

## POLICY 4.5

# RIGHTS OFFERINGS

### Scope of Policy

A rights offering financing enables an Issuer to raise capital and provides existing Shareholders with the opportunity to participate in the financing. The purpose of this Policy is to set out the Exchange’s requirements for a rights offering.

A rights offering occurs when an Issuer issues to its own Shareholders, at no cost, rights that may be exercised to purchase additional securities of the Issuer. Shareholders may choose to exercise the rights to obtain the additional securities or, in some circumstances, may choose to sell the rights.

A rights offering may be effected using a Prospectus (a “**Prospectus Rights Offering**”), or it may be effected in reliance upon an exemption from the Prospectus requirement (a “**Prospectus-Exempt Rights Offering**”). In this Policy, the phrase “**rights offering**” includes both Prospectus Rights Offerings and Prospectus-Exempt Rights Offerings.

For a Prospectus Rights Offering, a “rights offering Prospectus”, and for a Prospectus-Exempt Rights Offering, a “rights offering notice” with a “rights offering circular” (such documents being referred to in this Policy as the “**Rights Offering Document**”) are required to be prepared by the Issuer. An Issuer’s Rights Offering Document is required to be sent or made available, as applicable, to its existing Shareholders.

An Issuer proposing to make a Prospectus Rights Offering should also review, among other things, the applicable prospectus requirements in National Instrument 41-101 – *General Prospectus Requirements* and its related guidance and forms and, if applicable, National Instrument 44-101 – *Short Form Prospectus Distributions* and its related guidance and forms.

An Issuer proposing to make a Prospectus-Exempt Rights Offering should also review, among other things, National Instrument 45-106 – *Prospectus Exemptions*, Form 45-106F14 – *Rights Offering Notice for Reporting Issuers*, Form 45-106F15 – *Rights Offering Circular for Reporting Issuers* and Companion Policy 45-106CP - *Prospectus Exemptions*.

The main headings in this Policy are:

1. General
2. Securities Law Matters
3. Filing Requirements
4. Effecting the Offering
5. Transferability and “ex-rights” Trading
6. Stand-by Commitment
7. Pro Rata Over-Subscription

## **1. General**

- 1.1 A rights offering by an Issuer must be accepted for filing by the Exchange before the final terms of the rights offering, including the record date, are determined and announced.
- 1.2 A preliminary discussion with the Exchange is recommended to an Issuer proposing to offer rights to its Shareholders.
- 1.3 A right issued in a rights offering is similar to a warrant or an option because it enables the holder to acquire another security. A rights offering is also similar to a public distribution of an Issuer’s securities through the Exchange, but has two significant distinguishing features:
  - (a) the rights do not have to be purchased; they are granted to the Shareholders of the Issuer; and
  - (b) the rights are granted only to the existing Shareholders of the Issuer and the rights cannot be issued to investors who are not Shareholders of the Issuer; however, the Shareholders may be able to sell their rights through the facilities of the Exchange to non-Shareholder investors if they so choose provided that the Issuer has elected to list the rights on the Exchange.
- 1.4 Subject to section 1.5, the Issuer may elect to apply to have the rights listed for trading on the Exchange. If the rights will be listed for trading on the Exchange, the standard notation on final Prospectuses or other offering documents referring to conditional approval of a listing is not appropriate for a Rights Offering Document with respect to the rights themselves, nor is such notation appropriate with respect to the securities issuable upon exercise of the rights if such securities are of a class already listed, as the rights will normally be listed on the Exchange, as will the underlying securities (if of a class already listed), before the Rights Offering Document is sent or made available, as applicable, to the Shareholders.

