 78 of the Securities Act.

14.2.17 Amendments to the preliminary EOP must be sent to each recipient of the preliminary EOP, at the time the EOP is filed.

14.2.18 Any amendments to a preliminary EOP must be made in accordance with **LPS 3-02**. The material to be filed with the Exchange includes:

- a) One signed copy of the amendment to the preliminary EOP;
- b) Certified copy of the directors' resolution approving the amendment and authorizing the directors and officers to sign the amendment;
- c) If applicable, signed or certified true copies of all material contracts related to the amendment, if applicable; and
- d) signed consents, if required under section 108 of the Securities Rules.

## ***Final Required Documentation***

14.2.19\* When the Exchange has notified the Filing Solicitor of the resolution of all deficiencies, the Filing Solicitor must deliver the following to the Exchange:

- a) one signed copy of the final EOP, containing:
  - i) signed audited and unaudited financial statements;
  - ii) any signed future orientated financial information;
  - iii) any signed audited statement of costs; and
  - iv) any other supporting materials which are to form a part of the final EOP;

Note the certificate must be signed within three days of the date of the final EOP and the date of the final EOP must be within ten days of filing final material.

- b) two copies of the certified final summary prospectus (one blacklined to show edits from the sections in the base disclosure document, the other fully signed for the public file) required under **LPS 3-02**, if applicable, together with the solicitor's certificate described in s.11.4 of **LPS 3-02**;
- c) undertaking to deliver the base disclosure document as required under **LPS 3-02**, if applicable;
- d) signed consent letter, as required by section 106 of the Securities Rules, from each of the company's auditors and public accountants, including the public accountant who prepared the review engagement report;
- e) certified copy of directors' resolutions approving the final EOP and the financial statements and authorizing the directors to sign the balance sheet and the directors and officers to sign the final EOP;
- f) if the EOP contains a summary of a Geological Report, one signed copy of the final version of the Geological Report, if not previously filed, referred to in the final EOP, accompanied by the author's certificates and signed consents as required under sections 106, 109 and 110 of the Securities Rules;
- g) if the EOP contains a summary of a valuation or appraisal report, signed copy of the final version of the valuation or appraisal report accompanied by the author's signed consent letter, as required by section 106 of the Securities Rules;
- h) other signed consent letters from any other professional person named in the EOP, as required by section 106 of the Securities Rules;
- i) signed copy of the solicitor's certification if required by Local Policy Statement 3-41;
- j) confirmation that a CUSIP number has been applied for or received for any units and warrants to be crossed through VCT;
- k) signed copy of the underwriting or agency agreement, if not filed previously;
- l) certificate and undertakings of agent to provide due diligences report as required by LPS 3-17, if applicable;
- m) a specimen warrant certificate if applicable. The CUSIP number for the company's security is to be printed on the specimen certificate;
- n) DELETED

- o) DELETED
- p) a covering letter to the Exchange listing the documents enclosed and including written confirmation by the Filing Solicitor that s/he has filed with the Commission the documents required by **LPS 3-02** that are applicable to filings of final EOPs.

Certified copies of the supporting material may be used if originally signed copies have been already been filed with the Exchange.

*\*(a), (n) and (o) Last amended June 1998*

### ***Refusal to Issue Receipt***

14.2.20 In reviewing the preliminary EOP and the final EOP, the Exchange shall have particular regard to section 120 of the Securities Rules, and shall consider whether:

- a) it would be prejudicial to the public interest to issue a receipt for the EOP; and
- b) it is the case that:
  - i) the EOP or any record required to be filed with it,
    - A) does not comply substantially with the appropriate requirements of the **Statutory Requirements**; or
    - B) contains a misrepresentation or a statement, promise, estimate or forecast that is misleading, false or deceptive;
  - ii) unconscionable consideration has been paid or given or is intended to be paid or given for any services or promotional purposes or for the acquisition of property;
  - iii) the aggregate of
    - A) the proceeds from the sale of the securities under the EOP that are to be paid into the treasury of the **Qualifying Issuer**; and
    - B) the other resources of the **Qualifying Issuer**
 is insufficient to accomplish the purpose of the issue stated in the EOP;
  - iv) the **Qualifying Issuer** cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of the **Qualifying Issuer** or that of its officers, directors, promoters, or control persons;

- v) because of the past conduct of the **Qualifying Issuer** or that of its officers, directors, promoters, or control persons the business of the **Qualifying Issuer** may not be conducted with integrity and in the best interests of the security holders of the **Qualifying Issuer**;
- vi) the directors and officers of the **Qualifying Issuer** lack the knowledge and expertise necessary to conduct the business of the **Qualifying Issuer** in compliance with the law and in the best interests of the security holders of the **Qualifying Issuer**;
- vii) such escrow or pooling agreement as is considered necessary or advisable with respect to the securities has not been entered into or the rights or restrictions that is considered necessary or advisable with respect to the securities have not been attached to the securities;
- viii) a person or company that has prepared or certified any part of the EOP or that is named as having prepared or certified a report or valuation used in or in connection with the EOP is not acceptable;
- ix) an **Qualifying Issuer** doing business primarily as an industrial company or natural resource company does not have as part of its name any of the following words: "Acceptance"; "Credit", "Finance"; "Loan", "Trust", unless prior written approval has been obtained from the Executive Director; or
- x) where a minimum amount of funds is required by a **Qualifying Issuer** distributing securities on a best efforts basis, the EOP does not indicate that the offering will cease if the minimum amount of funds is not subscribed for within 90 days from the date of the receipt issued by the Director for the final EOP, unless the consent of the Director and those persons that subscribed within the 90 days is obtained.

