

## POLICY 4.2

# PROSPECTUS OFFERINGS

### Scope of Policy

This Policy addresses the filing and procedural requirements for Issuers proposing to distribute securities to the public pursuant to a Prospectus. This Policy applies to public offerings of securities carried out by Issuers whose securities are already listed for trading on the Exchange. It does not apply to an Issuer proposing to carry out an Initial Public Offering of its securities concurrent with an Application for Listing using a Prospectus, which is governed by Policy 2.3 – *Listing Procedures*, or to an Initial Public Offering by a Capital Pool Company, which is governed by Policy 2.4 – *Capital Pool Companies*.

## 1. Public Offering by Prospectus – All Jurisdictions

### 1.1 General

A Prospectus offering conducted by an Issuer must be prepared in accordance with the requirements of applicable Securities Laws and will be vetted by the applicable Securities Commissions. The Securities Commission designated as the principal regulator under National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions* is the primary reviewing authority for a Prospectus. When conducting a public offering by Prospectus, an Issuer must comply with the provisions of applicable Securities Laws. However, a Prospectus must also be filed with the Exchange to obtain the Exchange’s consent to the issuance of securities and the additional listing of the securities offered under the Prospectus.

The following provisions apply to all Prospectus filings, including each shelf prospectus supplement filed under National Instrument 44-102 – *Shelf Distributions* (“NI 44-102”), except where specifically provided.

## 1.2 Exchange Filing Requirements - General

Unless section 1.3 applies, an Issuer conducting a Prospectus offering must file the following with the Exchange:

- (a) a copy of the Issuer's submission letter to the principal regulator and a copy of the preliminary Prospectus (including all financial statements, reports, certificates, and other documents which are required to accompany the Prospectus);
- (b) a copy of the Issuer's material agreements not previously filed with the Exchange, including the Issuer's agreement with the Agent who will conduct the public offering;
- (c) all filings required under the Exchange Policies applicable to any transactions disclosed in the Prospectus which have not been previously filed with the Exchange for acceptance;
- (d) if the Issuer intends to list another class of securities not already listed on the Exchange, an application for a supplemental listing in compliance with Policy 2.8 – *Supplemental Listings*;
- (e) a copy of all of the Issuer's letters to and from each Securities Commission relating to the Prospectus offering;
- (f) a copy of the Issuer's final Prospectus and any amendments (including all financial statements, reports and other documents which are part of the Prospectus);
- (g) a copy of each Securities Commission receipt for the final Prospectus;
- (h) Personal Information Forms or, if applicable, Declarations from any new Insiders that will be created; and
- (i) the applicable filing fees as prescribed by Policy 1.3 – *Schedule of Fees*.

## 1.3 Exchange Filing Requirements - At-the-Market Distributions

An Issuer conducting an at-the-market distribution (an “**ATM Distribution**”) in compliance with Part 9 of NI 44-102, and all other applicable laws, must file the following with the Exchange in connection with each shelf prospectus supplement:

- (a) prior to the commencement of the ATM Distribution:
  - (i) a notice letter including:
    - (A) the particulars of the ATM Distribution and identifying any unusual aspects of the ATM Distribution;

- (B) confirmation of the trading market on which the securities will be sold;
  - (C) whether any Insider of the Issuer has an interest, directly or indirectly, in the ATM Distribution and if so, the nature of such interest;
  - (D) if known, whether any new Insider of the Issuer will be created in connection with the ATM Distribution;
  - (E) if known, whether any new Control Person of the Issuer will be created in connection with the ATM Distribution;
  - (F) whether the equity distribution agreement was negotiated at arm's length; and
  - (G) confirmation of the date of the final base shelf prospectus and the date of the receipt for the final base shelf prospectus, and for every shelf prospectus supplement filed in connection with that final base shelf prospectus, a summary of the offering;
- (ii) the draft shelf prospectus supplement (including all financial statements, reports, certificates, and other documents which are required to accompany the shelf prospectus supplement);
  - (iii) a copy of the Issuer's material agreements not previously filed with the Exchange, including the Issuer's draft equity distribution agreement (or at-the-market sales agreement) with the Agents who will conduct the ATM Distribution;
  - (iv) all filings required under the Exchange Policies applicable to any transactions disclosed in the base shelf Prospectus and/or the shelf prospectus supplement which have not been previously filed with the Exchange for acceptance;
  - (v) a copy of all of the Issuer's letters to and from each Securities Commission relating to the ATM Distribution not previously filed with the Exchange;
  - (vi) any Registration Statement filed with the Securities and Exchange Commission in relation to the ATM Distribution;
  - (vii) Personal Information Forms or, if applicable, Declarations from any new Insiders that will be created; and
  - (viii) the applicable filing fees as prescribed by Policy 1.3 – *Schedule of Fees*;

