



**GENERAL RULING/ORDER 45-902
LABOUR-SPONSORED VENTURE CAPITAL CORPORATIONS**

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2

AND

IN THE MATTER OF EXEMPTIONS
FOR CERTAIN TRADES BY AND TO
LABOUR-SPONSORED VENTURE CAPITAL CORPORATIONS

GENERAL RULING/ORDER
(Sections 83 and 160)

WHEREAS it has been represented that:

1. *The Labour Sponsored Venture Capital Company Act* (the “LSVSS Act”), which came into force in 1986, establishes a program which encourages Saskatchewan Employees, through tax incentives, to make equity investments in businesses by which they are employed;
2. Under the LSVCC Act, a Type B certificate of registration is granted to a single-purpose LSVCC, being a LSVCC that issues securities only to Employees of the Operating Company in which the LSVCC intends to invest or of an associated person or company of such Operating Company; and
3. An Operating Company would be exempt, under clauses 39(1)(u) and 81(1)(o) of the Act, from the registration and prospectus requirements of the Act if it issued securities directly to Employees instead of indirectly through an LSVCC, however, the requirements of the LSVCC Act preclude this;

AND WHEREAS on September 23, 1992 the Commission issued a ruling pursuant to clause 83(1)(a) of the Act that the provisions of sections 27 and 58 of the Act shall not apply to the following trades:

1. Trades whereby persons or companies solicit expressions of interest in, advertise or provide promotional material, sales literature or other information about a proposed trade

of securities by an LSVCC to Employees;

2. Trades by an LSVCC of its securities to Employees; and
3. Trades by an Operating Company of its securities to an LSVCC;

AND WHEREAS the Commission has assigned to the Director the power to make exemption orders and rulings under the provisions of the Act;

AND WHEREAS the Director has determined that it is not prejudicial to the public interest to issue an order that amends and restate the Previous Order to update it and streamline the procedures imposed on LSVCC's operating under it;

IT IS ORDERED pursuant to subsection 158(3) of the Act that the Previous Order be amended and restated as follows:

IN THIS GENERAL RULING/ORDER:

“Act” means *The Securities Act, 1988*, S.S. 1988, c. S-42.2;

“Commission” means the Saskatchewan Financial Services Commission;

“Director” means the Director, Securities Division of the Commission;

“Employee” means an employee of an Operating Company or of an associated person or company of an Operating Company who qualifies as an eligible investor under the provisions of the LSVCC Act;

“GRO” means this General Ruling/Order;

“LSVCC” means a labour-sponsored venture capital corporation which intends to apply for or has been issued a Type B certificate of registration under the provisions of the LSVCC Act;

“LSVCC Act” means *The Labour-sponsored Venture Capital Corporations Act*, S.S. 1986, c. L-0.2; and

“Operating Company” means a person or company in which an LSVCC intends to invest or has invested and which is an eligible business under the provisions of the LSVCC Act;

PART 1 TESTING THE WATERS

IT IS HEREBY RULED pursuant to clause 83(1)(a) of the Act that the provisions of section 27 and 58 of the Act shall not apply to any person or company who solicits expressions of interest in, advertises or provides promotional material, sales literature or other information about a proposed trade of securities by an LSVCC to Employees of the Operating Company in which the LSVCC intends to invest or of an associated person or company of such Operating Company

(“Testing the Waters”) prior to such an offering provided that:

1. Testing the Waters is restricted to:
 - (a) Providing information about the general nature of the proposed trade and particulars of the LSVCC Act; and
 - (b) Obtaining expressions of interest from the Employees to buy the securities of the LSVCC;
 - (c) and shall not include particulars of the proposed trade itself;
2. Any Promotional Material distributed in the course of Testing the Waters must:
 - (a) Be clear and understandable;
 - (b) Must not contain a misrepresentation;
 - (c) Direct the Employees to consider the material required to be provided under Part 2 of this GRO before making an investment decision;
 - (d) Disclose that employment or continued employment is not conditional upon Employees buying the securities of the LSVCC;
 - (e) Recommend that Employees consult with a professional adviser before deciding to buy the securities of the LSVCC;
 - (f) Disclose that the expressions of interest to buy the securities of the LSVCC given by Employees are non-binding; and
 - (g) Be distributed to all Employees eligible to participate in the proposed trade; and
3. Subscription agreements are not completed nor funds collected prior to receipt by a subscriber of the material required to be provided under Part 2 of this GRO;