### ***Material Changes and Amendments to Final EOP***

14.2.21 During the period in which an EOP is effective, if a material change occurs, the Filing Solicitor must determine if an amendment to the EOP is required. Generally an amendment is required if any of the trades of securities to be qualified by the EOP have not taken place. Any amendments to a final EOP must be made in accordance with **LPS 3-02** and section 67 of the Securities Act. **Qualifying Issuers** are reminded of their obligation to file an amendment in the event that the Funds Available or the estimated price disclosed in the EOP is materially different from the price set pursuant to Exchange Rule B.3.00 Part D or Part E. The material to be filed with the Exchange includes:

- a) One signed copy of the amendment to the final EOP;

- b) Certified copy of the directors' resolution approving the amendment and authorizing the directors and officers to sign the amendment;
- c) If applicable, signed or certified true copies of all material contracts related to the amendment, if applicable; and
- d) signed consents, if required under section 108 of the Securities Rules.

### **14.3 General Requirements for Prospectuses including EOPs**

- 14.3.1 Exchange Rule B.3.06 in Appendix 1A applies to all public offerings by listed companies (other than those expressly excluded by Rule B.3.06) and limits the ability of listed companies to do public offerings other than through the facilities of the Exchange and in accordance with the pricing rules of the Exchange. This part of Policy 14 summarizes these rules and other rules, which apply to offerings by ordinary Prospectus or by EOP.

#### ***Financial Statements***

- 14.3.2 The financial statements required for a Prospectus including an EOP are set out in **LPS 3-02** (Prospectus Filing Requirements) and sections 111 to 119 of the Securities Rules. The following should be noted with respect to the financial statements of the company:
- a) where the company has completed a business combination or proposes to enter into a business combination including a COB and an RTO, reference should be made to **LPS 3-02**, Policy 18.4 and 18.5, and section 114 of the Securities Rules, concerning the additional pro-forma consolidated financial statements that are required to be filed respecting the unlisted company being acquired. This may involve consideration as to whether or not a group of assets being acquired actually constitutes a "business" rather than just a capital asset acquisition (CICA 1580.02(b)). An important issue to consider is whether the "purchase method" is appropriate or whether the acquisition should be accounted for as an RTO, or a "common control transaction" (CICA section 1580.05). The "purchase method", if incorrectly applied, generally results in the consolidated assets being materially overstated. Indicators of potential problems in this regard include the recognition in the financial statements of goodwill, large amounts of "purchased technology", and/or evidence that "control", as defined by CICA section 1590, has or will be transferred to the 'acquiree's shareholder(s) or the vendor(s)';
  - b) whether the level of disclosure contained in the financial statements is adequate (see NIN #88/10 and section 3(9)(b) of the Securities Rules);

- c) where the company is reactivating pursuant to Local Policy Statement 3-35, the draft audited statements must be dated within 120 days of the date of the receipt for the preliminary EOP (see **LPS 3-02**);
- d) for any future-oriented financial information, reference should be made to paragraph 48 of the Auditing and Related Services Guideline of the CICA Handbook entitled "Examination of a financial forecast or projection included in a prospectus or other offering document", section 115 of the Securities Rules, **LPS 3-02** and National Policy 48.
- e) if a material change occurs subsequent to the date of the financial statements required to be filed reference should be made to **LPS 3-02**.

14.3.3 The following should be noted with respect to the unaudited statements of the company (if a waiver is requested, please follow the procedure in section 14.2.5):

- a) they must be prepared on a comparative basis (see sections 112(3) and 111(1)(b) of the Securities Rules);
- b) they must be prepared by a public accountant and include a review engagement report pursuant to Section 8100 and 8200 of the CICA Handbook (see section 111 of the Securities Rules);

\*\* Reference should be made to paragraphs 7100.34 and 7100.35 of the CICA Handbook.

14.3.4 The financial statements must include figures for subsidiaries of the company; see section 116 of the Securities Rule.

14.3.5 For companies which are in the development stage, the financial statements must contain an analysis of exploration, research, development and administrative costs.

\*\* See NIN #88/10 and section 3(9)(b) of the Securities Rules.

14.3.6 Financial statements contained in a Prospectus including an EOP must be approved by the board of directors, and the approval must be evidenced by the signatures at the foot of the balance sheet of two directors duly authorized to signify such approval, with their names typed below their signatures.



## **Geological Reports**

- 14.3.7 If the company is engaged in the exploration of natural resources, then an Geological Report must be filed with a Prospectus including an EOP for the property on which the company intends to spend a material part of the proceeds of the offering (see section 109 of the Securities Rules). The Exchange or the Executive Director may also require a Geological Report for another major property which represents the principal reason for investors' interest in the company, on which no proceeds are to be spent; see section 64 of the Securities Act.
- 14.3.8 All Geological Reports must be prepared by qualified, independent consultants and comply with Form 54 or Form 55, and National Policies #2-A or NP #2-B, or be accompanied by sound written reasons for any non-compliance.
- 14.3.9 The Exchange recognizes that it is impractical to always require preparation of a new Geological Report and in some cases permits the use of reports that were previously prepared, with appropriate updates if necessary. This includes Geological Reports required for any acquisition of a resource property that requires the prior acceptance of the Exchange.
- 14.3.10 If a Prospectus including an EOP discloses a property acquisition that would normally require the preparation of a Geological Report to obtain acceptance for filing from the Exchange, then the report must be summarized in the Prospectus made available for public inspection.

