

POLICY 5.9

INSIDER BIDS, ISSUER BIDS, GOING PRIVATE TRANSACTIONS AND RELATED PARTY TRANSACTIONS

Scope of Policy

This Policy incorporates Ontario Securities Commission (“OSC”) Rule 61-501, Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions (the “OSC Rule”), together with the Companion Policy 61-501CP (the “OSC Policy”), as they exist as at September 1, 2000 as a policy of the Exchange, subject to certain modifications. In addition to the stated exemptions in the OSC Rule, this Policy also provides certain **additional exemptions**. A complete copy of the OSC Rule and OSC Policy can be found on the OSC’s website at www.osc.gov.on.ca. The text of the OSC Rule and OSC Policy have also been incorporated, respectively, as Appendix 5B and Appendix 5C to the Exchange’s Corporate Finance Manual.

The main headings of this Policy are:

1. Definitions
2. Effective Date of this Policy
3. Application of the OSC Rule and OSC Policy
4. Exchange Valuation Exemptions

1. Definitions

- 1.1 Definitions contained in the OSC Rule and OSC Policy that are inconsistent with definitions contained within other Exchange policies shall be applicable only to the interpretation of this Policy.
- 1.2 References in the OSC Rule and OSC Policy to the “Director”, for the purposes of this Policy, shall refer to a Vice-President, Corporate Finance of the Exchange.
- 1.3 **"Feasibility Study"** for the purpose of this Policy, means a comprehensive study of a deposit in which all geological, engineering, operating, economic and other relevant factors are considered in sufficient detail to serve as the basis for a qualified person experienced in mineral production activities, acting reasonably, to make a final decision on whether to proceed with development of the deposit for mineral production.
- 1.4 **“Independent Committee”** for the purpose of this Policy, means a committee consisting exclusively of two or more Independent Directors.

- 1.5 **"Independent Directors"** for the purpose of this Policy, means for an Issuer, a director who is neither an employee, senior officer, Control Person or management consultant of the Issuer or its Associates or Affiliates and is otherwise independent as determined in accordance with section 7.1 of the OSC Rule.
- 1.6 **"Related Party" and "Related Party Transaction"** have the meaning ascribed to such terms in the OSC Rule.
- 1.7 **"Unrelated Investors"** for the purpose of this Policy, means Persons who are not Related Parties of the Issuer or the Target Issuer and who are not members of the Pro Group.

2. Effective Date of this Policy

- 2.1 This Policy shall become effective June 30, 2001 (the "Effective Date"). Prior to the Effective Date of this Policy, the Exchange may nevertheless use this Policy as a guideline.

3. Application of the OSC Rule and OSC Policy

- 3.1 The Exchange considers it appropriate to have policies providing guidance in respect of insider bids, issuer bids, going private transactions and related party transactions, and in particular concerning the circumstances in which disinterested shareholder approval, valuations, independent board committee approval and enhanced disclosure are required. On May 1, 2000, the OSC Rule and the OSC Policy became effective, replacing the former OSC Policy 9.1. Although the Exchange is considering adoption of its own separate policy, the Exchange considered the OSC Rule and the OSC Policy and determined that in an effort to create a national, harmonized set of rules, it would adopt the OSC Rule and the OSC Policy as a CDNX policy.
- 3.2 On the Effective Date, this Policy will apply to all Issuers listed on CDNX or seeking listing on CDNX, regardless of whether the Issuer is a reporting issuer in Ontario. References in either the OSC Rule or the OSC Policy to their application to Ontario reporting issuers, for the purposes of this policy, shall be considered to be references to Issuers listed on CDNX.
- 3.3 Subject to the modifications described in this Policy, and in particular the additional exemptions set forth in section 4 of this Policy, the OSC Rule and the OSC Policy are adopted, in their entirety, as a Corporate Finance policy of the Exchange as at the Effective Date.
- 3.4 Prior to the Effective Date, the Exchange will be reviewing its other corporate finance policies to minimize any conflicts or inconsistencies created by the introduction of this Policy and to provide appropriate cross-references and clarifications.
- 3.5 A number of Exchange policies may be impacted by the adoption of the OSC Rule and the OSC Policy, including the following:

- (a) Policy 2.4, Capital Pool Companies,
- (b) Policy 4.1, Private Placements,
- (c) Policy 5.2, Changes of Business and Reverse Take-Overs,
- (d) Policy 5.3, Acquisitions and Dispositions of Non-Cash Assets,
- (e) Policy 5.5, Stock Exchange Take-Over Bids and Issuer Bids, and
- (f) Policy 5.6, Normal Course Issuer Bids.

