

ALBERTA SECURITIES COMMISSION RULES

COMPANION POLICY 45 - 501CP

SYSTEM FOR SHORTER HOLD PERIOD FOR ISSUERS FILING AN AIF

PART 1 PURPOSE AND DEFINITIONS

1.1 Purpose - This policy statement is intended to provide guidance to issuers regarding the system for a shorter hold period for issuers meeting certain requirements, including the filing of an AIF, established by Rule 45-501.

1.2 Definitions

Defined terms - In this policy

"investor relations activities" means activities or oral or written communications, by or on behalf of an issuer or securityholder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer but does not include:

(a) the dissemination of information provided, or records prepared, in the ordinary course of the business of the issuer:

- (i) to promote the sale of products or services of the issuer; or
- (ii) to raise public awareness of the issuer;

that cannot reasonably be considered to promote the purchase or sale of securities of the issuer;

(b) activities or communications necessary to comply with the requirements of:

- (i) the Act or the rules; or
- (ii) the by-laws, rules or other regulatory instruments of a self-regulatory body or exchange; or

(c) communications by a publisher of, or writer for, a bona fide newspaper, news magazine or business or financial publication that is of general or regular paid circulation and that is distributed only to its purchasers or subscribers for value, where:

- (i) the communication is only through the newspaper, magazine or publication; and
- (ii) the publisher or writer receives no commission or other consideration other than for acting in the capacity of publisher or writer;

"hold period" means the applicable time period during which securities acquired by a purchaser under an exemption set out in the Act or the rules must be held before being resold.

"Rule 72-501" means ASC Rule 72-501- Distributions to Purchasers Outside Alberta;

"the Distribution Policy" means ASC Policy 45-601 - Distributions Outside Alberta"; and

"the SHAIFF system" means the system for a shorter hold period for issuers meeting certain requirements, including the filing of an AIF established under section 2.1 of Rule 45-501.

PART 2 SYSTEM FOR SHORTER RESALE TIME RESTRICTIONS WITH AN ANNUAL INFORMATION FORM

2.1 Exemption for a first trade in a security acquired in connection with a distribution of securities by a qualifying issuer where a current AIF has been filed - The effect of section 2.1 of Rule 45-501 is to permit an issuer that is a qualifying issuer to offer securities with a four month resale time restriction, instead of the usual 12 month hold period, provided that the other conditions in section 2.1 are met., including filing a current AIF.

2.2 Revenue and Expenditure Tests for Qualifying Issuers - In order to meet the definition of qualifying issuers (as defined in Rule 45-501), an issuer must meet certain revenue or expenditure tests. For a non-resources issuer, the expenditures must be directly related to the development of the business described in the current AIF. Expenditures directly related to the development of the business do not include such general and administrative expenses as head office rent, management fees, legal or accounting fees, travel, promotion or investor relations expenditures.

2.3 Recognized Market - To be a qualifying issuer, an issuer must have its securities listed on a recognized market. Issuers whose securities are only quoted on the Canadian Dealer Network or on a bulletin board are not considered qualifying issuers.

Issuers, whose securities are listed on other exchanges or quoted on other markets and want to take advantage of the reduced hold period provided by the SHAIFF system, may apply to the Commission for exemptive relief under subsection 116(1) of the Act to exempt the proposed distribution from the registration and prospectus requirements of the Act.

2.4 Convertible Securities - An issuer that has issued convertible securities is eligible to offer purchasers the reduced hold period provided for in section 2.1 of Rule 45-501 provided that it satisfies the eligibility criteria of section 2.1(a) of the rule prior to the date of the conversion of the securities. In those circumstances, the reduced hold period referred to in section 2.1(e) of the rule would commence from the date of issuance of the convertible securities. Issuers should note that the Executive Director may exercise the discretionary power described in section 3.3 of the rule and advise the issuer that it is not entitled to offer the reduced hold period where the issuer was not a qualifying issuer (as defined in Rule 45-501) at the date of issuance of the convertible securities.

PART 3 SHAIFF SYSTEM FILING REQUIREMENTS AND REVIEW PROCEDURES

3.1 Current AIF - A qualifying issuer meeting the requirements of section 2.1 of Rule 45-501 may at any time file an AIF. While filing under the rule is entirely voluntary, only issuers that have filed the required AIF will be eligible to offer purchasers the reduced hold period set out in section 2.1 of the rule.