## **The Offering Period and Pricing**

- 14.3.11 The requirements for pricing offerings under a Prospectus including an EOP are contained in Exchange Rule B.3.00 (*Primary Distribution of Securities Through the Exchange and Rights Offerings*). Companies intending to conduct a public offering should refer to the text of Exchange Rule B.3.00 as reproduced in Appendix 1A for details about Exchange requirements. The rule is organized into five parts as follows:
- Part A (General);  
Part B (Underwritings);  
Part C (Open Market Distributions);  
Part D (Fixed Price Agency Offering - Unit Offering); and  
Part E (Fixed Price Agency Offering - Share Offering).
- 14.3.12 In the case of a fixed price agency offering, the Member broker and the company must determine, with the consent of the Exchange, the day upon which the offering is to occur, which must be within 90 calendar days of the effective date.

14.3.13 The actual Exchange offering is done in the following ways depending on the type of offering:

- a) In an underwriting, the Member broker purchases the shares from the company's treasury on the effective date and "crosses" the shares through VCT at the specified price to its clients' accounts at any time, but almost invariably before the next trading day.
- b) In a fixed price agency offering, where the final Prospectus or EOP discloses the offering price (a "pre-set price offering"), the company and the agent with the consent of the Exchange determine the offering price in accordance with Rules B.3.27 (units) or B.3.41 (shares) on a trading day preceding the effective date. Once the price is determined, the issuer must immediately issue a press release disclosing the price and indicating it is subject to final acceptance upon receipt of the prospectus. On the offering day, provided the Exchange is satisfied that the offering price is not too far below the trading price, the Member broker, as agent for the company, "crosses" the shares (or units) on the offering day from itself as agent for the company through VCT to itself and other Members which are part of the selling group as agent for their clients, at a fixed price, the offering day being within the maximum offering period of 30 calendar days (45 calendar days for Advanced Companies) from the effective date. \*

\*Last amended February 26, 1997

- c) In a fixed price agency offering, where the final Prospectus or EOP discloses an estimated price, the company and the agent with the consent of the Exchange determine the offering price in accordance with Rules B.3.26 (units) or B.3.40 (shares) on the trading day preceding the offering day. On the offering day, the Member broker, as agent for the company, "crosses" the shares (or units) on the offering day from itself as agent for the company through VCT to itself and other Members which are part of the selling group as agent for their clients, at a fixed price, the offering day being within the maximum offering period of 90 calendar days from the effective date.
- d) In an open market distribution the Member broker, as agent for the company, either "crosses" the shares to its clients through VCT, or sells the shares as the company's agent to clients of other Exchange Members in ordinary open market transactions, at the prevailing market price. The maximum offering period in a best efforts agency offering is 90 calendar days from the effective date of the company's Prospectus.

14.3.14 The Exchange must be advised of the offering day by the Member before 11:00 AM on the trading day immediately prior, whereupon the Exchange will issue an Exchange Notice announcing the offering day. On offering day the Member broker must cross through VCT the company's shares either from its own account to the clients' accounts (in an underwriting) or from the company's account to the clients' accounts (in an agency offering). See Rule B.3.24. \*

\*Last amended February 26, 1997

- 14.3.15 Within three business days after an offering is effected, the company must file with the Exchange a directors' declaration certifying that there have been no material changes since the date of the prospectus until the completion of the distribution. If there have been material changes, the Filing Solicitor must file and have accepted an amendment to the prospectus including an EOP. \*

\*Last amended March 1997

- \*\* Members should be aware of the market stabilization provisions in Exchange Rule F.2.16, Restrictions on Trading by Members Involved in a Distribution.
- \*\* Companies are reminded that insiders must comply with the various regulatory instruments which govern the manner in which they may trade (e.g. NIN #95/5 *Principles of Fair Trading*; Sections 380 and 382 of the *Criminal Code*; and section 57 of the *Securities Act*) summarized in Policy 8 - Promotional and Market Making Activities.

## **Members - Offering Requirements**

- 14.3.16 The Member acting as agent or underwriter of the offering must:

- a) if an underwriter, advise the Exchange:
  - i) of the number of shares sold by way of over-subscriptions no later than the close of trading on the second day after the effective date of the Prospectus (Rule B.3.14(2)(b)); and
  - ii) of the extent of any over-subscription at the completion of the offering (Rule B.3.14(2)(e));
- b) if an agent for an open market distribution, notify the Exchange of the commencement of the offering by not later than 1 p.m. on the trading day immediately preceding the trading day on which the offering is to commence (Rule B.3.19(4));
- c) if an agent for a fixed price agency offering:
  - i) notify the Exchange of the offering day before 11:00 a.m. and specify a time between 10:00 a.m. and 1:00 p.m. at which trading in the securities of the issuer should be halted for determination of the average market price on the trading day immediately preceding the offering day (Rules B.3.24 and B.3.38); and\*
  - ii) advise the Exchange of the extent of any over-subscription prior to the opening of the market on the offering day (Rules B.3.33(5)(e) and B.3.42(5)(e)); and
- d) if an agent for a pre-set price offering:\*

\*Last amended February 26, 1997

- i) determine, with the issuer and the Exchange, the price of the offering on a date preceding the effective date; and\*

- ii) advise the Exchange of the extent of any over-subscription prior to the opening of the market on the offering day (Rules B.3.33(5)(e) and B.3.42(5)(e)); and\*

\*(i) & (ii) Last amended February 26, 1997

- e) after an Exchange offering has been completed, file with the Exchange within five business days of the offering:

- i) DELETED\*

\*Last amended March 1997

- ii) if there is a greenshoe option, disclosure by the Member broker of the number of shares over-subscribed unless trading in the shares of the issuer is halted or suspended, in which case the agent shall advise the Exchange of the extent of any oversubscription within ten business days of the offering day.

