

Annex A2

Proposed Changes to Companion Policy 45-106CP Prospectus and Registration Exemptions

1. *Companion Policy 45-106CP Prospectus and Registration Exemptions is changed by this Instrument.*

2. *Part 3 is changed by adding the following sections:*

3.10 Rights offering - reporting issuer

(1) Offer available to all security holders

One of the conditions of the rights offering exemption for reporting issuers in section 2.1.1 of the Instrument is that the issuer must make the basic subscription privilege available on a pro rata basis to every security holder of the class of securities to be distributed on exercise of the rights. This means that the issuer must send notice of the offering to each security holder of the class in the local jurisdiction, regardless of how many security holders reside in the local jurisdiction.

(2) Market price and fair value

Paragraph 2.1.1(4)(b) of the Instrument provides that if there is no published market for the securities, the subscription price must be lower than fair value. The exception to this is set out in subsection 2.1.1(5) which provides that paragraph 2.1.1(4)(b) does not apply if no insider is permitted to increase its proportionate interest in the issuer through the rights offering or a stand-by commitment. Under section 13 of Form 45-106F15, an issuer must explain in its rights offering circular how it determined the fair value of the securities. For these purposes, an issuer could consider a fairness opinion or a valuation.

For the purposes of subsection 2.1.1(4) of the Instrument, if the subscription price falls below the market price or fair value following filing of the notice, insiders will not be prohibited from participating in the offering.

(3) Stand-by commitments

To provide the confirmation in paragraph 2.1.1(7)(b) of the Instrument that the stand-by guarantor has the financial ability to carry out its obligations under the stand-by commitment, the issuer could consider the following:

- a statement of net worth attested to by the stand-by guarantor
- a bank letter of credit
- the most recent annual audited financial statements of the stand-by guarantor.

(4) Calculation of number of securities

In calculating the number of outstanding securities for purposes of paragraph 2.1.1(16)(b) of the Instrument, CSA staff generally take the view that

(a) if

$x =$ the number of securities of the class of the securities that may be or have been issued upon the exercise of rights under all rights offerings made by the issuer in reliance on the exemption during the previous 12 months,

$y =$ the maximum number of securities that may be issued upon exercise of rights under the proposed rights offering, and

$z =$ the number of securities of the class of securities that is issuable upon the exercise of rights under the proposed rights offering that are outstanding as of the date of the rights offering circular;

then $\frac{x + y}{z}$ must be equal to or less than 1, and

(b) if the convertible securities that may be acquired under the proposed rights offering may be converted before 12 months after the date of the proposed rights offering, the potential increase in outstanding securities, and specifically, “y” in paragraph (a), should be calculated as if the conversion of those convertible securities had occurred.

One of the conditions of the exemption is that the issuer must make the basic subscription privilege available on a pro rata basis to each security holder of the class of securities to be distributed on exercise of the rights. For clarity, this means that an issuer cannot use a rights offering to distribute a new class of securities.

In order to use the exemption in section 2.1.1 of the Instrument for the distribution of securities to a stand-by guarantor (in which case the securities would be subject to a seasoning period on resale), the stand-by guarantor must have been a security holder as at the date the issuer filed the notice. If the stand-by guarantor was not a security holder on that date, the issuer must use the exemption in section 2.1.2 of the Instrument to distribute securities to the stand-by guarantor. The securities would then be subject to a restricted period on resale.

If the stand-by guarantor is a registered dealer, the issuer must use the exemption in section 2.1.2 of the Instrument to distribute securities to the stand-by guarantor even if the guarantor was a security holder. This is to prevent potential backdoor underwriting concerns. We do not believe a registered dealer should be able to immediately resell to the public securities it acquired under a rights offering unless it provides a prospectus or uses another exemption from the prospectus requirement.

(5) Investment funds

As a reminder, pursuant to section 9.1.1 of National Instrument 81-102 *Investment Funds* (NI 81-102), investment funds that are subject to NI 81-102 are restricted from issuing warrants or rights.

3.11 Rights offering – issuer with a minimal connection to Canada

It may be difficult for an issuer to determine beneficial ownership of its securities as a result of the book-based system of holding securities. We are of the view that, for the purpose of determining beneficial ownership to comply with the exemption in section 2.1.3 of the Instrument, procedures comparable to those found in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or any successor instrument, are appropriate..

3. These changes become effective on xx.