

ALBERTA SECURITIES COMMISSION RULES

RULE 46-501

JUNIOR CAPITAL POOL OFFERINGS

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PART 1 INTERPRETATION

1.1 Interpretation - In this Rule

“ASE” means The Alberta Stock Exchange;

“ASE requirements” means the by-laws, circulars, policies, rules, regulations and rulings of the ASE and the instructions, decisions and directions of the ASE (including those of any committee of the ASE so authorized) as amended or supplemented and in effect from time to time;

“completion of the major transaction” means the date of the securityholders’ meeting at which the proposed major transaction was approved provided that

- (a) all post-meeting documentation is subsequently filed with the ASE, and
- (b) a Bulletin has been issued by the ASE confirming that the major transaction has been completed and that the company is no longer considered a JCP;

“JCP” means a company that

- (a) files a preliminary JCP prospectus under this Rule,
- (b) has no significant assets or business, and
 - (i) has no specific plans for the acquisition of any assets or business, or
 - (ii) has a specific plan or plans for the acquisition of an asset or business but such plan or plans have not yet reached the stage of an enforceable agreement;

“JCP prospectus” means a prospectus filed with the Commission by a JCP under this Rule;

“major transaction” means a transaction whereby a JCP

- (a) issues securities representing more than 25 percent of its securities issued and outstanding immediately prior to the issuance, in consideration for the acquisition of significant assets,
- (b) enters into an arrangement, amalgamation, merger or reorganization with another issuer with significant assets, whereby the ratio of securities which are distributed to the two sets of securityholders results in the securityholders of the other issuer acquiring control of the resulting entity, or
- (c) otherwise acquires significant assets,

and excludes a transaction whereby, prior to completion of the major transaction, a JCP issues for cash securities representing more than 25 percent of its securities issued and outstanding immediately prior to the issuance;

“majority of the minority test” means a vote at a properly constituted meeting of the securityholders of the JCP as described in an information circular accepted by the ASE which must be passed by at least 50 percent plus one vote of the votes cast by securityholders who vote at the securityholders’ meeting, other than parties related to the JCP and parties related to the major transaction;

“parties related to the JCP” means the promoters, officers, directors, other insiders of the JCP and associates or affiliates of those parties;

“parties related to the major transaction” means the promoters, officers, directors, other insiders and all other parties to or associated with the major transaction and associates or affiliates of those parties; and

“significant assets” means assets (other than cash) or securities of another issuer whereby on completion of the acquisition, the JCP meets the minimum listing requirements under Circular No. 1 of the ASE for an issuer other than a JCP.

PART 2 APPLICATION

2.1 Eligibility - Only companies that intend to become industrial issuers or natural resource issuers are eligible to file a JCP prospectus under this Rule.

2.2 Application

- (1) This Rule applies to all JCPs for which a final receipt for a JCP prospectus has

been issued by the Executive Director on or after the effective date of this Rule.

- (2) All JCPs for which a final receipt for a JCP prospectus was issued by the Executive Director prior to the effective date of this Rule shall continue to be governed by A.S.C. Policy 4.11 as it read on the day before the effective date of this Rule.

2.3 Rule Ceases to Apply - Once a Bulletin has been issued by the ASE confirming that the major transaction has been completed and that the company is no longer considered a JCP, the requirements of this Rule, other than Parts 7 and 9, cease to apply to the JCP.

PART 3 CERTAIN REQUIREMENTS OF A JCP

3.1 Business of a JCP

- (1) The business objective of a JCP shall be to identify and evaluate assets or businesses with a view to completing a major transaction approved by the ASE and the majority of the minority shareholders in accordance with this Rule.
- (2) Until the completion of the major transaction, the JCP shall not carry on any business other than the identification and evaluation of assets or businesses in connection with the potential major transaction.