- 3.2 Renewal of AIFs** - To remain eligible to offer purchasers the reduced hold period under Rule 45-501, an issuer that has filed an AIF is required to file a current AIF and supporting documents within 140 days from the end of each financial year.
- 3.3 Confirmation of Filing of AIF** - The Executive Director will forward to the issuer a written confirmation of filing of its current AIF within 10 days of the date the current AIF is filed with the Commission. Such confirmation does not mean the Commission has passed on the merits or the content of the current AIF and does not preclude further review of the current AIF, which will be subject to further review at any time.
- 3.4 Discretionary Powers** - Notwithstanding that an issuer may satisfy the applicable eligibility criteria of section 2.1 of Rule 45-501, the Executive Director may, after the issuer has filed its current AIF, advise the issuer that it will not accept the current AIF for filing under the rule. The Executive Director may request that other documents, in addition to the supporting documents required to be filed with the current AIF, be filed in order to allow the Executive Director to determine whether to exercise this discretionary power.

In addition, the Executive Director may, at any time prior to a distribution of securities entitled to the reduced hold periods under the rule, advise the issuer that it is no longer entitled to offer purchasers the reduced hold periods provided for in section 2.1 of the rule. For example, the Executive Director may exercise this power where the issuer has disposed of the business or resource property that entitled the issuer to be a "qualifying issuer" as defined in the rule. In either case the Executive Director will provide reasons for the decision and an opportunity for the issuer to be heard.

- 3.5 Review of AIF** - An issuer's AIF is subject to selective review, and as a result, changes may need to be made to the AIF as required by the Commission or the Executive Director. An issuer's AIF may be selectively reviewed before or after the issuance of the confirmation referred to in section 3.1 of Rule 45-501. If reviewed prior to or after the issuance of the confirmation, but before a distribution of securities, the issuer may not be eligible to offer the reduced hold period provided for under Rule 45-501 until the issuer has made the necessary changes to the AIF. If the issuer's AIF is reviewed after a distribution of securities and is not in the required form, the issuer will no longer be eligible to offer purchasers the reduced hold period under Rule 45-501 for any further distributions of securities. In addition, any of a wide range of compliance action may be taken, from requiring the AIF to be filed correctly or a clarifying press release to be issued to more serious actions such as issuing a cease trade order against the issuer's securities or initiating appropriate enforcement proceedings against the issuer or its directors or officers.
- 3.6 Loss of Eligibility** - Where an issuer does not file a current AIF within 140 days from the end of the financial year as referred to in section 3.2 of Rule 45-501, the Executive Director will consider that the issuer has ceased to be eligible to rely on Rule 45-501 for any new issuance of securities. The issuer will not be eligible to issue securities subject to the reduced hold period under the rule until the issuer again satisfies the applicable eligibility set out in section 2.1(a) of the rule, including filing a current AIF.

Securities issued in reliance on Rule 45-501 prior to the date a current AIF was required to be filed (as discussed above) will remain subject to the reduced hold period notwithstanding that the issuer subsequently ceases to be eligible to rely on the exemption set out in section 2.1 of the rule.

3.7 Alternative Forms of AIF.

- (a) **Prospectus** - Issuers are reminded that the reduced hold period provided under Rule 45-501 will only be available to issuers that are reporting issuers in Alberta and that satisfy the other eligibility requirements of section 2.1 of the rule, including the requirement that the issuer be a qualifying issuer.
- (b) **OSC Policy Statement No. 5.10** - Issuers electing to use this alternative form of AIF are reminded to file a notice with the Commission through SEDAR not later than the date of the distribution of the issuer's securities under section 2.1 of the rule.
- (c) **JCP/VCP Information Circular** - An issuer wishing to use this alternative form of AIF is reminded to file a notice with the Commission through SEDAR not later than the date of the distribution of the issuer's securities under section 2.1 of the rule.
- (d) **US Registrant** - An issuer wishing to use this alternative form of AIF is reminded to file a notice with the Commission through SEDAR not later than the date of the distribution of the issuer's securities under section 2.1 of the rule. Issuers filing Forms 10-K or Forms 20-F must file the relevant forms with the Commission within the earlier of the time periods required by Rule 45-501 and the 1934 Act.

