

**ALBERTA SECURITIES COMMISSION  
NOTICE AND REQUEST FOR COMMENT**

**PROPOSED ASC RULE 45-511 LOCAL PROSPECTUS EXEMPTIONS AND RELATED  
REQUIREMENTS AND PROPOSED CONSEQUENTIAL AMENDMENTS TO  
ALBERTA SECURITIES COMMISSION RULES (GENERAL)**

**February 12, 2010**

The Alberta Securities Commission (ASC) is publishing this notice and request for comment regarding proposed ASC Rule 45-511 *Local Prospectus Exemptions and Related Requirements* (ASC Rule 45-511) and proposed consequential amendments to the *Alberta Securities Commission Rules* (General) (the Rules). Proposed ASC Rule 45-511 is attached as Appendix A to this notice. The text of the amending rule for the proposed consequential amendments to the Rules is set out in Appendix B to this notice. Blacklines comparing the Local Rule provisions to the current counterparts of the Rules are attached as Appendix C to this notice. Comments on proposed ASC Rule 45-511 and the proposed consequential amendments to the Rules will be received until March 12, 2010.

**Background**

Proposed ASC Rule 45-511 is a local rule that consolidates the remaining local prospectus exemptions and related requirements contained in the Rules. As a result, we are proposing the repeal of several sections of the existing Rules as they will be replaced by provisions of proposed ASC Rule 45-511.

**Comments**

The amendments proposed in this notice are targeted to become effective on XX, 2010. Any comments on proposed ASC Rule 45-511 and the proposed consequential amendments to the Rules are required by no later than March 12, 2010.

Please direct any comments on the proposed amendments on or before March 12, 2010, in writing, to:

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## APPENDIX A

### Alberta Securities Commission Rule 45-511

#### *Local Prospectus Exemptions and Related Requirements*

##### **Part 1: Definitions**

**1.1** In this rule the definition of “qualifying issuer” has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

##### **Part 2: Local Prospectus Exemptions**

###### **2.1 *Rural Utilities Act and Cooperatives Act***

The prospectus requirement does not apply to a distribution of

- (a) a voting security of a corporation to which the *Rural Utilities Act* applies,
- (b) membership shares, including member loans deemed to be membership shares as defined in the *Cooperatives Act*, issued by a cooperative to which that Act applies, if the aggregate acquisition cost for membership shares and member loans
  - (i) for the first 18 months following incorporation is not greater than \$10 000 per member and not more than \$1000 of that amount is attributable to membership shares, and
  - (ii) in any subsequent year is not greater than
    - (A) \$5000 for cooperatives with 100 members or less, or
    - (B) \$2500 for cooperatives with more than 100 members, or
- (c) investment shares as defined in the *Cooperatives Act*, issued by a cooperative to which that Act applies, other than a cooperative under Division 1 or 4 of Part 18 of that Act, if
  - (i) the investment shares are purchased only by members of the cooperative who have been members of the cooperative for at least 12 months before the share purchase, and
  - (ii) the aggregate acquisition cost to the members in any one year is not greater than
    - (A) \$10 000 for cooperatives with 100 members or less, or
    - (B) \$5000 for cooperatives with more than 100 members.

### **Part 3: Local Requirements Related to Prospectus Exemptions**

#### **3.1 Unusual effort to prepare market**

For the purposes of sections 2.5(2)5, 2.6(3)3 and 2.8(2)3 of National Instrument 45-102 *Resale of Securities*, an unusual effort to prepare the market or to create a demand for securities takes place if one or more of the following activities is engaged in by or on behalf of the vendor of the securities

- (a) the dissemination to prospective purchasers of material soliciting orders to purchase, unless the material consists only of a letter or communication identifying the securities being sold and advising that they are available for sale, which letter or communication may comprise or be accompanied by a document the content of which is prescribed by Alberta securities laws and has been filed under the *Securities Act* (Alberta),
- (b) the formation of a selling group or any similar arrangement to coordinate the efforts of more than one registrant to effect a sale of the securities,
- (c) the commencement of any transaction or series of transactions, plan or other arrangement to manipulate or adjust the market price of the securities, other than price stabilization activities
  - (i) reasonably necessary for the maintenance of an orderly market, and
  - (ii) not going beyond what is accepted in the market where those activities occur,
- (d) any sales effort that
  - (i) is illegal or improper by the standards of the market in which it is made, or
  - (ii) involves the communication of false or misleading information,
- (e) the making of a sale to a purchaser with whom the vendor is not dealing at arm's length in order to put the purchaser in a position to resell the securities free of legal constraints to which the vendor was subject,
- (f) in the case of sales made as described in section 2.8(1) of National Instrument 45-102 *Resale of Securities* where there is a market for the securities, the making of a sale other than
  - (i) a sale made

- (A) in the market in which securities of the particular class are customarily traded, and
- (B) in a manner customary in that market,

or

- (ii) a sale made under an exemption from the prospectus and registration requirement.