### ***Agent or Underwriter Compensation***

- 14.3.17 In an underwriting, the underwriter's compensation is determined by the "spread" between the market price and the underwriting price (i.e. the price to be paid to the company by the underwriter). In the case of any agency offering, the agent is entitled to receive a commission from the company for its services. Under the Rules of the Exchange, the amount of the discount provided to the underwriter or the amount of commission earned by the agent is determined by negotiation between the company and the Member.
- 14.3.18 A company should survey the compensation paid to Members on public offerings in the recent past by comparable companies, having regard to any key differences in the companies and offering terms. This should enable management to discuss compensation on an informed basis. Generally, the variation in compensation among companies is small.
- 14.3.19 A Member is free to negotiate its selling commission with the company. (Rules B.3.21, B.3.35 and B.3.43.)
- 14.3.20 An agent may be granted a non-transferable share purchase warrant entitling it to subscribe for up to 25% of the total number of shares in the unit or share offering. The exercise price of the agent's warrant shall not be less than the average market price of the shares or units to be offered and, where the warrant exercise term exceeds one year, the exercise price per share shall be increased annually by a premium of not less than 15% of the average market price as determined by the Exchange in accordance with Rule B.3.40. (Rules B.3.33 and B.3.42).\*

\*Last amended May 1999

- 14.3.21 An underwriter may be granted an option to acquire additional treasury shares which has the same limits as the above warrants. The exercise price must not be less than the underwriting price (Rules B.3.14, B.3.15, B.3.33 and B.3.42).
- 14.3.22 For both agent's warrants and underwriter's options, the exercise term is a maximum of two years from the offering day with a minimum 15% premium on the average market price in the second year.

### ***Greenshoe Option***

- 14.3.23 To facilitate stability in the secondary trading market of a company's shares on the Exchange immediately after the Prospectus offering, the Rules of the Exchange enable a company to grant an underwriter or agent a "greenshoe option" [Rules B.3.14(2), B.3.33(5), and B.3.42(5)].
- 14.3.24 The number of shares or units which may be subject to a greenshoe option is limited to the lesser of 15% of the number of shares or units comprising the offering or the actual number of shares or units sold by the Member by way of over-subscription.
- 14.3.25 The Member shall advise the Exchange of the extent of any oversubscription prior to the opening of the market on the offering day unless trading in the shares of the issuer is halted or suspended, in which case the agent shall advise the Exchange of the extent of any oversubscription within ten business days of the offering day. [Rule B.3.14(e), Rule B.3.33(5)(e) and Rule B.3.42(5)(e)].
- 14.3.26 A greenshoe option may be exercised by the Member on a day not more than sixty calendar days commencing from the offering day. The option exercise price must be set at the same price as the net price of the units or shares to the company's treasury in the case of a fixed price agency offering or at the same price as the underwriting price in the case of an underwriting.

### ***Selling Group Compensation***

- 14.3.27 The Rules of the Exchange require that an underwriter or agent notify the Exchange and the BC Securities Commission of any sub-option, sub-underwriting or sub-agency agreement (Rule B.3.02). The following disclosure is normally seen in Prospectuses and EOPs:

The Agents reserve the right to offer selling group participation, in the normal course of the brokerage business to selling groups of other licensed broker dealers, brokers and investment dealers, who may or may not be offered part of the commissions or brokers' warrants derived from this offering.

- 14.3.28 In those sections of the Exchange Rules that deal with broker's warrants, provision is made to allow the transfer of an interest in the warrant to a sub-agent which is part of a selling group participating in the offering in the normal course of the brokerage business. The Exchange considers "transfer of an interest" in the broker's warrant to allow transfer of the warrant from the offering agent to a sub-agent or issuance of the broker's warrant to a sub-agent directly from the company, as long as the sub-agent is part of a selling group participating in the offering in the normal course of the brokerage business.
- 14.3.29 The allocation of the broker's warrants among the lead and sub-agents is to be reported to the Exchange on conclusion of the offering and the Exchange may make this information public.