3.8 Notice - If an issuer elects to use an alternative form of AIF under section 3.4 of Rule 45-501, the notice is to be directed to the attention of the Director, Capital Markets and identify the date of the document being used as an alternative form of AIF, the date of the issuer's year end, the date of the financial statements included in the document and, if the document is a prospectus, the date of the receipt of the prospectus. Refer to section 3.9 for filing procedures for issuers filing through SEDAR.

3.9 Filing through SEDAR - National Instrument 13-101 relating to SEDAR applies to Canadian issuers and foreign issuers who elect to file through SEDAR. These issuers must file certain documents, including a non-POP AIF, through SEDAR. Currently, the AIF would be filed under "Securities Offerings - Other Filings". The issuer should name the filing "SHAIF AIF". Where an issuer elects to use an alternative form of AIF that has previously filed through SEDAR, the issuer is not required to refile the document for the purposes of Rule 45-501. A notice required to be filed under section 3.4 of Rule 45-501 is to be named "SHAIF Notice". It is anticipated that SEDAR will be amended in the fall of 1998 (as part of Release 5.0 scheduled to be released October 5, 1998) to provide for a specific document type for SHAIF system documents.

3.10 Substantial Transaction - Issuers should note that the Executive Director may exercise the discretionary power described in section 3.3 of the rule where the issuer has sold or discontinued the business or sold or abandoned the resource property or interest in the resource property that entitled the issuer to be a qualified issuer.

The Commission considers a substantial transaction to be one where

- (a) in the case of a purchase,
 - (i) the consideration paid for the acquired business, resource property or interest in the resource property is greater than 20% of the total assets of the issuer as reported in the issuer's audited financial statements relating to its current AIF, or

- (ii) the revenue for the most recent year of the acquired business, resource property or interest in the resource property is greater than 20% of the total revenue of the issuer as reported in the issuer's audited financial statements relating to its current AIF.
- (b) in the case of a sale,
 - (i) the selling price of the business, resource property or interest in the resource property is greater than 20% of the total assets as reported in the issuer's audited financial statements relating to its current AIF, or
 - (ii) the total revenue of the business, resource property or interest in the resource property being sold, as included in the issuer's audited financial statements relating to its current AIF, is greater than 20% of the total assets as reported in the issuer's audited financial statements relating to its current AIF.
- (c) in the case of a discontinuance or abandonment,
 - (i) the book value of the business, resource property or interest in the resource property being discontinued or abandoned is greater than 20% of the total assets of the issuer as reported in the issuer's audited financial statements relating to its current AIF, or
 - (ii) the revenue of the business, resource property or interest in the resource property being discontinued or abandoned, as included in the issuer's audited financial statements relating to its current AIF, is greater than 20% of the total revenues of the issuer as reported in the issuer's audited financial statements relating to its current AIF.

Issuers are reminded that the filing of a material change report disclosing a substantial transaction under section 3.6 of the rule does not relieve the issuer from its obligation to file a material change report in other circumstances where appropriate.

3.11 Currency of Information in AIF - An issuer is required under section 3.7 of the rule to update the information in its AIF to reflect any material events or conditions that arise after the end the issuer's most recently completed financial year and before the date of the AIF. What is material is a matter of judgment and should generally be determined in relation to its significance to investors, analysts and other users of the information.

PART 4 RESALES OUTSIDE ALBERTA DURING THE HOLD PERIOD

A purchaser resident outside Alberta holding securities distributed under Rule 45-501 may resell the securities during the hold period outside Alberta, provided the securities are not resold to a person or company in Alberta or through a market in Alberta. The issue of resales outside of Alberta during a hold period is discussed in further detail in the Distribution Policy.

PART 5 EXEMPTION

- 5.1 Decision of Executive Director Regarding Use of Section 2.1 Exemption** - Issuers are reminded that the Executive Director may, at any time prior to a distribution of securities made under Rule 45-501, advise the issuer that it is no longer entitled to rely on the exemption in section 2.1 of the rule. Where that is the case, the Executive Director will provide reasons for the decision and an opportunity for the issuer to be heard.