

A.S.C. POLICY 5.1
STATUTORY EXEMPTIONS

1. INTRODUCTION

- 1.1 Securities traded on reliance on statutory exemptions from prospectus requirements change hands under the Alberta Securities Act (the "Act") and the regulations made under the Act (the "Regulations") according to rules that are essentially self-policing. Unless otherwise stated, references to section numbers in this policy are to sections of the Act. The relatively common statutory exemptions are available in respect of
- 1.1.1 sales of securities to financial institutions identified in section 107(l)(a);
 - 1.1.2 sales to exempt purchasers recognized as such by the Alberta Securities Commission (the "Commission") under section 107(l)(c);
 - 1.1.3 sales to purchasers whose aggregate acquisition cost of the securities is not less than \$97,000 under section 107(l)(d);
 - 1.1.4 sales under the seed capital exemption under section 107(l)(p);
 - 1.1.5 sales on a second and subsequent use of the seed capital exemption under section 107(l)(q);
 - 1.1.6 sales to certain relatives of directors and senior officers under section 107(l)(z)(iii); and
 - 1.1.7 sales to not more than 50 close friends or business associates of a promoter of the issuer provided no invitation is made to the public under section 107(l)(z)(v).
- 1.2 Though vendors of securities who rely on statutory exemptions are obliged under section 108(l) to notify the Commission of certain details of their trades by filing a Form 20, the offering material they use to sell securities is not routinely reviewed and commented upon by the Commission staff; in contrast, prospectuses intended for distribution in connection with public financings are given close scrutiny by the Commission staff.
- 1.3 The Commission relies on participants in Alberta capital markets to understand and comply with the system of statutory rules governing sales and resales of securities to Alberta residents.-The Commission recognizes that questions occasionally arise as to the suitability of practices employed in carrying out a distribution under certain statutory exemptions.

- 1.4 In response to specific applications and questions directed to the Commission from time to time, the following guidelines are provided for the assistance of vendors of securities who have relied or intend to rely upon the statutory exemptions referred to in items 1. 1. 1 to 1. 1. 7 inclusive.

2. GUIDELINES

2.1 *Interaction of Statutory Exemptions from Prospectus Requirements*

- 2.1.1 All the statutory exemptions from the prospectus requirements under the Act may be used in conjunction with other statutory exemptions from the prospectus requirements.

- 2.1.2 Notwithstanding item 2.1.1, the Commission wishes to emphasize that where more than one exemption is to be relied upon, it is the responsibility of the issuer, its professional advisers and its agents, if any, to ensure that one statutory exemption is compatible with another in carrying out the offering. In particular, it is the Commission's position that the following statutory exemption is not compatible with any other statutory exemption:

2.1.2.1 no other exemption may be used in conjunction with the isolated trade exemption at section 107(1)(b).

2.2 *Section 107(1)(c)*

- 2.2.1 The application for recognition as an exempt purchaser must be made pursuant to section 69 of the Regulations by the filing of Form 11 under the Regulations.

- 2.2.2 An order will usually not be granted for a period beyond one year and will be required to be renewed annually.

2.3 *Section 107(1)(d)*

- 2.3.1 Under section 107(1)(d), a prospectus exemption is available in respect of a trade where the purchaser purchases as principal if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than \$97,000. The \$97,000 consideration may be cash and/or the assumption of liabilities having a value of \$97,000 on a present value basis.

- 2.3.2 The intent of section 107(1)(d) is that a transaction is exempt only if the purchaser is making a firm commitment of at least \$97,000. Accordingly, a commitment not

immediately satisfied by cash payment should be included only if the purchaser is certain, or virtually certain, to be called upon to make payment. This would disqualify commitments assumed under various tax-oriented arrangements where the promoter or distributor has held out to the investor hope or expectation that payment of a promissory note will be waived and would disqualify, from inclusion under this exemption, assumption of mortgages where the purchaser does not have a direct and real obligation to make payment under the mortgage. Further, to determine the amount of the commitment under a promissory note, the liability should be treated on a present value basis; the interest rate used in the calculation of present value would be the rate of interest payable on the note or the current prime rate plus one percent, whichever is higher. If the note is payable on demand, a reasonable maturity date should be assumed for the calculation, based on any representations made by the promoter or distributor as to the probable payment date. This concept is essentially that set out in the Regulations at section 1(1)(b) under the definition of aggregate acquisition cost and at section 2 which deals with the method of determining aggregate acquisition cost.