## **14.4 Shareholder Offerings**

### ***Introduction***

- 14.4.1 Securities that have been issued in reliance upon a Prospectus exemption are generally subject to a one year (4 months if the issuer is an AIF Issuer) hold period in British Columbia pursuant to s.140 - 143 of the Securities Rules. The Securities Act permits sales during the hold period in certain circumstances including pursuant to a Prospectus including an EOP which qualifies the first trade of the shares. These resales are commonly referred to as shareholder offerings (as opposed to treasury offerings, where the company issues shares from its treasury).\*
- \*Last amended January 1998
- 14.4.2 In a shareholder offering, the Prospectus must explicitly qualify the trade of the shares. This means that the Prospectus must be amended to reflect any material changes (evergreen) throughout any treasury and shareholder offering periods.
- 14.4.3 An underwriter must be involved in every shareholder offering, as the Securities Act deems a broker handling such sales to be an underwriter who is required to sign the underwriter's certificate of the EOP or Prospectus.
- \*\* See definition of "underwriter" in section 1 and section 69 of the Securities Act.
- 14.4.4 The Member is used as the underwriter and the distribution of a listed security must be made through the facilities of the Exchange (see Rule C.1.08 ). Accordingly each selling shareholder must enter into an arrangement to sell his or her shares through a Member that signs the Prospectus, whereby the Member will be the agent of the selling shareholder in conjunction with the distribution.
- 14.4.5 An undertaking in the form located in Appendix 14A must be provided to the Exchange by each selling shareholder.

- 14.4.6 If a treasury offering, separate from the shareholder offering, is included in the Prospectus, the shareholder offering cannot proceed prior to the treasury offering being completed.

### ***Material Changes***

- 14.4.7 A shareholder offering like any offering may only take place during the period in which the Prospectus is effective, and when all material facts regarding the company's securities are disclosed in the Prospectus or an amendment thereto. In the event that a material change occurs during the period that a shareholder offering is taking place, the offering shall cease until the Prospectus has been amended to disclose the material change.
- 14.4.8 Upon the occurrence of a material change, the company is expected to contact any selling shareholder and the agent(s) and alert them of the situation. Selling shareholders are required to provide the Exchange with an undertaking that they will cease their distribution upon becoming aware that a material change may have occurred, either by receipt of advice from the company or the Member acting as agent that a material change has occurred, or upon becoming aware of the possibility of a material change in another manner. The distribution cannot recommence until the selling shareholders receive confirmation from the Member acting as their agent that an amendment has been accepted for filing by the Exchange and a receipt for the amendment has been issued by the Commission, or that one is not required.
- \*\* See Appendix 14A for the required selling shareholder undertaking.
- 14.4.9 If a material change occurs during the period in which an Prospectus is effective, an amendment to the Prospectus is required. Companies can determine if a shareholder offering has been completed in various ways, including contacting the company's transfer agent or the Member to find out if there are any shares that have not yet been sold.

### ***Delivery of Prospectus***

- 14.4.10 Section 83 of the Securities Act requires delivery of a Prospectus to a purchaser and provide rights of withdrawal and rescission to purchasers. This section deems the receipt of the Prospectus by the agent for the purchaser, to be receipt by the purchaser as long as the agent for the purchaser is not acting for the selling shareholder.
- 14.4.11 The selling shareholder's statutory obligation to deliver the Prospectus to purchasers is generally considered to be satisfied by delivery of the Prospectus to all Members acting as agents for the purchasers prior to any sales under the offering. Members acting as agents for any selling shareholders are required to deliver the Prospectus to any of their own clients purchasing from the offering.

- 14.4.12 Members are required to ensure that suitable procedures are in place to ensure compliance with the delivery requirements.

### ***Misrepresentation***

- 14.4.13 Under s.131 of the Securities Act, *selling shareholders* are liable to purchasers of the securities offered if the Prospectus contains a misrepresentation. In the event of a misrepresentation, purchasers may elect to rescind their purchase or sue for damages. In an action for damages, the selling shareholders may be liable for any misrepresentations in the Prospectus regarding the company, unless the selling shareholder conducted a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation. In no case shall the amount recoverable by a plaintiff under s.131 exceed the price at which the plaintiff bought the securities from the selling shareholder. There are also other defenses which may be available to selling shareholders.

### ***Settlement Matters***

- 14.4.14 Any shares issued by Exchange Issuers in a Private Placement will contain a legend stating the BC hold period. Because share certificates legended with an unexpired hold period are not good delivery for settlement purposes for shares sold through the facilities of the Exchange, the selling shareholders (usually through the agent on the Prospectus) are required to make arrangements to have the legended shares replaced with shares without a legend. The legend may not be removed until the share is sold through VCT. The Exchange requires that the selling shareholders or their agent make arrangements to ensure that good delivery is made on the settlement date.

### ***Plan of Distribution***

- 14.4.15 The Plan of Distribution in the Prospectus shall disclose that, if a public offering, other than the shareholder offering, is included in the Prospectus, or is in progress prior to the shareholder offering, (the shareholder offering shall not proceed prior to the completion of the public offering) any other material terms of the offering and shall contain details of the selling shareholders, as required by Form 12B or 14B.

### ***Term of Offering***

- 14.4.16 A shareholder offering shall terminate upon the earlier of the expiration of any applicable hold period or on a stated date not more than 1 year after the preliminary receipt for the Prospectus. However, the selling shareholders, the company and the agent may negotiate an earlier expiry date upon which the shareholder offering will cease.



## ***Offering Price***

- 14.4.17 Shareholder offerings must be effected through the facilities of the Exchange, i.e. through VCT, at prevailing market prices at the time of sale. Shareholder offerings may not be offered at a discount.

