

# POLICY 4.5

## RIGHTS OFFERINGS

### Scope of Policy

A rights offering occurs when an Issuer issues to its own shareholders, at no cost to the shareholders, rights enabling the shareholders to purchase additional shares or other securities of the Issuer under certain conditions by exercising the rights. This Policy outlines the requirements for a rights offering.

The main headings in this Policy are:

1. Introduction
2. Procedure
3. Filing Requirements
4. Effecting the Offering
5. Terms of the Rights and Warrants
6. Minimum Subscription Standby Guarantee
7. Pro Rata Over-Subscription
8. Trading of Rights and Warrants

### 1. Introduction

- 1.1 A right issued in a rights offering is similar to a warrant or an option because it enables its holder to acquire another security. A rights offering is also similar to a public distribution of an Issuer's securities through the Exchange but has two significant distinguishing features:
  - (a) the rights do not have to be purchased; instead, they are given to the shareholders of the Issuer; and
  - (b) the rights are given only to the shareholders of the Issuer. The rights cannot be issued to investors who are not shareholders. The shareholders will, however, be able to sell their rights, if they so choose, to non-shareholder investors.
- 1.2 Several jurisdictions have Securities Laws which provide a Prospectus exemption for rights offerings. A **"Rights Offering Circular"**, along with certain other information, is usually required to be prepared by the Issuer and sent to the shareholders with the rights.
- 1.3 The Exchange requires that rights issued by an Issuer be transferable and be listed for trading on the Exchange.

## 2. Procedure

- 2.1 Whether a rights offering is to be effected by a Rights Offering Circular or by a Prospectus, the Issuer must make filings with both the Exchange and all applicable Securities Commissions. The Securities Laws of all jurisdictions where shareholders are resident must also be considered, which may require filings with other securities regulators. The offering cannot proceed until all the relevant regulators have accepted the documentation for filing. If some shareholders are resident in jurisdictions where the rights may not legally be given to them, the Issuer normally sends these rights to the transfer agent which uses its best efforts to sell the rights through the facilities of the Exchange and deliver the net proceeds pro rata to the shareholders residing in non-qualifying jurisdictions.
- 2.2 An Issuer proposing to make a rights offering should also review Proposed National Instrument 45-101 - Rights Offerings, Proposed Form 45-101F - Information Required in a Rights Offering Circular and Proposed Companion Policy 45-101CP for details about rights offerings and matters of concern to the Securities Commissions.

## 3. Filing Requirements

- 3.1 An Issuer should refer to the applicable Securities Laws to determine what documents must be filed with the Securities Commission(s).
- 3.2 An Issuer proposing to make a rights offering must file the following documents with the Exchange:
- (a) a Rights Offering Circular or Prospectus, with the additional disclosure as described in subsection (4) below;
  - (b) a copy of the Issuer's filing letter to the relevant Securities Commission;
  - (c) a specimen rights certificate and, if applicable, share purchase warrant certificate. The CUSIP number for the security must be printed on the specimen certificate;  
  
*See Policy 3.1 for a discussion of the requirements regarding share certificates and CUSIP numbers.*
  - (d) if there is a standby guarantee, a copy of the guarantee agreement and, unless the guarantor is a Member, satisfactory evidence of the guarantor's ability to perform the obligations contained in the guarantee (i.e. Posted Bond, Letter of Credit, etc.) and a description of the Prospectus exemptions to be used to:
    - (i) issue securities to the guarantor pursuant to the guarantee;
    - (ii) issue any guarantor's warrant to the guarantor; and

- (iii) permit the guarantor to resell any of the securities acquired under (i) and (ii);
  - (e) a copy of the Issuer's latest audited and unaudited financial statements; and
  - (f) the applicable fee as prescribed in Policy 1.3 - Schedule of Fees.
- 3.3 After the Exchange and the relevant Securities Commission(s) have accepted the Rights Offering Circular, the following documents must be sent to each registered shareholder of the Issuer:
  - (a) a copy of the Rights Offering Circular;
  - (b) a copy of the Issuer's latest annual report (unless it has previously been provided to shareholders); and
  - (c) a copy of the Issuer's latest audited financial statements (unless they have previously been provided to shareholders).
- 3.4 The Rights Offering Circular or Prospectus must include all the information required in a Rights Offering Circular under applicable Securities Laws.

## **4. Effecting the Offering**

- 4.1 The offering period must not be more than 30 days if a minimum amount has been fixed, and must not be more than 90 days if there is no minimum subscription. The offering period must not be less than 21 days. The term of rights will not normally be extended beyond the expiry date specified in the Rights Offering Circular or Prospectus. However, if circumstances which are beyond the control of the Issuer have arisen preventing the delivery of the rights to the Issuer's shareholders, the Exchange may consider an extension provided that the applicable Securities Commission(s) consent to the extension and provided that the rights issued under the Rights Offering Circular have not traded.
- 4.2 An Issuer proposing a rights offering must, not later than three business days after its Rights Offering Circular has been accepted for filing, issue and disseminate a news release and publish a notice in the daily press, addressed to the attention of its shareholders, containing the dates the rights offering begins and ends as well as the material details of the rights offering.
- 4.3 The rights offering cannot begin until seven business days after the date the Exchange accepts the documents. The Listed Shares of the Issuer will trade "ex rights" starting two business days before the record date for the offering, provided that the Issuer gave the Exchange two clear trading days notice of the "ex-rights" date. An Issuer should not announce a record date for a rights offering before receiving all necessary approvals in each of the applicable jurisdictions because if any approvals are delayed, the Issuer may have to change the record date at its own expense.