2.3.3 Where securities, having an acquisition cost less than \$97,000 on a per unit basis, are sold in blocks or units that in the aggregate have an acquisition cost satisfying the test in section 107(l)(d), the statutory exemption can be properly relied upon. In certain cases this could result in varying hold periods for different securities which comprise the block or unit involved in the initial exempt trade under section 107(l)(d).

2.3.4 Corporations, and syndicates and partnerships, and other forms of unincorporated organizations may not be created solely to permit purchases, under section 107(l)(d), by groups of individuals whose individual share of the aggregate acquisition cost is less than \$97,000. There is no objection if a corporation, syndicate, partnership or other form of entity is pre-existing and has a bona fide purpose other than investment in the securities being sold.

2.4 *Sections 107(1)(p) and 107(1)(q) - The Seed Capital Exemption*

2.4.1 The Commission notes that with respect to the seed capital exemption in section 107(l)(p) or 107(l)(q) where the purchaser is a corporation, partnership, syndicate, trust or unincorporated organization, each corporation, or member of such partnership, syndicate, trust or unincorporated organization must be counted separately in calculating the number of purchasers. This is not the case, however, if a corporation, syndicate, partnership or other form of entity is pre-existing and has a bona fide purpose other than investment in the securities being sold.

- 2.4.2 Notwithstanding item 2.4.1, any purchaser that falls within one of the following categories shall be considered to be a single purchaser:
- 2.4.2.1 pension plans;
 - 2.4.2.2 groups of pension plans under common management;
 - 2.4.2.3 organizations of members of a family fund formed to make investments of family funds;
 - 2.4.2.4 testamentary trusts and estates;
 - 2.4.2.5 organizations which have primary ongoing business activities other than investing in securities; i.e. law, accounting or investment firms; or
 - 2.4.2.6 mutual funds other than private mutual funds within the meaning of section 1(q)(i) of the Act (investment clubs).
- 2.4.3 The number of sales set out under the seed capital exemption at section 107(l)(p) or (q) shall be strictly observed. However, an issuer may make an application to go beyond the numerical limits of these exemptions. Such an application should be made pursuant to section 116 of the Act prior to any trade of securities under these exemptions. The nature of a section 116 application is described in A.S.C. Policy 2.1.
- 2.4.4 The issuer, under the seed capital exemption, must obtain a statutory declaration from the purchaser whereby the purchaser attests to the fact that he is purchasing as principal and is a sophisticated purchaser contemplated under section 107(l)(p)(iv) or 107(l)(q)(iv). Failure to obtain such a statutory declaration may result in the issuer not being able to rely on the exemption.
- 2.4.5 A promoter shall not be permitted to finance the same property, project or program more than once in any 12 month period where:
- 2.4.5.1 that property, project or program was also financed by an issuer or issuers formed by that promoter, and
 - 2.4.5.2 during that 12 month period reliance was made on the exemptions at section 107(l)(p) or (q) or their equivalent.
- 2.4.6 There is a so-called "12 month rest period" between the initial use of the seed capital exemption and the second and subsequent use of that exemption. An

applicant may, however, wish to apply for a section 116 order to reduce the "rest period". The nature of a section 116 application is described in A.S.C. Policy 2.1.

2.5 *Section 107(1)(z) - The Close Friends and Business Associates Exemption*

2.5.1 The statutory exemption at section 107(1)(z)(v) permits the distribution of securities to close friends and business associates of the promoter of the issuer and companies all of whose voting securities are beneficially owned by a single close friend or a single business associate. However it must be noted that the distribution under this exemption is not to more than a total of 50 purchasers.