4. Exchange Valuation Exemptions

4.1 The OSC Rule contains various provisions exempting issuers from its application. In regard to valuations, the OSC Rule sets out various situations in which an Issuer is exempt from the requirement to obtain an independent valuation. In addition to the stated exemptions in the OSC Rule and subject to sections 4.3 and 4.4 below, the Exchange will also generally exempt an Issuer from the requirement of an independent valuation ("Exchange Valuation Exemptions") in the course of Exchange acceptance of a Related Party Transaction in connection with a:

- Qualifying Transaction by a CPC;
- Change of Business;
- Reviewable Acquisition;
- Reviewable Disposition; or
- Reverse Take-Over or such other transaction deemed to be a Reverse Take-Over by the Exchange notwithstanding that the transaction may not be a reverse take-over for accounting purposes;

provided that one of the following circumstances is met:

- (a) the fair market value of the assets, business or securities is "indeterminate" with reference to the criteria described in section 4.5 below; or
- (b) the transaction constitutes the acquisition or disposition of an oil and gas property in North America and the Issuer has obtained an independent engineering or geological report, which provides a value of proved and probable reserves based on constant dollar pricing presented at discount rates of 10%, 15% and 20%, with probable reserves discounted a further 50%; or
- (c) the transaction constitutes the acquisition or disposition of a mineral resource property and the Issuer has obtained a Feasibility Study based on proven and probable reserves that demonstrates a minimum three year mine life; or

- (d) the transaction constitutes an acquisition by either a CPC or an Issuer that does not meet Tier 2 Tier Maintenance Requirements such that the Issuer could be designated Inactive, and the consideration to be paid consists solely of equity securities of the Issuer and the Issuer is conducting a concurrent financing constituting the issuance of equity securities provided that:
- (i) the product obtained by multiplying the gross proceeds of the financing by the inverted fractional interest that the concurrent financing subscribers will own of the Issuer, less net tangible assets of the Issuer, is equal to or greater than the total of the deemed value of the securities being issued for the assets, business or securities to be acquired;
 - (ii) Unrelated Investors purchase equity securities in the concurrent financing representing 20% or more of the total issued and outstanding equity securities of the Issuer after giving effect to both the concurrent financing and the transaction; and
 - (iii) Unrelated Investors contribute at least 2/3 of the aggregate proceeds of the concurrent financing.

E.g. An Issuer has 5,000,000 Listed Shares outstanding and is conducting an acquisition of a private start-up technology company, Targetco. The purchase price for all of the issued and outstanding shares of Targetco is to be the issuance by the Issuer of 10,000,000 Listed Shares at \$0.30 (ie. a deemed value of \$3,000,000) to acquire all of the issued and outstanding shares of Targetco. Concurrently with the acquisition, the Issuer is conducting a financing to arm's length subscribers, issuing 5,000,000 Listed Shares at \$0.30 to raise total gross proceeds of \$1,500,000. In this example, the Issuer has no net tangible assets other than the cash raised on the financing in the amount of the \$1,500,000

The subscribers to the concurrent financing will own 25% of the Resulting Issuer, assuming completion of both the acquisition and the financing. Accordingly, the required 20% minimum has been met and the financing can be used as an alternative method of valuation.

Based on the financing, the Exchange will accept a deemed value for Targetco of up to \$4,500,000.

The \$4,500,000 is calculated by multiplying the gross proceeds of the concurrent financing (ie. \$1,500,000) by the inverted fractional interest that the concurrent financing subscribers will own of the Resulting Issuer. (i.e. 25% is 25/100 which, when inverted is 100/25) less net tangible assets of the Issuer (which, in this case, are confined to \$1,500,000). \$4,500,000 ($\$1,500,000 \times 100/25 - \$1,500,000$) is the

maximum deemed value attributable to Targetco. Since the Issuer only intends to pay a deemed price of \$3,000,000, the consideration to be paid is acceptable.