- (b) concurrent with the filing of the shelf prospectus supplement on SEDAR, and in no case later than the first sale of securities pursuant to the ATM Distribution:
  - (i) a copy of the Issuer's shelf prospectus supplement and any amendments, with a black-lined version indicating the changes to the last draft of the shelf prospectus supplement filed with the Exchange;
  - (ii) the final equity distribution agreement (or at-the-market sales agreement) with the Agents who will conduct the ATM Distribution; and
  - (iii) the news release required under NI 44-102;
- (c) within 10 calendar days after the end of each fiscal quarter:
  - (i) a notice, including a nil notice, of:
    - (A) the number and average price of the securities distributed under the ATM Distribution; and
    - (B) the aggregate gross and aggregate net proceeds raised, and the aggregate commissions paid or payable, under the ATM Distribution during that fiscal quarter;
  - (ii) a news release disseminated by the Issuer disclosing the information provided in the notice described in section 1.3(c)(i) unless the Issuer has not issued any securities pursuant to the ATM Distribution during that quarter; and
  - (iii) the applicable filing fees as prescribed by Policy 1.3 – *Schedule of Fees*; and
- (d) a notice of the termination of the ATM Distribution (whether through the equity distribution agreement being terminated or the maximum number of securities having been distributed pursuant to the ATM Distribution or otherwise) within one business day following the date of its termination.

#### **1.4 Shareholder Approval Requirements**

The Exchange may require prior Shareholder approval where:

- (a) a new Control Person may be created as a result of the Prospectus offering; or
- (b) the Prospectus offering appears to be undertaken as a defensive tactic to a takeover bid. See National Policy 62-202 – *Take-Over Bids – Defensive Tactics*.

## **1.5 Agent Requirements**

If there is an Agent, then unless the Exchange Requirements applicable to a particular offering require otherwise, the Agent must sign the Prospectus certificate in connection with a Prospectus. The Agent must be registered under the applicable Securities Laws to sell securities in the jurisdiction in which the offering is taking place.

## **1.6 Minimum Subscription**

The Exchange will require, unless the Distribution is entirely a secondary Distribution or an ATM Distribution, a minimum amount net to the Issuer's treasury of \$200,000 either as an underwritten or as an agency offering. The minimum amount of the offering must be sufficient to accomplish the purposes of the offering and such minimum must be specified. The offering may be cancelled by the Exchange if the minimum amount is not reached.

## **1.7 Pricing**

- (a) Other than in the case of an ATM Distribution, if Listed Shares are being offered, the offering price will generally be the Market Price at the time of the news release referred to in section 1.7(b), and it must in no case be less than the Discounted Market Price at that time. See section 1.9 regarding the offering of Convertible Securities.
- (b) At the time the pricing decision is made, an announcement, by news release, will be made immediately by the Issuer to announce the terms of the offering. The Agent will immediately reconfirm any order received subject to price by directly conveying the terms of the offering to any potential purchaser whose order was received subject to price.
- (c) The Exchange may require that the offering price be amended if there is Material Information regarding the affairs of the Issuer between the date the offering price is fixed and the closing of the offering.
- (d) If the class of securities being offered is not a class of Listed Shares, then the minimum offering price must be \$0.05.