2.5.2 The close friends and business associates exemption prohibits invitations to the public to subscribe for securities. Therefore, the Commission is of the view that the exemption is not available to anyone who is not a direct close friend or a direct business associate of a promoter of the issuer. Thus, the exemption does not permit the distribution of securities to close friends of close friends of the promoter of the issuer. The Commission takes the view that the relationship set out under the exemption must be directly between the promoter of the issuer and the close friend or business associate or company wholly-owned by the close friend or business associate of the promoter.

2.5.3 The matters related under item 2.4.5 in reference to the seed capital exemption are also applicable to this exemption.

3. USE OF OFFERING MEMORANDA IN CONNECTION WITH CERTAIN STATUTORY EXEMPTIONS

3.1 Section 108.1 of the Act provides that under the statutory exemptions at sections 107(1)(p) or (q) an offering memorandum must be received by a purchaser and that an offering memorandum may be sent to a purchaser in reliance on the statutory exemptions at sections 107(1)(c), (d), (t), (t.1), or (z).

3.2 Offering memorandum is defined at section 1(m.2) of the Act which definition makes clear that annual reports, interim reports, information circulars, takeover bid or issuer bid circulars, or prospectuses are not offering memoranda. Offering memoranda should at a minimum contain the information that is required by Form 43 of the Regulations. A guideline as to the completion of Form 43 is attached as Schedule A to this policy.

3.3 Due to the self-policing nature of the statutory exemptions referred to in this policy, the decision as to what is a material fact in a particular offering rests with the issuer and its legal or financial advisors. Material fact is defined in section 1(1) of the Act as follows:

“(1) “material fact” when used in relation to securities issued or proposed to be

issued means a fact that significantly affects or would reasonably be expected to have a significant effect on the market price or value of the securities;”

Therefore, the issuer may provide more than the minimal level of disclosure of material facts than is set out in Form 43 so as to avoid an allegation of misrepresentation. Misrepresentation is defined in section 1(m) of the Act as follows:

"(m) "misrepresentation" means

- (i) an untrue statement of a material fact, or
- (ii) an omission to state a material fact that is required to be stated, or
- (iii) an omission to state a material fact that is necessary to be stated in order for a statement not to be misleading;"

A misrepresentation in an offering memorandum could result in an investor seeking certain civil remedies including rescission or damages.

4. FORM 20 AND FORM 21

- 4.1 Form 20 must be filed with the Commission pursuant to section 108(l) of the Act. In completing Form 20, an issuer should specify which particular statutory exemption or exemptions was relied upon in effecting the distribution of the securities.
- 4.2 If the issuer is not a reporting issuer and if there is no public trading market for the securities of the issuer and no such market is likely to develop, then item 4(b) of Form 20 may be applicable and should be completed in accordance with the requirements of that item.
- 4.3 If item 4(b) is properly completed the Commission will not make the Form 20 available for public inspection and will not publish in its Weekly Summary the names and municipality of residence of the purchasers of the securities but will publish information relating to "Amount or Number of Securities Purchased" and "Purchase Price". The Commission requests that each Form 20 include the information referred to in the preceding sentence even in those situations where the names and municipality of residence of purchasers have been omitted.
- 4.4 If item 4(b) has been completed on Form 20 in connection with the sale of certain securities, it is the practice of the Commission not to publish the Form 21 or to make it available for public inspection if, at the time of filing Form 21, the vendor requests that the Form remain confidential.

- 4.5 It is the responsibility of the vendor or its agent to provide written advice to purchasers of securities (under the statutory exemptions referred to in this policy), that those purchasers shall be obligated to file a Form 21 at the time that they dispose of all or any part of their securities.

Effective date: March 15, 1987

SCHEDULE A TO ITEM 3.2 OF A.S.C. POLICY 5.1

GUIDELINES FOR PREPARING FORM 43

In order to assist issuers and their professional advisers in preparing an offering memorandum required by Form 43 of the Securities Regulations, the Alberta Securities Commission offers these guidelines in respect of certain items in Form 43

NOTE: If a particular item is inapplicable, then include a statement under that item that it is "not applicable".