### **3.2 Extraordinary commission or consideration**

For the purposes of sections 2.5(2)6, 2.6(3)4 and 2.8(2)4 of National Instrument 45-102 *Resale of Securities*, an extraordinary commission or consideration is paid in respect of a trade if the trade is effected

- (a) on an agency basis and the aggregate compensation paid to the registrant through whom the securities are sold is greater than that which is customary in agency transactions of similar size involving similar securities in the relevant market,
- (b) through an exchange or other market in which it is customary for registrants to trade on an agency basis but the securities are instead sold by the vendor to another registrant acting as principal if the sale was prearranged to avoid the operation of paragraph (a), or
- (c) through the sale of the securities by the vendor to a registrant and the excess of the then market value of the particular securities over the price paid is greater than that which is customary in principal transactions of similar size involving similar securities in the relevant market.

### **3.3 Registrants registered outside Alberta**

For the purposes of sections 3.1 and 3.2, if a transaction is effected in another jurisdiction, “registrant” means a person or company registered to trade in securities in that jurisdiction.

### **3.4 Offering memorandum required for minimum amount investment exemption**

- (1) Subject to subsection (3), any document purporting to describe the business and affairs of the issuer and prepared for review by prospective purchasers to assist in making an investment decision in respect of securities being sold that is delivered to a purchaser in respect of a distribution made in reliance on the prospectus exemption in section 2.10 of National Instrument 45-106 *Prospectus and Registration Exemptions*, under an offering that commenced on or after September 14, 2005, is designated to be an offering memorandum.
- (2) If a document is designated to be an offering memorandum under subsection (1)

- (a) the offering memorandum must
  - (i) be prepared in accordance with Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, or, in the case of a qualifying issuer, in accordance with Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, and comply with subsections 2.9 (8) to (14) of National Instrument 45-106 *Prospectus and Registration Exemptions*, or
  - (ii) include
    - (A) the certificate required by subsections 2.9(8) to (14) of National Instrument 45-106 *Prospectus and Registration Exemptions*, and
    - (B) a statement describing the rights of actions provided by section 204 of the *Securities Act* (Alberta) and the time limits specified by section 211 of the *Securities Act* (Alberta) in which an action to enforce a right under section 204 must be commenced, and
- (b) the issuer must
  - (i) deliver a copy of the offering memorandum to the purchaser not later than when the purchaser signs the agreement to purchase the security, and
  - (ii) comply with section 2.9(17) of National Instrument 45-106 *Prospectus and Registration Exemptions*,
- (3) Subsection (1) does not apply if the document delivered is a document the content of which is prescribed by Alberta securities laws and has been filed under the *Securities Act* (Alberta).

### **3.5 Prohibited Representation in Offering Memorandum**

No person or company shall make any representation that the Alberta Securities Commission has in any way reviewed or passed upon the merits of the securities offered under an offering memorandum or a document designated to be an offering memorandum under section 3.4(1).

### **3.6 Effective Date**

This Rule comes into force on ●, 2010.

## **APPENDIX B**

### **PROPOSED AMENDMENTS TO THE *ALBERTA SECURITIES COMMISSION RULES (GENERAL)***

#### **AMENDMENT INSTRUMENT**

1. The *Alberta Securities Commission Rules (General)* are amended by this Instrument.
2. Section 3 is repealed.
3. Section 4 is repealed.
4. Section 5 is repealed.
5. Section 127.03 is repealed.
6. Section 127.1 is repealed.
7. Section 127.2 is repealed.
8. Section 128 is repealed.
9. These amendments come into force on on ●, 2010.