3.2 Restrictions on Foreign Transactions

- (1) The majority of the directors of a JCP shall be residents of Canada.
- (2) The majority of the officers of a JCP shall be residents of Canada.
- (3) Not more than 20% of the securities of a JCP that are issued and outstanding at any time prior to the public offering under a JCP prospectus shall be beneficially owned by individuals who or entities that reside outside of Canada.
- (4) Foreign or offshore trusts, corporations or other entities shall not hold securities of a JCP prior to the public offering under a JCP prospectus unless the name of the individual or individuals who beneficially own these securities is disclosed to the Commission. If the beneficial owner of these securities is not an individual, the name of the individual or individuals who beneficially own the intermediary entity or entities that hold the securities shall be disclosed to the Commission.

- (5) A JCP shall not have as its objective the acquisition of properties or businesses located outside of Canada.
- (6) A JCP shall not acquire rights or assets unless the rights or assets will be used, operated or located entirely within Canada.
- (7) A JCP shall not acquire shares of a company if
 - (a) the company is incorporated in a jurisdiction outside of Canada;
 - (b) the company carries on a substantial portion of its business outside of Canada; or
 - (c) the majority of directors of the company are not residents of Canada.

3.3 Private Placements for Cash- Until the completion of the major transaction, a JCP shall not issue for cash securities representing more than 25 percent of its securities issued and outstanding unless

- (a) all applicable requirements of securities legislation and all ASE requirements are met;
- (b) the consent of the ASE is obtained prior to the issuance of the securities; and
- (c) the requirements of Parts 6, 7 and 8 are met in connection with the proposed issuance of securities.

3.4 Requirement to Maintain Listing

- (1) A JCP shall maintain a listing on the ASE while it is subject to this Rule.
- (2) If a JCP becomes delisted from the ASE, the Executive Director will issue an interim cease trade order against the JCP.
- (3) If the shares of a JCP are suspended from trading on the ASE, the Executive Director may issue an interim cease trade order against the JCP.

PART 4 CERTAIN REQUIREMENTS OF THE OFFERING

4.1 Underwriters and Agents - A JCP prospectus offering shall have an underwriter or agent

that is

- (a) registered in Alberta as a broker or investment dealer; and
- (b) a member of the ASE.

4.2 Conditional Listing Approval

- (1) Securities shall not be offered under a JCP prospectus unless the securities have been conditionally approved for listing by the ASE.
- (2) Written confirmation from the ASE to the Commission is required stating that application for listing has been approved subject to the issuer meeting the conditions imposed by the ASE.

4.3 Restrictions on Trading - Other than the initial distribution of securities under a JCP prospectus and the grant of options by the JCP to an officer or director of the JCP, securities of the JCP shall not be traded during the period between the date of the receipt for the preliminary JCP prospectus and the time the securities are posted for trading on the ASE.

4.4 Securities

- (1) Only voting common shares and options granted in accordance with Part 5 shall be offered or qualified under an initial JCP prospectus.
- (2) A JCP shall not issue warrants or undertake a rights offering prior to completion of the major transaction.

4.5 Dilution

- (1) Dilution in a JCP prospectus shall be calculated on the basis of total gross proceeds to the JCP of securities
 - (a) to be sold under the JCP prospectus; and
 - (b) sold prior to the filing of the preliminary JCP prospectus,
 without deduction of expenses incurred by the JCP in connection with the offering.
- (2) If an offering has a minimum and maximum subscription, dilution based on the

minimum subscription and the maximum subscription shall be disclosed in the JCP prospectus.

4.6 Disclosure Required in a JCP Prospectus

- (1) In addition to complying with all applicable requirements of securities legislation relating to form and content of a prospectus, a JCP prospectus shall
 - (a) be prepared in accordance with either Form 12 or Form 14 of the Rules, except as otherwise provided in this Rule;
 - (b) disclose the business objective of the JCP as provided in section 3.1;
 - (c) include in the disclosure both on the cover page and in the body of the JCP prospectus under the heading “Risk Factors”, disclosure that the offering is suitable only to those investors who are willing to rely solely on the management of the JCP and who can afford to lose all of their investment;
 - (d) contain a statement that any proposed major transaction shall be submitted to securityholders for approval in accordance with the requirements of this Rule; and
 - (e) disclose the restrictions on payments to parties related to the JCP as provided in section 6.1.
- (2) If a JCP intends to enter into a specific proposed major transaction that is not yet at the stage of an enforceable agreement, that transaction shall be identified in the JCP prospectus and the JCP prospectus shall also:
 - (a) disclose any non-arm’s length relationship between
 - (i) the JCP or parties related to the JCP; and
 - (ii) the parties related to the major transaction;
 - (b) disclose any conflict of interest arising out of the transaction among the JCP, the parties related to the JCP and the parties related to the major transaction; and
 - (c) contain sufficient disclosure of material facts relating to the proposed

