

ALBERTA SECURITIES COMMISSION

BLANKET ORDER 51-512

Citation: Order Exempting Alpha Main Issuers from Certain Provisions of Alberta Securities Laws , Re, 2012 ABASC 129 **Date:** 20120330

Background

1. Aspects of Alberta securities laws and policies vary in their application to issuers depending on the marketplace on which an issuer's securities are listed or quoted.
2. Alpha Exchange Inc. (**Alpha**) intends to operate two listing markets, referred to respectively as *Alpha Venture Plus* and *Alpha Main*. Alpha Venture Plus listing requirements are designed to be more aligned with "venture issuers", as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), while *Alpha Main* listing requirements are designed to be more aligned with "non-venture issuers", as defined in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**).
3. Alpha has represented that issuers with securities listed on *Alpha Main* (**Alpha Main Issuers**) should be subject to Alberta securities laws and policies applicable to "non-venture issuers", as defined in NI 52-109. However, pending possible amendments to Alberta securities laws and policies to make express reference to *Alpha Main*, this would require:
 - (a) the application of Alberta securities laws to Alpha Main Issuers as if they were non-venture issuers; and
 - (b) the application of National Policy 46-201 *Escrow for Initial Public Offerings* as if Alpha Main Issuers with a market capitalization (calculated in accordance with that policy) of less than \$100 million were "established issuers" (within the meaning of that policy) and Alpha Main Issuers with a market capitalization of at least \$100 million were "exempt issuers" (within the meaning of that policy).

Order

4. The Alberta Securities Commission (the **Commission**), considering that it would not be prejudicial to the public interest, orders that the provisions of Alberta securities laws specified below do not apply to an Alpha Main Issuer, on the condition that, prior to having its securities listed on Alpha, the issuer files with the Commission an originally signed undertaking to the Commission in the form of the Schedule hereto (the **Alpha Main Issuer Undertaking**) and concurrently delivers a copy of the Alpha Main Issuer Undertaking to Alpha:

- (a) all provisions contained in National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) that would otherwise apply to the Alpha Main Issuer as a result of the fact that it constitutes a “venture issuer” and an “IPO Venture issuer” (within the meaning of NI 41-101);
- (b) the criterion under section 2.2(e) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**), for qualification to file a prospectus in the form of a short form prospectus, that an issuer's equity securities be listed and posted for trading on a “short form eligible exchange” (within the meaning of NI 44-101);
- (c) the criterion, under section 2.2(1) of National Instrument 44-102 *Shelf Distributions*, for qualification to file a preliminary short form prospectus that is a preliminary base shelf form prospectus, that the issuer be qualified under section 2.2 of NI 44-101 to file a prospectus in the form of a short form prospectus, on the condition that the issuer meets all the criteria of section 2.2 of NI 44-101 except the criterion under section 2.2(e) that an issuer's equity securities be listed and posted for trading on a short form eligible exchange.
- (d) all provisions contained in NI 51-102 that would otherwise apply to the Alpha Main Issuer as a result of the fact that it constitutes a “venture issuer” (within the meaning of NI 51-102);
- (e) for so long as the issuer remains an Alpha Main Issuer, the requirement under section 11.2 of NI 51-102 to file a change of status report;
- (f) the requirement under section 4.2(1)(b) of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) to file an annual certificate on Form 52-109FV1 that would otherwise apply to the Alpha Main Issuer as a result of the fact that it constitutes a “venture issuer” within the meaning of NI 52-109;
- (g) if the Alpha Main Issuer's first financial period that ends after its securities become listed on the *Alpha Main* marketplace is a financial year and the Alpha Main Issuer files an annual certificate on Form 52-109F1-IPO/RTO for that financial year, the requirement under section 4.2(1) of NI 52-109 to file an annual certificate on Form 52-109F1;
- (h) if the Alpha Main Issuer's first financial period that ends after its securities become listed on the *Alpha Main* marketplace is an “interim period” (within the meaning of NI 51-102) and the Alpha Main Issuer files an interim certificate on Form 52-109F2-IPO/RTO for that interim period, the requirement under section 5.2(1) of NI 52-109 to file an interim certificate on Form 52-109F2;
- (i) the requirement under section 5.2(1)(b) of NI 52-109 to file an interim certificate on Form 52-109FV2 that would otherwise apply to the Alpha Main Issuer as a

result of the fact that it constitutes a “venture issuer” (within the meaning of NI 52-109);