## APPENDIX C

### ~~127.03~~ 2.1 Rural Utilities Act and Cooperatives Act

The prospectus requirement does not apply to a distribution of:

- (a) ~~(a)~~ — a voting security of a corporation to which the *Rural Utilities Act* applies,
- (b) ~~(b)~~ — membership shares, including member loans deemed to be membership shares as defined in the *Cooperatives Act*, issued by a cooperative to which that Act applies, if the aggregate acquisition cost for membership shares and member loans
  - (i) ~~(i)~~ — for the first 18 months following incorporation is not greater than \$10 000 per member and not more than \$1000 of that amount is payable for membership shares, and
  - (ii) ~~(ii)~~ — in any subsequent year is not greater than
    - (A) ~~(A)~~ — \$5000 for cooperatives with 100 members or less, or
    - (B) ~~(B)~~ — \$2500 for cooperatives with more than 100 members, or
- (c) ~~(c)~~ — investment shares as defined in the *Cooperatives Act*, issued by a cooperative pursuant to that Act, other than a cooperative under Division 1 or 4 of Part 18 of that Act, if
  - (i) ~~(i)~~ — the investment shares are purchased only by members of the cooperative who have been members of the cooperative for at least 12 months before the share purchase, and
  - (ii) ~~(ii)~~ — the aggregate acquisition cost to the members in any one year is not greater than
    - (A) ~~(A)~~ — \$10 000 for cooperatives with 100 members or less, or
    - (B) ~~(B)~~ — \$5000 for cooperatives with more than 100 members.

#### 4.3.1 Unusual effort to prepare market

For the purposes of sections 2.5(2)~~5.~~, 2.5(3)5., 2.6(3)3., ~~2.6(4)3.~~, and 2.8(2)3. ~~and~~ ~~2.8(3)2.~~ of National Instrument 45-102 Resale of Securities, an unusual effort to prepare the market or to create a demand for securities takes place if one or more of the following activities is engaged in by or on behalf of the vendor of the securities:

- (a) ~~(a)~~ — the dissemination to prospective purchasers of material soliciting orders to purchase, unless the material consists only of a letter or communication
  - (i) ~~(i)~~ — identifying the securities being sold, and
  - (ii) ~~(ii)~~ — advising that they are available,

and that letter or communication may comprise or be accompanied by one or more of the following:

- (iii) ~~(iii)~~ — an annual report;
  - ~~(iv) — an interim report;~~
  - (iv) an annual information form;
  - (v) ~~(v)~~ — an information circular;
  - (vi) ~~(vi)~~ — a take-over bid circular;
  - (vii) ~~(vii)~~ — an issuer bid circular;
  - (viii) ~~(viii)~~ — a prospectus;
  - (ix) ~~(ix)~~ — an offering memorandum;
  - (x) ~~(x)~~ — a document or documents not referred to in subclause (iii) to (ix) prepared pursuant to a statute or a regulation primarily for some other purpose;
- (b) ~~(b)~~ — the formation of a selling group or any similar arrangement to co-ordinate the efforts of more than one registrant to effect the sale;
  - (c) ~~(c)~~ — the implementation of any transaction or sequence of transactions, plan or other arrangement to manipulate or adjust the market price of the securities, other than price stabilization activities
    - (i) ~~(i)~~ — reasonably necessary for the maintenance of an orderly market, and



- (ii) ~~(ii)~~ — not going beyond what is accepted ~~on~~in the market where those activities occur;
- (d) ~~(d)~~ — any sales effort that
  - (i) ~~(i)~~ — is illegal or improper by the standards of the market in which it is made, or
  - (ii) ~~(ii)~~ — involves the communication of false or misleading information;
- (e) ~~(e)~~ — the making of a sale to a purchaser with whom the vendor is not dealing at arm's length in order to put the purchaser in a position where the purchaser may re-sell the securities free of constraints to which the vendor was subject;
- (f) ~~(f)~~ — in the case of sales made as described in section 2.8(1) of National Instrument 45-102 *Resale of Securities* where there is a market for the securities, the making of a sale other than
  - (i) ~~(i)~~ — a sale made
    - (A) ~~(A)~~ — in the market in which securities of the particular class are customarily traded, and
    - (B) ~~(B)~~ — in a manner customary in that market,

or

  - (ii) ~~(ii)~~ — a sale made under an exemption ~~referred to in the rules~~ from the prospectus and registration requirement

### 5.3.2 Extraordinary commission or consideration

For the purposes of sections 2.5(2)~~6.~~, 2.5(3)~~6.~~, 2.6(3)~~4.~~, 2.6(4)~~4.~~, 2.8(2)~~4.~~~~6.~~, 2.6(3)~~4.~~, and 2.8(3)~~3.~~~~2~~~~4~~ of ~~Multi~~lateralNational Instrument 45-102 *Resale of Securities*, an extraordinary commission or consideration is paid in respect of a trade if the trade is effected