major transaction to enable a potential investor to make a reasoned assessment of

- (i) the nature and magnitude of the proposed major transaction;
- (ii) the nature and magnitude of the consideration to be given by the JCP in the proposed major transaction; and
- (iii) the likelihood of completion of the proposed major transaction.

PART 5 OPTIONS

5.1 Options to Underwriter or Agent

- (1) No option to acquire securities of a JCP shall be granted to the underwriter in an underwritten offering or to an agent in a best efforts offering, unless
 - (a) the option is a single, non-transferable option;
 - (b) the number of securities subject to the option does not exceed 10 percent of the total number of securities offered under the JCP prospectus;
 - (c) the exercise price per security under the option is not less than the offering price per security to the public; and
 - (d) the exercise period does not exceed 18 months from the date of listing of the JCP on the ASE.
- (2) If an option to acquire securities of a JCP is granted to the underwriter or agent as consideration for acting as underwriter or agent, the option may be exercised in whole or in part prior to the completion of the major transaction by the JCP, provided that no more than 50 percent of the aggregate number of shares which can be acquired by the underwriter or agent on exercise of the option may be sold by the underwriter or agent prior to completion of the major transaction.

5.2 Options to Parties Related to the JCP - No option to acquire securities of a JCP shall be granted to a party related to the JCP unless

- (a) the number of securities reserved under option for issuance to parties related to the JCP does not exceed 10 percent of the securities to be outstanding after the

offering under the JCP prospectus; and

- (b) the exercise price per security under the option granted to a party related to the JCP is not less than the offering price per security to the public.

PART 6 USE OF PROCEEDS

6.1 Prohibited Payments to Parties Related to the JCP

- (1) Except as provided in sections 5.2 and 6.2, until the completion of the major transaction, no payment shall be made, directly or indirectly, by a JCP to a party related to the JCP by any means including
 - (a) remuneration, which includes
 - (i) salaries;
 - (ii) consulting fees;
 - (iii) management fees;
 - (iv) finders' fees;
 - (v) loans;
 - (vi) advances; and
 - (vii) bonuses, including bonuses relating to the major transaction; and
 - (b) deposits and similar payments described in subsection 6.3(b).
- (2) No payment referred to in subsection (1) shall be made by a JCP on or after the completion of the major transaction if the payment relates to services rendered or obligations incurred prior to or in connection with the major transaction.

6.2 Exceptions to the Prohibitions on Payments to Parties Related to the JCP - Subject to sections 3.1, 3.2, 6.3 and 6.4, a JCP may

- (a) compensate a party related to the JCP for

- (i) reasonable expenses for office supplies, office rent and related utilities;
- (ii) reasonable expenses for equipment leases; and
- (iii) legal services provided that
 - (A) if the lawyer receiving the remuneration is a sole practitioner, or a member of an association of sole practitioners, the lawyer is not a promoter of the JCP; and
 - (B) if the legal services are provided by a firm of lawyers, no member of the law firm is a promoter of the JCP; and
- (b) reimburse a party related to the JCP for reasonable out-of-pocket expenses incurred in pursuing the business of the JCP.

6.3 Permitted Use of Proceeds - Subject to sections 3.1, 3.2 and 6.1, and except as otherwise provided in section 6.4, until the completion of the major transaction, the gross proceeds of all securities issued by the JCP shall be used

- (a) only to identify and evaluate assets or businesses, for expenses such as:
 - (i) business valuations;
 - (ii) engineering reports; and
 - (iii) fees for legal advice relating to the identification and evaluation of assets or businesses and the obtaining of securityholder approval for the proposed major transaction; except that
- (b) up to an aggregate of \$25,000 may be used on any form of deposit, including refundable deposits, non-refundable deposits, secured deposits, unsecured deposits, trust deposits, lock-up fees and advances to preserve assets.