Re ITEM 8 *Restrictions On Resale of Securities*

- 8.1 If the securities being offered through a statutory exemption or discretionary exemption are subject to restrictions on resale, then make a statement to the following effect in bold print:

"All securities purchased pursuant to this offering memorandum shall be subject to restrictions on resale until such time as

8.1.1 the appropriate "hold periods" have been satisfied,

8.1.2 a further statutory exemption may be relied upon by the investor or,

8.1.3 an appropriate discretionary order is obtained pursuant to applicable securities laws.

Therefore all purchasers under this offering should consult with their legal advisers to determine the extent of the applicable hold period and the possibilities of utilizing any further statutory exemptions or the obtaining of a discretionary order."

- 8.2 If the issuer is not a reporting issuer, add a statement to the following effect:

"Since (name of issuer) is not a reporting issuer in Alberta, the applicable hold period may

never expire, and if no further statutory exemption may be relied upon and if no discretionary order is obtained, this could result in a purchaser having to hold the securities acquired under this offering for an indefinite period of time."

If the issuer is a reporting issuer disclose the date on which the hold period expires.

- 8.3 Disclose that the purchaser shall be required to file a form pursuant to securities regulations being Form 21, which must be filed within 10 days from the date of the beginning of the distribution by the purchaser.

Re ITEM 10 *Nature of Project To Be Financed*

- 10.1 Describe the project, property or program that is to be financed by the offering, and

10.1.1 in the case of acquisition of property or assets, set out all the potential titles that must be transferred, legal descriptions, if appropriate and details of any material encumbrances against the property or assets that are the subject of the offering,

10.1.2 if there is a technical report, in the case of a natural resource project or program set out a summary of that report, relating to the project or program prepared by an expert and disclose name and qualifications of expert,

10.1.3 if there is a valuation or feasibility study, in the case of a project or program that does not involve natural resources, include a summary of a valuation, feasibility study or other appropriate technical report prepared by an expert and disclose name and qualifications of expert.

- 10.2 Summarize the nature and extent of any ongoing financial commitments or responsibilities imposed on the issuer or promoter in order to complete the project or program or to acquire the property and state whether the issuer or promoter shall be able to meet those commitments or responsibilities based on financial statements of the issuer or promoter. If the issuer or promoter is not able to meet those commitments or responsibilities, provide disclosure as to the consequences for the purchaser.

Re ITEM 11 *Use of Proceeds By Issuer*

- 11.1 State the estimated net proceeds to be derived by the issuer from the sale of the securities

to be offered, the principal purposes for which the net proceeds are intended to be used and the approximate amount intended to be used for each purpose;

- 11.2 If a minimum subscription level is involved, the priorities for use of proceeds shall be disclosed in respect of application of both minimum and maximum proceeds from the offering.
- 11.3 If a particular property, project or program is to be financed only partially from proceeds of the offering, the source of additional financing and particulars thereof needed to complete financing of the property, project or program shall be disclosed.

Re ITEM 12 *Share Capital Structure:*

Furnish in substantially the tabular form indicated or, if appropriate, in notes thereto particulars of the share capital of the issuer and its subsidiaries if any.

Column 1	Column 2	Column 3	Column 4	Column 5
Designation of security	Amount authorized or to be authorized	Amount outstanding as of the date of the most recent balance sheet contained in the offering memorandum	Amount outstanding as of a specific date within 30 days preceding the date securities were first offered for sale pursuant to this offering memorandum	Amount to be outstanding if all securities being issued are sold

Re ITEM 13 *Debt of the Issuer*

Furnish in substantially the tabular form indicated or, if appropriate, in notes thereto particulars of the debt of the issuer and its subsidiaries if any

Column 1	Column 2	Column 3	Column 4
Nature of Debt	Amount of Debt as of a date not more than 30 days preceding the date securities were first offered pursuant to this offering memorandum	Interest Rate on Debt	Repayment Schedule

INSTRUCTION

State whether the particular debt is in default.