

## APPENDIX 5E

# TRANSFER, RELEASE AND CANCELLATION OF PERFORMANCE SHARES ISSUED BY FORMER ASE ISSUERS

This Policy applies to applications for transfer, release and cancellation of performance shares pursuant to agreements made under former ASE policies.

## 1. Release of Escrowed Shares

### 1.1 Requirements for Release

No performance shares may be released from escrow unless, at the time of the application for release:

- (a) the Issuer is meeting its current obligations in the ordinary course of business as they generally become due, as evidenced by a statutory declaration of the president or chief financial officer of the Issuer;
- (b) the Issuer's shares are listed and trading on all stock exchanges having jurisdiction over it, as evidenced by letters from those stock exchanges, if requested by the Exchange;
- (c) the Issuer is not in default of the financial statement and related requirements of the applicable Securities Laws, as evidenced by a certificate issued by the ASC, or a copy of the Issuers in Default section of a recent ASC Weekly Summary;
- (d) the Issuer is in good standing with respect to its filing of returns with the Registrar of Corporations or similar authority in the jurisdiction of its incorporation organization or continuance, as evidenced by a certificate issued by the Registrar of Corporations or by that similar authority, or by a recent "company search" of the Registrar of Corporations;
- (e) any conditions precedent to release in the escrow agreement are fulfilled; and
- (f) the Issuer has used its best efforts to determine if any Issuer holding escrowed shares is currently a valid Issuer. If the Issuer has been dissolved, the Issuer or the applicant must make reasonable efforts to obtain consents of the Shareholders for release of the escrowed shares.

## **1.2 Documents to be filed with Request for Consent to Release**

The request for consent to the release must be accompanied by:

- (a) written evidence of compliance with the requirements of paragraph 1.1;
- (b) annual audited financial statements of the Issuer for the financial year or years during which the release requirements were met in respect of the performance shares to be released;
- (c) where expenditures on a resource property were made by a person other than the Issuer, an audited statement of costs;
- (d) a calculation, prepared by the Issuer's auditor of the number of performance shares to be released;
- (e) where the release of escrowed shares is based on the achievement of milestones, evidence that the applicable milestones have been achieved; and
- (f) the prescribed fee.

## **1.3 Letter of Consent or Objection**

Upon receiving a request for consent to a release and accompanying documents that comply with paragraphs 1.1 and 1.2, the Exchange will issue to the Issuer a letter that either consents or objects to the release. A letter consenting to the release will be copied to the escrow agent.

## **1.4 Request by Holder of Performance Shares for Consent to Release**

A holder of performance shares may apply to the Exchange for release where the Issuer is unable or unwilling to do so. If the president or chief financial officer of the Issuer refuses to provide the statutory declaration referred to in sub-paragraph 1.1(a), the Exchange may waive that requirement.

## **1.5 Release Criteria**

- (1) Applications for release of performance shares may only be made once per year and may only relate to Cash Flow received or Deferred Expenditures, as defined in *ASE Form 10B – Escrow Agreement*, incurred in the preceding fiscal year or the fiscal years of the Issuer since the last release from escrow pursuant to the escrow agreement, whichever is greater.
- (2) All shares released from escrow shall be distributed pro rata to all securityholders.
- (3) Generally, the maximum number of shares which may be released from escrow in any one calendar year shall be one third of the original number of shares held in escrow.

- (4) Any securities that have not been released from escrow in accordance with the criteria prescribed in this policy and the escrow agreement within five years following the date of the escrow agreement shall be cancelled.

## **1.6 Adjustment of Release Calculation**

On a consolidation, subdivision, amalgamation or reclassification of the Issuer's shares, the release calculation must be adjusted so that the proportion of the outstanding performance shares available for release is unaffected by the consolidation, subdivision, amalgamation or reclassification.

## **2. Transfers of Escrowed Shares**

- (1) Performance shares may only be transferred to:
  - (a) other Principals, including incoming Principals;
  - (b) the Issuer that issued the performance shares; or
  - (c) an offeror under a formal bid (as defined in section 158(I)(h) of the Securities Act (Alberta)).
- (2) In order to transfer performance shares, the holder of performance shares must deliver to the Exchange a written request for consent to the transfer. The request for consent to the transfer must include:
  - (a) the name of the escrow agent and the reference date of the escrow agreement;
  - (b) an explanation of the reason for the transfer;
  - (c) a description of the consideration to be paid for the performance shares;
  - (d) where the performance shares are to be transferred to a Principal, confirmation that the transferee is a Principal or will become a Principal on or before the date of the proposed transfer; and
  - (e) a description of the registration, Prospectus, and take-over bid exemptions in the Securities Laws being relied upon to make the transfer.