PART 2 TRADES BY AN LSVCC OF ITS SECURITIES TO EMPLOYEES

IT IS HEREBY FURTHER RULED pursuant to clause 83(1)(a) of the Act that the provisions of section 27 and 58 of the Act shall not apply to a trade by an LSVCC of its securities to Employees of the Operating Company in which it intends to invest or of an associated person or company of such Operating Company provided that:

1. Each Employee eligible to participate in the trade receives the following material before he or she buys securities of the LSVCC;

- (a) Disclosure setting out the information listed in Appendix A to this GRO;
 - (b) Certificate of Incorporation, Articles of Incorporation and any amendments thereto (or restated Articles of Incorporation) of the LSVCC and the Operating Company;
 - (c) The latest financial statements of the LSVCC;
 - (d) The latest financial statements of the Operating Company;
 - (e) Risk Disclosure Statement setting out the information listed in Appendix B to this GRO;
and
 - (f) Disclosure as required by section 80.2 of *The Securities Act, 1988* (Saskatchewan), an example of which is set out in Appendix C to this GRO;
2. Any material provided to Employees with respect to the trade must:
 - (a) Be clear and understandable;
 - (b) Must not contain a misrepresentation;
 - (c) Disclose that employment or continued employment is not conditional upon Employees buying the securities of the LSVCC;
 - (d) Recommend that Employees consult with a professional adviser before deciding to buy the securities of the LSVCC; and
 - (e) Be distributed to all Employees eligible to participate in the proposed trade; and
 3. Solicitation of and sales to Employees are made only by:
 - (a) Directors, officers or employees of the LSVCC or Operating Company; or
 - (b) A person or company registered under the Act to trade in the type of securities to be issued by the LSVCC and authorized to trade in securities of the LSVCC;
 4. Employees are not induced to purchase securities of the LSVCC by expectation of employment or continued employment;
 5. No selling or promotional expenses are paid or incurred in connection with the offering except for professional services or for the services of a registered dealer;
 6. Further trades of securities of the LSVCC traded under this Part are subject to the provisions of section 2.6 or Multilateral Instrument 45-102 *Resale of Securities*, unless such further trade is:

- (a) To the LSVCC;
 - (b) To a self-directed registered retirement savings plan of a security holder of the LSVCC or such security holder's spouse;
 - (c) To another Employee of the Operating Company in which the LSVCC intends to invest or has invested or of an associated person or company of such Operating Company if the Employee has received a copy of the latest financial statements of the LSVCC and the Operating Company; or
 - (d) From a self-directed registered retirement savings plan of a security holder of the LSVCC or such security holder's spouse to the security holder or one of the persons or companies listed in clauses (a), (b) or (c) of this section; and
7. Prior to any closing, funds raised pursuant to the trade are held by the LSVCC in trust for the investors until the following conditions of closing have been met and, if such conditions of closing are not met, such funds are to be returned to the investors without interest or deduction:
- (a) The LSVCC is registered as a labour-sponsored venture capital corporation pursuant to the LSVCC Act; and
 - (b) the tax incentives under the LSVCC Act are available to investors;

PART 3 TRADES BY AN OPERATING COMPANY OF ITS SECURITIES TO AN LSVCC

IT IS HEREBY FURTHER RULED pursuant to clause 83(1)(a) of the Act that the provisions of section 27 and 58 of the Act shall not apply to a trade by an Operating Company of its securities to an LSVCC provided that:

1. No selling or promotional expenses are paid or incurred in connection with the trade except for professional services or for services of a registered dealer;
2. Unless the trade is consented to by the Director or is to the Operating Company, further trades of securities of the Operating Company traded under this Part are subject to the provisions of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities*;

PART 4 CONTINUOUS DISCLOSURE

IT IS HEREBY ORDERED pursuant to section 160 of the Act that the continuous disclosure requirements of the Act, including those under Part XIV of the Act, triggered by use of this GRO

prior to such requirements being removed from this GRO shall not apply to an LSVCC and Operating Company;

PART 5 CLARIFICATION

IT IS HEREBY ORDERED pursuant to section 160 of the Act for greater certainty that:

1. Nothing in this GRO precludes an LSVCC or an Operating Company from using statutory exemptions in the Act if they are applicable;
2. Nothing in this GRO precludes an LSVCC or an Operating Company from applying to the Commission for a discretionary order or ruling under the Act;
3. The provisions of Saskatchewan Local Instrument 47-501 *Marketing Communications* apply to trades under this GRO.

Amended and restated at Regina, Saskatchewan this 5th day of January, 2005.