4.4 The following chart shows the typical timing for the Exchange Notice and ex-rights day in relation to a record date which falls on a Friday:

<b>Day of the Month</b>	1	2	3	4	5	6
<b>Day of the week</b>	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
<b>Event</b>	Exchange publishes notice of rights offering	Clear Day	Clear Day	Clear Day	---	---
<b>Day of the Month</b>	7	8	9	10	11	12
<b>Day of the Week</b>	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>Event</b>	Clear Day	Clear Day; last day to trade cum-rights	Shares trade ex-rights; rights commence trading	Clear Day	Record Date	---

## 5. Terms of the Rights and Warrants

5.1 The subscription price for shares or units to be acquired on the exercise of rights during the rights offering can be less than the Market Price of the Listed Shares on the day the required information is accepted for filing by the Exchange, but must not be less than the following discounts from the Market Price:

<b>Market Price</b>	<b>Maximum Discount</b>
up to \$0.50	50%
\$0.51 to \$2.00	40%
over \$2.00	30%

and cannot in any case be less than \$0.10 per share.

5.2 A Warrant forming part of a unit must expire within one year after the expiry of the rights for a Tier 2 Issuer and within two years after the expiry of the rights in the case of a Tier 1 Issuer. The exercise price of a Warrant forming part of a unit must not be less than the subscription price determined under section 5(1).

## 6. Minimum Subscription Standby Guarantee

- 6.1 If an Issuer requires a certain amount of funds for a specific use, the Issuer must determine a minimum subscription, which must be guaranteed by a Person which, in the opinion of the Exchange, has the financial ability to satisfy such standby guarantee.
- 6.2 A guarantor who provides a standby guarantee can receive a bonus from the Issuer in the form of a non-transferable share purchase warrant entitling the guarantor to acquire shares of the Issuer equal in number to not more than 40% of the total number of shares he has agreed to acquire on a standby basis. The warrant must be exercised within six months after the date on which performance under the guarantee could be required. The exercise price of the warrant must not be less than the exercise price of the rights.

## 7. Pro Rata Over-Subscription

If there is an over-subscription, a subscriber's pro rata entitlement on over-subscription will be determined by a pro rata formula acceptable to the Exchange and to the applicable Securities Commission.

## 8. Trading of Rights and Warrants

- 8.1 Rights issued in a rights offering must be transferable and will be called for trading on the Exchange on the date the Listed Shares of the Issuer commence trading "ex-rights" and will trade under normal settlement rules until three trading days before the expiry date of the rights during which time the rights will trade only on a cash basis. The Exchange will cease trading of rights on the Exchange at 9:00 a.m. (Vancouver time), 10:00 a.m. (Calgary time), 12:00 noon (Toronto time) on the expiry date.
- 8.2 There must be at least 200,000 transferable Warrants in a rights offering of units provided that the number of shares which may be issued on the exercise of the Warrants must not be more than the total number of shares issued as part of the unit offering.
- 8.3 The transferable Warrants will commence trading if, after completion of the rights offering, the Issuer submits a Distribution Summary Statement (Form 2E) or other evidence acceptable to the Exchange, that at least 75 Public Shareholders hold at least one Board Lot each of the Warrants.
- 8.4 If there is insufficient distribution of the outstanding Warrants for an orderly market, the Exchange can declare that the remaining Warrants will only be traded on a cash basis. During the last six trading days of the term of the Warrants, the Warrants will only trade on a cash basis.
- 8.5 If the number of issued Warrants which are called for trading is reduced to less than 75,000, the Warrants will be delisted from trading on the Exchange.

- 8.6 If the Warrants which form part of the unit offering are not transferable, then:
- (a) the number of shares which may be issued on the exercise of those Warrants must not exceed the total number of shares issued as part of the unit offering;
  - (b) the certificates representing the non-transferable Warrants must be issued in the name of the holder and must have the words “non-transferable” prominently displayed on them;
  - (c) the Rights Offering Circular or Prospectus qualifying the unit offering must clearly disclose that the Warrants are non-transferable; and
  - (d) the Exchange will not list or trade the Warrants.
- 8.7 A Warrant comprising part of a unit must not entitle the holder to acquire a further Warrant, whether transferable or otherwise, upon its exercise.
- 8.8 The Exchange will not accept Warrants for filing if the warrant trust indenture (or equivalent document) entitles the directors of the Issuer to change the exercise price (except for anti-dilution purposes) or provides for the possibility of an accelerated expiry date.
- 8.9 The Exchange will cease trading of Warrants on the Exchange at 9:00 a.m. (Vancouver time), 10:00 a.m. (Calgary time), 12:00 noon (Toronto time), on the expiry date.
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