The Seed Share Resale Rules of Part 2.7 do not apply to a Reverse Takeover. However, the Exchange will not accept for filing an EOP or ordinary Prospectus for a company which have had a Reverse Takeover accepted for filing in the past year if:

- (a) it includes a shareholder offering qualifying private placement shares issued prior to the completion of the Reverse Takeover at prices less than the public treasury offering price; and
- (b) the effect of this would be that the private placee had to hold his private placement securities for less time than he would have had they been seed shares and had an Initial Public Offering and a conditional listing been conducted instead of a Reverse Takeover.

## ***Out of Province Sales***

- 14.4.18 A Prospectus qualifies the sale of securities by owners to the public resident in BC. Sales to residents of other provinces or to residents or citizens of the United States are only qualified if the offering has been qualified for sale in those other jurisdictions. Jurisdictions outside of Canada and the United States have laws that must be complied with in offerings made to their residents. Selling shareholders and their agents must consider the implications of these circumstances when conducting a shareholder offering. In particular, a Member, acting as agent, shall not solicit purchases from jurisdictions where the shareholder offering is not qualified.
- 14.4.19 Selling shareholders are required to provide the Exchange with an undertaking that the distribution will be made in accordance with all applicable securities laws.

## **14.5 Special Warrant Conversions by Prospectus**

14.5.1 Special warrants are warrants which are issued for cash consideration by a company in a Private Placement using a Prospectus exemption. They entitle the holder to acquire common shares (or units consisting of common shares and share purchase warrants) upon the conversion of the special warrant. No additional consideration is payable by the warrant holders on the conversion of the special warrant. The special warrants are converted on or immediately after the effective date of a Prospectus or EOP which qualifies the trade, which is the issuance of the shares (and any share purchase warrants) on the conversion of the special warrants.

\*\* See Policy 16 in this section under the heading Private Placement of Special Warrants.

14.5.2 The Exchange permits the conversion of special warrants into units or shares to be done using an EOP to qualify the conversion rather than an ordinary Prospectus, provided that all the requirements of Rule B.3.00, **LPS 3-02** and the Securities Act are met, namely:

- a) the placees are in BC or outside Canada, or waive their right to have their securities qualified and instead hold them for the usual one year, or the EOP is filed and receipted as a prospectus with a securities commission outside of BC where the placee resides; and
- b) the company is a **Qualified Issuer**.

14.5.3 In addition to the regular requirements applicable to Prospectuses, the following requirements are applicable to special warrants conversion:

- a) the EOP must have the certificate specified in section 70 of the Securities Act, signed by the agent;
- b) the Use of Proceeds section of the Prospectus must disclose:
  - i) the proceeds from the special warrant private placement;
  - ii) whether any of the proceeds have been spent, and if so, a cross reference to the detailed disclosure found elsewhere in the Prospectus; and
  - iii) 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;

- c) the Prospectus must be accompanied by the same Geological Reports or consultant's and specialist's (if any) certificate(s) as if it were an ordinary treasury offering, see section 109 of the Securities Rules and Interim Local Policy Statement 3-17;
- d) if any placee will become an Insider (i.e. hold more than 10% of the issued voting shares) on conversion of the special warrants, that fact must be disclosed in the Prospectus (see item 11.4 of Form 12B or 14B);
- e) if any placee will have direction or control over more than 10% of the company's issued voting shares on conversion of the special warrants, the placee must submit an undertaking to file Insider reports with the BC Securities Commission;
- f) the Prospectus must disclose the number and dollar value of any special warrants acquired by agents and/or underwriters; and
- g) an agent or underwriter who has purchased special warrants must provide an Prospectus to all subsequent purchasers of the securities acquired by the agent or underwriter on conversion of the special warrants as this trade is deemed by the Securities Act to be a "distribution".

\*\* See above in this Policy under the Exchange Offering Prospectus Offering heading for more details on Prospectus requirements.

## **14.6 Public Offering by Short Form Offering Document\***

**\*New section April 1999**

- 14.6.1 The Short Form Offering Document (the "Short Form") is an Exchange document which allows certain issuers to undertake a public offering without preparing a Prospectus (the "Offering"), while allowing eligible investors to receive free trading shares. By using the Short Form, an issuer can access the public market on a timely and cost efficient basis, while providing sufficient disclosure to investors to allow them to make an informed investment decision.
- 14.6.2 The Short Form is not a Prospectus, but a brief disclosure document which supplements the company's existing continuous disclosure record, which includes: Annual Information Forms, financial statements, quarterly reports and material change reports as well as other documents available in the public domain such as engineering reports, valuations, feasibility studies and market studies previously filed with the Exchange or the Commission. This existing current disclosure is not restated in the Short Form, but is incorporated by reference and must be available to investors on a publicly accessible database such as the SEDAR web site, the issuer's web site, the BCSC web site or the VSE web site.

\*\* See Appendix 14B for the Short Form Offering Document

14.6.3\* The BCSC has issued **BOR #99/2**, which provides a Prospectus exemption for eligible issuers undertaking a distribution using the Short Form, in most cases without imposing a hold period on the securities.

\*\* See Appendix 14C for **BOR #99/2**

**\*Last amended June 1999**

14.6.4 A Short Form is an Exchange document and may not be used to distribute securities in other jurisdictions, or qualify previously issued securities for sale in British Columbia or elsewhere.