“Barbara Shourounis”
Barbara Shourounis
Director, Securities Division

APPENDIX A - Term Sheet

Name of LSVCC:

Name of Operating Company:

Type of LSVCC securities being sold:

Price of LSVCC securities being sold:

Who can purchase LSVCC securities:

Conditions to close the offering of LSVCC securities if any:

Minimum subscription to close the offering of LSVCC securities if any:

Maximum investment amount per Employee if any:

Minimum investment amount per Employee if any:

When can the investment be made:

Who is selling LSVCC securities:

Are there any incentives to buy LSVCC securities, if so provide details (ex. loans, payroll deductions, etc):

How will the LSVCC use of money it raises from the offering its securities:

Costs of offering:

Reserved for administration costs and/or redemption of LSVCC securities:

Other:

Balance to purchase securities of the Operating Company:

Employment or continued employment is not conditional upon Employees buying LCVCC securities.

Employees should consult with a professional adviser before deciding to buy LSVCC securities.

APPENDIX B - Risk Factors

[Delete or change any of the following risk factors which are not applicable.]

1. Potential investors should consider the following risks before deciding to buy securities under this offering:
2. These securities are highly speculative in nature. An investment is appropriate only for investors who are prepared to have their money invested for a long period of time and with the capacity to absorb a loss of some or all of their investment.
3. There is no public market for the securities nor is one expected to develop. Therefore investors may find it very difficult to sell their securities.
4. There are restrictions on the resale of these securities and they will be very difficult to sell.
5. The Operating Company may not achieve a level of profitability to permit distributions to investors through the LSVCC. Investors should not count on regular or any returns from these securities.
6. Investors may not be able to redeem their securities as set out in the Articles of Incorporation of the LSVCC if they die, terminate employment with the Operating Company or at the end of the hold period imposed by LCVCC legislation, because the LSVCC may not have the funds to pay for a redemption of their securities.
7. Tax laws frequently change. There is no guarantee that the tax rules and the LSVCC legislation allowing for tax credits in force at the date of purchase will remain in force throughout the life of the LSVCC.
8. The investment in the Operating Company may become ineligible under the LSVCC legislation. This will result in a recapture of tax credits from the LSVCC by the Governments of Saskatchewan and Canada. This may affect the viability of the LSVCC.
9. In addition to the tax benefits of investing in these securities prospective investors should fully assess the investment merits of the securities.
10. Investors in these securities will become security holders of the LSVCC, and as such, will not have direct say in the management of the Operating Company. If the LSVCC is not purchasing voting securities of the Operating Company, investors may not have any say in the management of the Operating Company.
11. Investors who deposit the securities in a self-directed RRSP should not depend on selling the securities to fund their retirement.

[Detail any other relevant risks relevant to this offering. These might be include risks specific to

the Operating Company, risks specific to the industry the Operating Company is in, the fact that additional regulatory approvals are required, etc.]

APPENDIX C - RIGHTS OF ACTION

Statutory rights of action

A purchaser is given certain statutory rights under *The Securities Act, 1988* (the “Act”). Those rights are:

1. Subsection 80.3(3) - the right to withdraw from an agreement to purchase securities by giving written notice to the seller within two business days after receipt of this offering memorandum or any amendment thereto;
2. Subsection 138(1) - a right of action for rescission or for damages where this offering memorandum and any amendment to this offering memorandum contains a misrepresentation;
3. Subsection 138.1(1) - a right of action for rescission or for damages where advertising or sales literature used in connection this offering contains a misrepresentation;
4. Subsection 138.2(1) - a right of action for rescission or for damages where a verbal statement made in connection with this offering contains a misrepresentation;
5. Subsection 141(1) - a right to void the purchase agreement and recover the purchase price if the securities are sold in contravention of the Act, the regulations to the Act or a decision of the Saskatchewan Financial Services Commission; and
6. Subsection 141(2) - a right of action for rescission or for damages if the offering memorandum is not delivered to the purchaser before the agreement to purchase, as required by subsection 80.3(1) of the Act.

A purchaser should refer to the provisions of the Act for the particulars of these rights or consult with a lawyer.

These statutory rights given by the Act are in addition to and without derogation from any other right or remedy which a purchaser might have at law.

Time limitations

Statutory rights of action and the contractual right of action must be exercised within certain time periods. Those time periods are:

1. An action for rescission must be started within 180 days of the purchase;
2. An action for damages must be started by the earlier of:
 - (i) one year after the purchaser first had knowledge of the facts giving rise to the action;
 - or
 - (ii) six years after the securities were purchased.