- (j) section 6.2 of National Instrument 52-110 *Audit Committees* (**NI 52-110**) as it would otherwise apply to the Alpha Main Issuer as a result of the fact that it constitutes a “venture issuer” (within the meaning of NI 52-110); and
- (k) the requirement under section 2.2 of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) to include, in a management information circular, “AIF” or annual “MD&A” (within the meaning of NI 58-101), as the case may be, the disclosure required by Form 58-101F2, which would otherwise apply to the Alpha Main Issuer as a result of the fact that it constitutes a “venture issuer” (within the meaning of NI 58-101).

30 March 2012

For the Commission:

“original signed by”

William S. Rice, QC
Chair

“original signed by”

Stephen Murison
Vice-Chair

SCHEDULE FORM OF UNDERTAKING

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta
T2P 0R4

ALPHA MAIN ISSUER UNDERTAKING

_____ (the **Alpha Main Issuer**) hereby undertakes to the Alberta Securities Commission that, in addition to complying with all other aspects of Alberta securities laws, it will:

1. comply with National Instrument 41-101 *General Prospectus Requirements* as if the Alpha Main Issuer was neither a “venture issuer” nor an “IPO venture issuer” (within the meaning of that instrument);
2. if the Alpha Main Issuer has a market capitalization of less than \$100 million, apply National Policy 46-201 *Escrow for Initial Public Offerings* as if the Alpha Main Issuer were an “established issuer” (within the meaning of that policy);
3. comply with National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) as if the Alpha Main Issuer were not a “venture issuer” (within the meaning of NI 51-102);
4. file a change of status report under section 11.2(a) of NI 51-102 when the Alpha Main Issuer’s securities become listed on the Alpha Venture Plus marketplace operated by Alpha Exchange Inc. or on any other exchange that would cause it to be designated as a “venture issuer” (within the meaning of NI 51-102);
5. prepare acquisition statements in accordance with “Canadian GAAP applicable to private enterprises” and include the specific notes, as applicable, prescribed under sections 3.11(1)(f)(iv) and 3.11(6)(d)(iii) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, as if the Alpha Main Issuer were neither a “venture issuer” nor an “IPO venture issuer” (within the meaning of that instrument);

6. comply with National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* as if the Alpha Main Issuer were a “non-venture issuer” (within the meaning of that instrument);
7. comply with Part 3 *Composition of the Audit Committee* (sections 3.1 to 3.9) of National Instrument 52-110 *Audit Committees* (**NI 52-110**), as if the Alpha Main Issuer were not a “venture issuer” (within the meaning of NI 52-110);
8. comply with Part 5 *Reporting Obligations* (sections 5.1 and 5.2) of NI 52-110, as if the Alpha Main Issuer were not a “venture issuer” (within the meaning of NI 52-110); and
9. include in the Alpha Main Issuer’s management information circular, its AIF or annual MD&A (within the meaning of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**)), as the case may be, the disclosure required by Form 58-101F1 as prescribed under section 2.1 of NI 58-101, as if the Alpha Main Issuer were not a “venture issuer” (within the meaning of NI 58-101).

The undersigned acknowledges that failure to comply with this Alpha Main Issuer Undertaking¹ would be a contravention of section 93.2 of the *Securities Act* (Alberta).

[Place, Date]

[Name, Function], duly authorized

¹ An Alpha Main Issuer that is a reporting issuer in Ontario or Québec may supplement this undertaking substantially to the following effect:

The Alpha Main Issuer further undertakes not to invoke the benefit of the following exemptions:

1. the *Exemption from Formal Valuation Requirement* under section 4.4(1)(a) of Multilateral Instrument *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**);
2. the *Exemption from Formal Valuation Requirement* provided for in subsection 5.5(b) of MI 61-101; or
3. the *Exemption from Minority Approval Requirement* provided for in paragraph 5.7(1)(b) of MI 61-101.