## **1.8 Unit Offering**

The following requirements apply to unit offerings that include Warrants:

- (a) the total number of additional securities which may be issued pursuant to the exercise of Warrants cannot exceed the total number of securities initially issued as part of the unit offering;
- (b) a Warrant comprising part of a unit must not entitle the holder to acquire a Warrant upon exercise;

- (c) a Warrant in a unit offering must have an exercise price which is not less than the greatest of:
  - (i) the unit offering price;
  - (ii) Market Price of the Issuer’s Listed Shares at the time of the news release referred to in section 1.7(b); and
  - (iii) \$0.05;
- (d) the maximum term of a Warrant shall be limited to five years commencing from the date of issue;
- (e) if the Warrants which form part of the unit offering are not transferable, then:
  - (i) the certificates representing the non-transferable Warrants shall be issued in the name of the holder and shall have the words “non-transferable” prominently displayed thereon,
  - (ii) the Prospectus qualifying the unit offering shall clearly disclose the non-transferable nature of such Warrants, and
  - (iii) the Exchange shall not list or trade such Warrants; and
- (f) where the Warrants which form part of the unit offering are to be listed for trading on the Exchange, an application for a supplemental listing of the Warrants must be made in compliance with Policy 2.8 – *Supplemental Listings*.

## **1.9 Convertible Securities Offering**

If Convertible Securities are being offered, the offering terms must also comply with the requirements set out in Policy 4.1 – *Private Placements* that are applicable to Convertible Securities.

## **1.10 Secondary Distributions**

A secondary Distribution of securities is permitted to be effected pursuant to a Prospectus offering. However, if an offering consists of both a primary and a secondary Distribution, the primary Distribution must be completed before the commencement of the secondary Distribution and the price of the secondary Distribution must be the same as the primary Distribution. The selling Shareholders of any secondary offering must bear a proportionate share of the Agent’s commission and offering costs.

## **1.11 Agent Compensation**

See Policy 5.1 – *Loans, Loan Bonuses, Finder’s Fees and Commissions* for the maximum compensation that may be paid.

(a) **Agent's Commission**

An Agent is free to negotiate its selling commission with the Issuer.

(b) **Agent's Option**

An Agent may be granted a non-transferable Agent's Option entitling it to subscribe for securities offered for sale under a Prospectus. The Agent's Option must have an exercise price that is not less than the greater of:

- (i) the offering price of the securities offered for sale under the Prospectus; and
- (ii) \$0.05.

Any Warrants underlying the units comprised in the Agent's Option will be exercisable at the same price as the Warrants underlying the units offered to the public.

The Agent's Option must expire if not exercised within five years from the date of issue.

(c) **Selling Group Compensation**

An Agent may offer part of the commissions or Agent's Option from an offering to other licensed broker dealers and investment dealers who participate in a selling group.

(d) **Over-Allotment Option**

An Issuer may grant an over-allotment option to an Agent to acquire further securities offered under a Prospectus in accordance with the following:

- (i) the option must be limited to the lesser of 15% of the total number of securities sold in the offering or the actual number of securities sold by way of over-allotment;
- (ii) the number of securities under option will be determined on the offering date;
- (iii) the exercise price of the over-allotment option must be equal to the offering price of the securities offered for sale under the Prospectus;
- (iv) the exercise period cannot exceed 60 calendar days after the closing date; and
- (v) the Agent must advise the Exchange of the extent of any over-allotment at the time of closing of the offering.

## **1.12 Scope of Exchange Review**

The Exchange reviews the required materials in order to accept any transactions disclosed in the Prospectus which have not been previously filed with the Exchange and to accept the listing of any securities to be issued pursuant to the Prospectus. Any transactions disclosed in the Prospectus which have not been previously filed with the Exchange for acceptance must comply with Exchange Requirements. A Securities Commission will generally not issue a receipt for a final Prospectus until the Exchange has conditionally accepted the listing of the securities offered under the Prospectus.

---