- 1.5** If rights issued to Shareholders of the Issuer entitle the holders to purchase securities of another issuer which is not listed on the Exchange, a Prospectus Rights Offering must be used and the rights will not be listed on the Exchange unless such issuer's securities have been conditionally approved for listing on the Exchange.
- 1.6** The following requirements apply to all rights offerings:
- (a) The subscription price for the security to be acquired on the exercise of rights during the rights offering cannot in any case be less than \$0.01 per security. The form of consideration used in satisfaction of the subscription price in a rights offering must be cash paid to the Issuer.
  - (b) Issuers may determine the number of rights (including fractions of rights) to be issued for each security held by Shareholders and the number of rights (which must be a whole number) required to purchase a security upon exercise of the rights in accordance with applicable Securities Laws.
  - (c) If the Issuer proposes to provide a rounding mechanism, whereby Shareholders not holding a number of securities equally divisible by a specified number would have their entitlements adjusted upward, adequate arrangements must be made to ensure that beneficial owners of securities registered in the names of CDS, banks, trust companies, investment dealers or similar institutions will be treated, for purposes of such additional entitlements, as though they were registered Shareholders.
  - (d) The rights issued by an Issuer must be transferable.
  - (e) If the rights are listed on the Exchange, the rights offering must be unconditional.
- 1.7** The following requirements apply to all rights offerings where the rights are exercisable for units (the “Units”) comprised of Listed Shares and Warrants (a “Unit Rights Offering”):
- (a) The exercise price of a Warrant forming part of a Unit acquired on the exercise of a right under a Unit Rights Offering must not be less than the Market Price of the Issuer's Listed Shares prior to the news release announcing the Unit Rights Offering and in any case must not be less than \$0.05.
  - (b) A Warrant forming part of a Unit acquired on the exercise of a right under a Unit Rights Offering must expire by no later than five years after the date the right expires.
  - (c) The total number of Listed Shares of the Issuer that may be issued on the exercise of the Warrants issued under a Unit Rights Offering must not exceed the total number of Listed Shares of the Issuer issued on the exercise of the rights under the Unit Rights Offering.

- (d) In order for transferable Warrants issued on the exercise of the rights under a Unit Rights Offering to be listed for trading on the Exchange, the requirements of Policy 2.8 – *Supplemental Listings* must be complied with in respect of such Warrants.
- (e) If there is insufficient distribution of the outstanding Warrants for an orderly market, the Exchange can declare that the remaining Warrants will only be traded on a cash basis. Further, as the Warrants have an expiry date, trading in the Warrants shall be for cash same day settlement on the expiry date as set out in Rule C.2.18 of the TSX Venture Exchange Rule Book and Policies. On the expiry date of the Warrants, trading in the Warrants shall cease at 9:00 a.m. (Vancouver time), 10:00 a.m. (Calgary time) and 12:00 noon (Toronto and Montréal time).
- (f) If the Warrants which form part of the Units issued on the exercise of the rights under a Unit Rights Offering are not transferable, then:
  - (i) the certificates representing the non-transferable Warrants must be issued in the name of the holder and must have the words “non-transferable” prominently displayed on them;
  - (ii) the Rights Offering Document must clearly disclose that the Warrants are non-transferable; and
  - (iii) the Exchange will not list or trade the Warrants.
- (g) A Warrant forming part of a Unit acquired on the exercise of a right must not entitle the holder to acquire a further Warrant, whether transferable or otherwise, upon its exercise.

## **2. Securities Law Matters**

- 2.1** An Issuer should refer to the applicable Securities Laws to determine what documents must be filed with the Securities Commission(s).
- 2.2** A Prospectus Rights Offering must be effected by means of a Prospectus in compliance with applicable Securities Laws and the requirements of this Policy. Canadian jurisdictions also have Securities Laws that provide a Prospectus exemption for rights offerings, in which case a Prospectus-Exempt Rights Offering may be effected by means of a rights offering notice with a rights offering circular in compliance with applicable Securities Laws and the requirements of this Policy.
- 2.3** In the case of a Prospectus Rights Offering or a Prospectus-Exempt Rights Offering, the Issuer must make filings with both the Exchange and all applicable Securities Commissions. The Securities Laws of all jurisdictions where a rights offering will be made must also be considered, which may require filings with other securities regulators. A rights offering cannot proceed until all the relevant securities regulators have received

the relevant filings and, in the case of a Prospectus Rights Offering, the applicable Securities Commission(s) issued a receipt for the Prospectus.

- 2.4 If some Shareholders are resident in jurisdictions where the rights may not legally be given to them (the “**Non-Qualifying Jurisdictions**”), and if the rights are listed for trading on the Exchange, the Issuer normally sends these rights to its transfer agent which uses its best efforts to sell the rights through the facilities of the Exchange and deliver the net proceeds pro rata to the Shareholders residing in the Non-Qualifying Jurisdictions.