- (a) ~~(a)~~ — on an agency basis and the aggregate compensation paid to the registrant through whom the securities are sold is greater than that which is customary in agency transactions of similar size involving similar securities in the relevant market,
- (b) ~~(b)~~ — through an exchange or other market in which it is customary for registrants to trade on an agency basis but the securities are instead sold by the vendor to another registrant acting as principal if the sale was prearranged to avoid the operation of clause (a), or

- (c) ~~(e)~~ through the sale of the securities by the vendor to a registrant and the excess of the then market value of the particular securities over the price paid is greater than that which is customary in principal transactions of similar size involving similar securities in the relevant market.

### 3-3.3 Registrants registered outside Alberta

For the purposes of sections 43.1 and 5,3.2, if a transaction is effected in another jurisdiction, “registrant” means a person or company registered to trade in securities in that jurisdiction.

### 127.13.4 Offering memorandum required for minimum amount investment exemption

(1) ~~(1)~~ ~~If any~~ Any document purporting to describe the business and affairs of the issuer and prepared for review by prospective purchasers to assist in making an investment decision in respect of the securities being sold that is delivered to a purchaser acquiring a security under the prospectus exemption in section 2.10 of National Instrument 45-106 Prospectus and Registration Exemptions ~~(NI 45-106)~~, in respect of an offering commenced on or after September 14, 2005, is designated to be an offering memorandum and the issuer must deliver such offering memorandum to the purchaser, at the same time or before the purchaser signs the agreement to purchase the security, ~~an offering memorandum in a form that~~ and

(a) the offering memorandum must

- (i) be prepared in accordance with Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers, or, in the case of a qualifying issuer, in accordance with Form 45-106F3 Offering Memorandum for Qualifying Issuers, and
- (ii) ~~(a)~~ ~~complies~~ comply with sections 2.9 (8) to (14) ~~and 6.4 of NI 45-106, of National Instrument 45-106 Prospectus and Registration Exemptions,~~ or

~~(b)~~ ~~includes~~

(b) the offering memorandum must include

- (i) ~~(i)~~ ~~the certificate required by section 2.9(8) to (14) and of National Instrument 45-106 Prospectus and Registration Exemptions, and~~
- (ii) ~~(ii)~~ ~~a statement describing the rights of actions provided by section 204 of the Securities Act and the time limits specified by section 211 of the Securities Act in which an action to enforce a right under section 204 must be commenced.~~

- (2) *An issuer that delivers a document designated to be an offering memorandum under subsection (1) must comply with section 2.9(17) of National Instrument 45-106 Prospectus and Registration Exemptions.*
- (3) ~~(2)~~—Subsection (1) does not apply if the ~~documents~~document delivered ~~consist only of one or more of the following~~
- ~~(a)~~—an annual report, annual information form, interim report,
- ~~(b)~~—information circular, take-over bid circular, issuer bid circular, prospectus, or ~~(c) continuous disclosure~~is a document, the content of which is prescribed by Alberta securities law,~~that~~ and has been filed.
- ~~(3)~~—The issuer must update the offering memorandum and any required update of a previously filed offering memorandum on or before the 10th day after each distribution under the offering memorandum or an update of the offering memorandum.

~~127.2~~—An issuer that delivered an offering memorandum under

- ~~(a)~~—**Repealed** (September 28, 2009),
- ~~(b)~~—section 2.10 of NI 45-106,
- ~~(c)~~—section 122.2 of these Rules, as it existed prior to its repeal on September 14, 2005,
- ~~(d)~~—section 131(e) of the Act as it existed prior to its repeal by section 19 of the *Securities Amendment Act, 2005*, or
- ~~(e)~~—section 131(d), (q), (r), (s), (t) or (bb) of the Act, as they existed prior to their repeal by section 13 of the *Securities Amendment Act, 2003*,

~~must file a copy of the offering memorandum and any required update of a previously filed offering memorandum on or before the 10th day after each distribution under the offering memorandum or an update of the offering memorandum.~~

### **128.3.5 Prohibited Representation in Offering Memorandum**

No person or company shall make any ~~representations~~representation that the Alberta Securities Commission has ~~(a)~~—in any way reviewed, or ~~(b)~~—passed upon the merits of the securities offered by a document designated to be an offering memorandum.