6.4 Restrictions on Use of Proceeds

- (1) Until the completion of the major transaction, no more than 30 percent of the gross proceeds of all securities issued by a JCP shall be used for purposes other than as provided in section 6.3. Expenditures that do not meet the requirements of section 6.3 include:

- (a) listing and filing fees;
 - (b) underwriters' or agents' fees or commissions;
 - (c) other costs of the issue of securities, including legal and audit expenses relating to the preparation and filing of the JCP prospectus; and
 - (d) administrative and general expenses of the JCP, including
 - (i) office supplies, office rent and related utilities;
 - (ii) printing costs, including printing of the JCP prospectus;
 - (iii) equipment leases; and
 - (iv) fees for legal advice relating to matters other than those described in paragraph 6.3(a)(iii).
- (2) Until the completion of the major transaction, no proceeds of the issue of securities of a JCP shall be used to acquire or lease a vehicle.

PART 7 ESCROW

7.1 Escrow of Securities Issued at a Discount - All securities of a JCP of the class offered under the JCP prospectus and issued prior to the offering under the JCP prospectus at an issuance price per security that is less than the issuance price under the JCP prospectus shall be held in escrow under a JCP escrow agreement.

7.2 Escrow of Securities Held by Parties Related to the JCP - All securities of a JCP

- (a) beneficially owned, directly or indirectly, at the time of the offering under the JCP prospectus;
- (b) acquired pursuant to the offering under the JCP prospectus; and
- (c) acquired from treasury after the offering under the JCP prospectus but prior to completion of the major transaction,

by the parties related to the JCP shall be held in escrow under a JCP escrow agreement.

7.3 Further Escrow of Securities Held by Control Persons - In addition to any securities required to be held in escrow under sections 7.1 or 7.2, all securities of the JCP acquired by a control person in the secondary market prior to completion of the major transaction shall be held in escrow under a JCP escrow agreement.

7.4 Holding Companies

- (1) Where securities of a JCP required to be held in escrow are held by a company, during the currency of the escrow agreement that company shall not carry out any transactions which would result in a change of control of that company.
- (2) Where securities of a JCP required to be held in escrow are held by a company, the major asset of which consists of those escrowed securities or escrowed securities of any other JCP, the shares of that company shall be held in escrow under a JCP escrow agreement.

7.5 Policies 4.2 and 4.9 Not Applicable - The provisions of the Commission's Policies 4.2 and 4.9 do not apply to JCP offerings.

7.6 Release from Escrow - Securities escrowed under a JCP escrow agreement shall be released as to one-third of the securities then subject to escrow requirements on each of the first, second and third anniversaries of the completion of the major transaction.

7.7 Form of JCP Escrow Agreement - Every JCP escrow agreement referred to in Part 7 shall be completed in accordance with Form 46-501F1.

PART 8 CERTAIN REQUIREMENTS RELATING TO THE MAJOR TRANSACTION

8.1 Requirements Relating to the Major Transaction - Prior to the completion of the major transaction or the issuance of any securities of the JCP in connection with the major transaction, the JCP shall

- (a) comply with all applicable securities legislation and all applicable ASE requirements, including in particular Circulars 1, 2, 3, 5, 7, 12 and 18;
- (b) prepare and submit to the ASE for review by the ASE an information circular for the securityholders' meeting described in subsection (c), which information circular shall be prepared in accordance with Form 30 of the Rules and all applicable requirements of securities legislation and ASE requirements, including in particular Circular 7; and

- (c) provide to securityholders the right to approve the major transaction by means of the majority of the minority test.

PART 9 EXEMPTION

9.1 Exemption - The Executive Director or the Commission may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 10 EFFECTIVE DATE

10.1 Effective Date - This Rule comes into force effective January 1, 1998.