### 3. Filing Requirements

- 3.1 An Issuer proposing to make a rights offering must file the following documents with the Exchange:

- (a) a draft news release outlining the proposed terms and timing of the rights offering;
- (b) a draft rights offering notice with the rights offering circular, or a draft rights offering Prospectus;
- (c) if the rights will be listed for trading on the Exchange, a draft of the specimen rights certificate, and if the Warrants will be listed for trading on the Exchange, a draft of the specimen Warrant certificate; the ISIN or CUSIP number for the security must be obtained and, if applicable, printed on the specimen certificate (see Policy 3.1 – *Directors, Officers, Other Insiders & Personnel and Corporate Governance* for requirements regarding security certificates);
- (d) if there is a stand-by commitment as described in Part 6:
  - (i) a copy of the agreement;
  - (ii) a list of all conditions, if any, to which the stand-by commitment is subject; and
  - (iii) unless the stand-by guarantor is a Participating Organization, satisfactory evidence of the stand-by guarantor’s ability to perform the obligations contained in the stand-by commitment (e.g. posted bond, letter of credit, etc.);
- (e) a Personal Information Form (a “**PIF**”) (Form 2A) or, if applicable, a Declaration (Form 2C1) from any Person who does not currently but may own or control, beneficially or as nominee, directly or indirectly, securities representing more than 10 percent of the voting rights attached to all outstanding voting securities of the Issuer (and, where such a securityholder is not an individual, any director, officer or insider of that securityholder) on the completion of the rights offering, including any stand-by commitment; and
- (f) the applicable fee as prescribed in Policy 1.3 - *Schedule of Fees*.

- 3.2** In the case of a Rights Offering Prospectus where the rights are to be listed on the Exchange, if the rights offering is acceptable to the Exchange (subject only to the correction of minor deficiencies, if any, and the filing of the required documents), the Exchange will provide written communication to the Issuer stating that an application for listing of the rights on the Exchange has been made and has been accepted subject to the Issuer meeting the requirements for listing of the Exchange so that the Issuer can deliver that written communication to the relevant Securities Commission(s).
- 3.3** An Issuer should not announce a record date for a rights offering before receiving all necessary approvals from the Exchange and, in the case of a Prospectus Rights Offering, the relevant Securities Commissions in each of the applicable jurisdictions because if any approvals are delayed, the Issuer may have to change the record date at its own expense.
- 3.4** At least five trading days in advance of the record date for the rights offering (being the date of the closing of the transfer books for the preparation of the final list of Shareholders who are entitled to receive rights):
- (a) all deficiencies raised by the Exchange must be resolved;
  - (b) all the terms of the rights offering must be finalized;
  - (c) the Issuer must disseminate a news release disclosing the terms of the rights offering, including the record date and, if section 4.2 is applicable, that the rights offering will not close, or will only be closed in escrow, until the Exchange has notified the Issuer that the results of the review of the relevant PIFs are satisfactory;
  - (d) the Exchange must receive all requested documents, including a copy of the final Rights Offering Document; and
  - (e) if a rights offering Prospectus is being used, the Issuer must obtain clearances for the rights offering from all Securities Commissions having jurisdiction, and so advise the Exchange.

- 3.5 When the rights certificates are mailed to the Shareholders, the Issuer must concurrently file with the Exchange a definitive specimen of the rights certificate.
- 3.6 Immediately upon the expiry of the rights offering, the Issuer must advise the Exchange in writing of the number of securities issued as a result of the rights offering, including securities issued pursuant to any underwriting or similar arrangement, and pay to the Exchange any balance of the applicable fee.

## 4. Effecting the Offering

- 4.1 The rights offering must be open for a period of not less than 21 calendar days following the date on which the Rights Offering Document is sent or made available, as applicable, to Shareholders.
- 4.2 In the event that any Person does not currently but may own or control, beneficially or as nominee, directly or indirectly, securities representing more than 10 percent of the voting rights attached to all outstanding voting securities of the Issuer as a result of the completion of the rights offering including any stand-by commitment, the rights offering exercise period may end, but the rights offering may not close, or may only be closed in escrow, until the Exchange has notified the Issuer that the results of the review of the relevant PIFs are satisfactory.
- 4.3 Once the rights have been issued, the essential terms of the rights offering, such as the exercise price or the expiry date cannot be amended. However, the Exchange may grant an exemption to extend the expiry date under extremely exceptional circumstances, such as an unexpected postal disruption, provided that the rights have not traded and to do so is in compliance with all applicable Securities Laws.