## **Definitions**

14.6.5 In this Policy:

- a) **“Designated Hold Purchaser”** means a purchaser that is an insider or promoter of the issuer, the issuer's underwriter or member of the Professional Group of that underwriter;
- b) **“Designated Threshold Purchaser”** means a purchaser who either would be entitled to purchase securities of the issuer pursuant to the Prospectus exemptions contained in sections 74(2)(1) or 74(2)(3) of the Securities Act, or is a “sophisticated purchaser” as defined in the Securities Rules, other than a member of the Professional Group;
- c) **“Professional Group”** means a group of persons as defined in Multi-Jurisdictional Instrument 33-105 *Underwriting Conflicts* in its most recently published form or in the form adopted by the Commission from time to time;
- d) **“Subsequently Triggered Report”** means a material change report that must be filed no later than 10 days after a material change under section 85(1)(b) of the Securities Act, as a result of a material change that occurs after the date of the certification of the Short Form but before entering into an agreement of purchase and sale with a purchaser; and
- e) **“Threshold Amount”** means the greater of \$10,000 and 2% of the value of the securities distributed under an Offering.

## **Eligibility to Use Short Form**

**14.6.6** Issuers which are Qualifying Issuers pursuant to Local Policy 3-27 ("LPS 3-27") and BOR #98/7 (*System for Shorter Hold Periods with an Annual Information Form*) which have filed a current AIF pursuant to LPS 3-27, are eligible to use the Short Form under the conditions outlined in section 14.6.7 and in **BOR #99/2**.\*

**\*Last amended June 1999**

14.6.7 Qualifying Issuers may use the Short Form provided that:

- a) the issuer has filed all documents that it is required to file under the continuous disclosure provisions of the Securities Act and the Securities Rules, including annual and interim financial information and annual reports, press releases disclosing material changes and material change reports;
- b) the distribution is of a class of securities that are listed for trading on the Exchange;
- c) the number of securities distributed by the issuer under the Offering, including shares purchasable upon the exercise of share purchase warrants, and shares distributed pursuant to a greenshoe option, when aggregated with the securities of the issuer distributed under all Short Form Offerings during the twelve month period prior to the date of the Short Form, does not:
  - i) result in gross aggregate proceeds to the issuer of more than \$1,000,000; or
  - ii) constitute in excess of 100% of the number of issued and outstanding securities of the offered class of securities at the later of:
    - A) the date the issuer first distributed securities of the same class under the Short Form; and
    - B) the date which is 12 months prior to the date of the Short Form;
- d) the aggregate acquisition cost to a purchaser, other than a Designated Hold Purchaser or Designated Threshold Purchaser, is no more than the Threshold Amount;
- e) no purchaser acquires more than 20% of the securities distributed under the Offering;
- f) no more than 50% of the securities distributed pursuant to the Offering are subject to the four month hold period imposed pursuant to **BOR #99/2**, and sections 14.6.7(g) and (h) of this Policy;\*
- g) all securities purchased on the Offering by a purchaser who was, at the time it acquired the security, a Designated Hold Purchaser will be subject to a four month hold period from the date that the purchaser acquired securities under the Offering; and

**\*Last amended June 1999**

- h) Designated Threshold Purchasers who acquired more than the Threshold Amount of securities will be subject to a four month hold period from the date that the purchaser acquired securities under the Offering on the portion of those securities which are in excess of the Threshold Amount.

### ***Use of Proceeds***

- 14.6.8 The Short Form cannot be used to raise funds for property transactions which have not received Exchange acceptance.
- 14.6.9 Where the offering is financing work on a specific property, the most recent geological report or valuation filed with the Exchange or Commission, relating to that property must be available to the public, either through the SEDAR web site, the VSE web site, the BCSC web site or the issuer's web site. If no geological report has been filed with the Exchange or Commission in respect of the property, the Exchange may require one to be filed prior to acceptance of the Short Form.
- 14.6.10 If the proceeds of the offering are to be used for purposes other than working capital, a minimum offering consistent with the stated purpose must be established to ensure adequate funds are raised.

### ***Process***

- 14.6.11 The filing and acceptance process for a Short Form Offering Document involves the following steps:
- Step 1:** The company and/or its filing solicitor prepare the Short Form, ensuring all continuous disclosure material is up to date, and incorporated by reference.
- Step 2:** The company's agent reviews the document and material incorporated by reference, and does sufficient due diligence to sign the certificate page of the Short Form.
- Step 3:** The company issues a news release announcing the financing by Short Form and disclosing the amount of funds to be raised, the price per share, the use of proceeds and the name of the agent.
- Step 4:** The company submits the Short Form to the Exchange for review within two days from the date of the news release.
- Step 5:** The Exchange reviews the Short Form and if there are no significant deficiencies, accepts it within five business days and publishes an Exchange Notice indicating the acceptance of the financing.
- Step 6:** The agent has 30 days from Exchange acceptance to market and sell the offering. On the offering day, the shares are crossed through VCT.

## ***Required Initial Documentation***

- 14.6.12 The issuer must file the following with the Exchange's Corporate Finance Services Department:
- a) a copy of the Short Form, signed by the issuer's officers, directors, promoters and agent;
  - b) a copy of the Agency agreement; and
  - c) the applicable fee.