- 4.2 Subject to sections 4.3 and 4.4 below, an Exchange Valuation Exemption will also generally be available to an Issuer in the course of Exchange acceptance of a Private Placement which is a Related Party Transaction:
- (a) where the fair market value of the Issuer's securities is "indeterminate" with reference to the criteria described in section 4.5 below; or
 - (b) where:
 - (i) a liquid market (as defined in paragraph 1.3(1)(a) of the OSC Rule) does not exist for the securities of the Issuer at the time the transaction is agreed to;
 - (ii) the Exchange's normal pricing policies will be applied in fixing the price of the equity securities purchased on the Private Placement;
 - (iii) Unrelated Investors contribute at least 2/3 of the aggregate proceeds of the Private Placement; and
 - (iv) the pro rata share of the total issued and outstanding equity securities of the Issuer owned by any Related Party of the Issuer will not increase after giving effect to the Private Placement.
- 4.3 Where an Issuer relies upon the Exchange Valuation Exemptions:
- (a) the Issuer must provide to the Exchange a certificate in accordance with section 4.4 below, executed by either a majority of the board of directors of the Issuer which must include two or more Independent Directors or an Independent Committee;
 - (b) the contents of the Certificate must be disclosed in any Information Circular or Filing Statement provided to shareholders in connection with the transaction; and
 - (c) any securities issued in consideration for such assets, business or securities will be subject to escrow or other resale restrictions as prescribed by the Exchange. See *Policy 5.4 - Escrow and Vendor Consideration*.
- 4.4 The certificate referred to in section 4.3 above shall provide:
- (a) disclosure with respect to the Exchange Valuation Exemption being relied upon and the basis for such reliance;

- (b) disclosure of the manner in and basis upon which price or value was determined;
- (c) that either a majority of the board of directors of the Issuer including two or more Independent Directors or the Independent Committee , having made reasonable inquiry, have:
 - (i) no knowledge of a Material Change or Material Fact concerning the Issuer or its securities that has not been generally disclosed; and
 - (ii) no reason to believe it is inappropriate to apply the Exchange's normal pricing policies; and
- (d) in respect of the exemptions set forth in subsections 4.1(a) and 4.2(a) above, the certificate must also state that:
 - (i) either a majority of the board of directors of the Issuer including two or more Independent Directors or the Independent Committee , acting in good faith, reasonably believe that the fair market value of the assets, business or securities is "indeterminate" with reference to the criteria described in section 4.5; and
 - (ii) there has been disclosure of the manner and basis upon which the consideration to be paid for the assets, business or securities was determined including, without limitation, reference to net tangible asset value;
- (e) in respect of the exemption set forth in subsection 4.1(d) above, the certificate must also state that:
 - (i) prior to making their investment, the Unrelated Investors will have received disclosure in the Information Circular or offering memorandum, as the case may be, of all matters relating to or affecting the concurrent financing and the transaction;
 - (ii) prior to voting on the transaction, the shareholders of the Issuer will have received disclosure in the Information Circular of all matters relating to or affecting the concurrent financing and the transaction; and
 - (iii) either a majority of the board of directors of the Issuer including two or more Independent Directors or the Independent Committee, having made reasonable inquiry, have no knowledge of any matter that might impact upon the deemed value determined in subsection 4.1(d).

- (f) in respect of the exemption set forth in subsection 4.2(b) above, that the pro rata share of the total issued and outstanding equity securities of the Issuer owned by any Related Party of the Issuer will not increase after giving effect to the Private Placement.

4.5. The Exchange will generally consider assets, businesses or securities to be of "indeterminate" value where:

- (a) the Issuer has demonstrated, to the satisfaction of the Exchange, a minimal history of commercial operations (less than one full fiscal year); and
- (b) financial statements relating to such assets, business or securities evidence:
 - (i) no cumulative earnings since commencement of operations;
 - (ii) either no sales or revenues or minimal cumulative sales or revenues derived from operations (less than \$1,000,000 since the commencement of operation of such assets or business); and
 - (iii) no positive cash flow or a minimal history of positive cash flow (two or fewer quarterly reporting periods).

4.6 The Exchange exemptions from the valuation requirements are only exemptions from the application of this Policy. An Issuer that is a reporting issuer in Ontario and is therefore directly subject to the OSC Rule and OSC Policy cannot rely upon the Exchange Valuation Exemptions to exempt them from the requirements of the OSC Rule and OSC Policy.

4.7. Where an Issuer is a reporting issuer in Ontario and the Issuer seeks an exemption from the OSC Rule or OSC Policy from the OSC, the Issuer must make application to the OSC with a copy of such application and all subsequent correspondence being provided to the Exchange. Where an exemption or waiver is permitted by the OSC, the Exchange will generally defer to the decision of the OSC.

4.8. Where an Issuer is not a reporting issuer in Ontario and is not directly subject to the OSC Rule and OSC Policy and seeks only an exemption from this Policy 5.9, the Issuer will make application for exemption or waiver of this Policy solely to the Exchange.