## 5. Transferability and “ex-rights” Trading

- 5.1 Rights issued by an Issuer must be transferable, although the Issuer may elect whether to list the rights for trading on the Exchange. Any proposed restriction on the transfer of unlisted rights must receive the prior consent of the Exchange.
- 5.2 If the Issuer elects to list the rights for trading on the Exchange:
- (a) the rights will be listed and commence trading on the Exchange at the opening of trading on the record date, and at the same time, the underlying Listed Shares of the Issuer will commence trading on an “ex-rights” basis, which means that purchasers of the Listed Shares at that time are not entitled to receive the rights;
  - (b) the rights will trade under normal settlement rules and as the rights have an expiry date, trading in the rights shall be for cash same day settlement on the expiry date as set out in Rule C.2.18 of the TSX Venture Exchange Rule Book and Policies;

- (c) the following chart shows the typical timing for the Exchange Bulletin and ex-rights day in relation to a record date which falls on a Friday:

<b>Day (chronological)</b>					1	2	3
<b>Day of the week</b>					Thursday	Friday	Saturday
<b>Event</b>					Requirements in section 3.4 are satisfied	Clear Day	---
<b>Day (chronological)</b>	4	5	6	7	8	9	
<b>Day of the Week</b>	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<b>Event</b>	---	Clear Day	Clear Day Exchange Bulletin is finalized for publication on Day 7	Clear Day Exchange Bulletin is published	Clear Day Last day to trade cum-rights	Record Date Shares trade ex-rights at the opening; rights commence trading at the opening	

- (d) On the expiry date of the rights, trading in the rights shall cease at 9:00 a.m. (Vancouver time), 10:00 a.m. (Calgary time) and 12:00 noon (Toronto and Montréal time); and
- (e) in order to provide adequate time for settlement, the rights should not expire less than three hours after the rights cease trading on the Exchange.

## 6. Stand-by Commitment

- 6.1 If an Issuer requires a certain amount of funds for a specific use, the Issuer must determine a minimum subscription which must be guaranteed, and in other circumstances the Issuer may determine that the rights offering will be guaranteed, by a Person (the “**stand-by guarantor**”) which the Issuer has confirmed has the financial ability to satisfy such stand-by commitment to acquire some or all of the securities which are not otherwise subscribed for under the rights offering.



- 6.2** A stand-by guarantor who provides a stand-by commitment can receive a bonus from the Issuer only in the form of a non-transferable Warrant which:
- (a) entitles the stand-by guarantor to acquire shares of the Issuer equal in number to not more than 25% of the total number of shares the stand-by guarantor has agreed to acquire under the stand-by commitment (which does not include the number of shares the stand-by guarantor is entitled to subscribe for under the basic subscription privilege and additional subscription privilege);
  - (b) has an exercise price that is not less than the Market Price of the Issuer’s Listed Shares prior to the news release announcing the rights offering and in any case must not be less than \$0.05; and
  - (c) expires no later than five years after the date on which performance under the stand-by commitment could be required.
- 6.3** The form of consideration used in satisfaction of the stand-by commitment in a rights offering must be cash paid to the Issuer. See Policy 4.3 – *Shares for Debt* for Exchange Requirements in settling outstanding debt of an Issuer by issuing securities to a creditor.
- 6.4** If there is a stand-by commitment, the Issuer must have granted an additional subscription privilege to all holders of the rights.
- 6.5** Shareholder approval of the creation of any new Control Person of the Issuer as a consequence of the stand-by commitment generally will not be required provided that the rights are listed for trading on the Exchange and the subscription price for the rights is at a “significant discount” to the Market Price. A “significant discount” would be equal to at least the maximum discount to Market Price allowed for private placements as set forth in the definition of “Discounted Market Price” in Policy 1.1 - *Interpretation*. If either of these criteria is not satisfied, the Exchange may require shareholder approval of the creation of the new Control Person to be obtained before the rights offering commences.
- 6.6** Before the Exchange will accept a rights offering which includes a stand-by commitment, any Person who does not currently but may own or control, beneficially or as nominee, directly or indirectly, securities representing more than 10 percent of the voting rights attached to all outstanding voting securities of the Issuer (and, where such a securityholder is not an individual, any director, officer or insider of that securityholder) on the completion of the rights offering, including any stand-by commitment, must first file with the Exchange a duly completed PIF (Form 2A) or, if applicable, a Declaration (Form 2C1).

## **7. Pro Rata Over-Subscription**

- 7.1** If there is an over-subscription, a subscriber’s pro rata entitlement on over-subscription must be determined by a pro rata formula that is in compliance with applicable Securities Laws.