## **2.1 Filing Requirements**

The request for consent to the transfer must be accompanied by the following documents:

- (a) a copy of the escrow agreement;
- (b) a copy of the transfer agreement;

- (c) an acknowledgement and agreement to be bound by the terms of the escrow agreement, executed by the transferee;
- (d) where the performance shares are to be transferred to a non-reporting or closely held Issuer, wherever situate, rather than to an individual, an undertaking by the Issuer not to permit the transfer of ownership in the Issuer or allot and issue any further shares of the Issuer without written consent of the Exchange;
- (e) where applicable, evidence that the proposed Change of Control has been approved by the Shareholders of the Issuer; and
- (f) the appropriate fee.

### **3. Amendments to Escrow Agreements**

- (1) The Exchange will only consider amendments to provisions in an escrow agreement in accordance with Exchange Policy 5.4.
- (2) All amendments to an escrow agreement require approval by the majority of the minority Shareholders.
- (3) All applications for amendments must be made such that there is sufficient notice to the market in general by the Issuer and such notice be sufficient to allow any party affected by an amendment to appeal the decision of the Exchange.
- (4) The amount of shares available for release per year are governed by section 1.5(3) of this policy.
- (5) Applications to extend the time period for release from escrow must be made prior to expiry of any term of escrow.

### **4. Cancellation of Escrowed Shares**

- (1) The directors of the Issuer must pass a resolution declaring the relevant facts to exist pursuant to section 14 of the ASE Escrow Agreement (Form 10B) and request the Exchange to direct cancellation if the Exchange is so authorized under the terms of the escrow agreement.
- (2) Where the cancellation is not effected pursuant to section 14 of the ASE Escrow Agreement, unanimous consent to a cancellation of shares must be obtained from the escrow Shareholders, and the directors must, by letter to the Corporate Finance Department, evidence the unanimous consent with letters signed by the escrow Shareholders and request the Exchange to proceed with a determination of the shares to be cancelled. The letter should also be accompanied by a certified copy of the directors' resolution, and the applicable fee.

- (3) Any request for a release of escrow shares concurrently with the cancellation must be clearly stated.
- (4) Where there is not unanimous consent of the escrow Shareholders, the Issuer or its filing solicitor must forward a letter requesting cancellation to the Corporate Finance Department and all non-consenting escrow Shareholders which must include:
  - (a) a list of the documentation enclosed;
  - (b) a certified copy of the directors' resolution and evidence of the facts on which it is based;
  - (c) a description of the escrow agreement (date, parties, etc.);
  - (d) a summary of the numbers of escrowed shares originally issued and the subsequent disposition thereof;
  - (e) a current list of escrow shares held and escrow Shareholders in a letter by the escrow agent;
  - (f) certification that a notice of cancellation complying with the requirements outlined below was sent to all escrow Shareholders. In the event the Issuer is unable to contact any of the escrow Shareholders it shall identify them and explain what efforts have been made to locate those Shareholders and the results thereof. Where an Issuer is holding escrowed shares the Issuer must use its best efforts to determine if the Issuer is currently valid, and has not been dissolved. If the Issuer has been dissolved, the Issuer must make reasonable efforts to obtain consent of the Shareholders of the dissolved Issuer for the cancellation;
  - (g) a copy of the notice of cancellation sent to the escrow Shareholders; and
  - (h) the applicable fee.
- (5) All correspondence to or from the Exchange, Issuer, or escrow Shareholders not consenting to cancellation must be copied to the affected Shareholders and the Issuer throughout the process.
- (6) Where unanimous consent of escrow Shareholders has not been obtained, the Issuer must by registered mail send a notice to each escrow Shareholder including a copy of its cancellation application sent to the Exchange and such other material as may be necessary to advise the escrow Shareholders advising:
  - (a) of the reason for the notice of cancellation, including reference to the specific provision in the escrow agreement which permits the cancellation;
  - (b) that a directors' resolution has been delivered to the Exchange;

- (c) that the shares remaining in escrow must be tendered to the Issuer by way of gift for cancellation;
  - (d) if such is the case, that the Exchange required the Issuer to determine the number of shares which shall be subject to cancellation and the number, if any, to be released;
  - (e) that the Shareholder has the opportunity to make representations to the Exchange if he or she so desires; and
  - (f) that if the Shareholder wishes to make representations he or she should do so by mailing same directly to the Exchange's Corporate Finance Department within 14 days from the date of the mailing of the notice, and copying the Issuer.
- (7) The Exchange will inform the Issuer of any objections received to the escrow share cancellation by providing a copy of each objection.
  - (8) The Issuer and the Shareholders may file such material as each desires in support of their respective positions, but they must ensure that each other party receives a carbon copy of their submissions.
  - (9) The Exchange will advise the parties of the date of its meeting to consider the matter.
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