## ***Offering Period and Pricing***

- 14.6.13 An Offering shall be priced based on the closing price of the issuer's listed shares on the trading day before the news release disclosing the Short Form Offering is disseminated, less a discount of up to 10%, subject to a minimum price of \$0.15 per share or unit. Share purchase warrants issued pursuant to the Offering must be priced at a 10% premium to the share price.
- 14.6.14 The Short Form must be filed with the Exchange within 2 business days from the date of the news release in order to ensure the offering price will be accepted. If however, a material change is announced by the company during the offering period and the Exchange deems that the company was likely aware of that pending material change at the time the offering price was set, the Exchange may require that the offering be re-priced to reflect the material change.
- 14.6.15 Upon Exchange acceptance of the Short Form, the issuer and its agent have an offering period of 30 days from the date of acceptance in which to market and sell the securities offered pursuant to the Short Form. On the offering day, the agent crosses the shares (or units) through VCT from the company's account to the clients' accounts at the offering price.
- 14.6.16 The Exchange must be advised of the offering day by the agent before 11:00 a.m. on the trading day immediately prior to the offering day, whereupon the Exchange will issue an Exchange Notice announcing the offering day.

## ***Greenshoe Requirements***

- 14.6.17 Where the offering has a greenshoe option, the agent must advise the Exchange of the extent of any over-subscription prior to the opening of the market on the offering day, unless trading in the shares of the issuer is halted or suspended, in which case the agent shall advise the Exchange of the extent of any over-subscription within ten business days of the offering day.

\*\* See Rules B.3.33 and B.3.42 for the policies to be applied to the greenshoe option.

## ***Delivery Requirements and Subsequent Material Changes***

- 14.6.18 The Short Form, and any Subsequently Triggered Report filed by the issuer subsequent to the date thereof, must be delivered to a purchaser by the issuer or its agent:
- a) before the issuer or its agent enters into the written confirmation of the purchase and sale resulting from an order or subscription for securities being distributed under the Offering; or
  - b) not later than midnight on the second business day after the agreement of purchase and sale is entered into.
- 14.6.19 When a material change occurs after the Exchange has accepted the Short Form, and prior to the completion of the distribution, the issuer and the agent are reminded that in order to rely on **BOR #99/2** the issuer must have filed all documents that it is required to file under Part 12 of the Securities Rules. As a result, the issuer and the agent must cease distribution until a news release is disseminated and filed with the Exchange and the Commission, and a material change report is filed with the Exchange and Commission.\*

**\*Last amended June 1999**

## ***Contractual Rights of Action***

- 14.6.20 The issuer must grant a contractual right of action to the purchasers in the following form:
- “If this Short Form Offering Document, together with any Subsequently Triggered Report, contains a “misrepresentation” as that term is defined in the *Securities Act* (British Columbia) and it was a misrepresentation on the date of investment, the purchaser will be deemed to have relied on the misrepresentation and will have a right of action, either for damages against the Company and its directors and every person, except the agent, who signed the Offering Document, (the “Company Representatives”) or alternatively for rescission of the agreement **of purchase and sale for the securities**. In any such action, parties against whom remedies are sought shall have the same defenses as are available in section 131 of the Securities Act, as if the Short Form Offering Document were a prospectus.\*

**\*Last amended June 1999**



A purchaser is not entitled to commence an action to enforce this right after:

- (1) in the case of an action for rescission, 180 days after the date of purchase; or
- (2) in the case of an action for damages, the earlier of 180 days following the date the investor first had knowledge of the misrepresentation or three years following the date of purchase.

The contractual rights provided herein are in addition to and without derogation from any other right the purchaser may have at law.”

### ***Contractual Rights of Withdrawal***

- 14.6.21 The issuer must grant a contractual right of withdrawal to the purchasers, in the following form:

“An order or subscription for the securities offered under this Short Form Offering Document is not binding on a purchaser if the dealer from whom the purchaser purchased the security (or the issuer if the purchaser did not purchase the security from a dealer), receives, not later than two business days after the receipt by the purchaser of the Short Form Offering Document and any Subsequently Triggered Report, written notice sent by the purchaser evidencing the intention of the purchaser not to be bound by the agreement.”\*

\*Last amended June 1999

### ***Agent Requirements and Compensation***

- 14.6.22 An agent signing the Short Form agent certificate must be an Exchange Member Firm which is registered in B.C. as an underwriter.
- 14.6.23 An agent signing the Short Form must comply with sections 4, *Requirement for Due Diligence Report* and sections 5.1, 5.3 and 5.4, *Content of Due Diligence Report* of Local Policy Statement 3-17 in relation to the Short Form. All references to the Superintendent in these sections shall be read as the Exchange in relation to a Short Form Offering.
- 14.6.24 An agent is free to negotiate its selling commission with the company.
- 14.6.25 Agent’s warrants may be issued up to a maximum of 25% of the total number of shares in the Offering. Agent’s warrants are not included in the calculation of the yearly limit in 14.6.6(c). The exercise price of the agent’s warrant shall not be less than the price of the shares to be offered, and where the warrant term exceeds one year, the exercise price shall be increased annually by not less than 15% of the exercise price. The maximum term for an agent’s warrant is two years.

## ***Final Filing Requirements***

- 14.6.26 After the Offering has been completed, the agent must file the list of purchasers with the Exchange, indicating which purchasers have taken securities subject to a hold period pursuant to section 14.6.6(h), and how many securities each purchaser has purchased.

## ***Audit***

- 14.6.27 Although the Exchange review of the Short Form will not comprise a full vetting of the document and material incorporated by reference for disclosure and policy compliance, an audit will be undertaken to review certain Short Forms after the distributions are completed. If the audit results in the discovery of significant problems with the filing, the Exchange may withdraw the company's ability to use the Short Form in the future.