



**GENERAL RULING/ORDER 45-910
TSX VENTURE EXCHANGE SHORT FORM OFFERING EXEMPTION**

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

AND

IN THE MATTER OF OFFERINGS TSX VENTURE EXCHANGE SHORT FORM OFFERING
DOCUMENT

RULING
(Subclause 82(1)(a)(i))

WHEREAS the Saskatchewan Financial Services Commission (the "Commission") has assigned to the Director of the Securities Division the power to make exemption orders and rulings under provisions of *The Securities Act, 1988* (the "Act") including orders and rulings of general application;

AND WHEREAS the staff of the Commission have applied to the Director for a ruling pursuant to subclause 83(1)(a)(i) of the Act of that the provisions of section 58 of the Act do not apply to distributions by issuers who comply with the provisions of the Exchange Policy;

AND WHEREAS it has been represented to the Director that:

1. the Exchange Policy sets out a program for distributions of securities by a Short Form Offering Document; and
2. An exemption from the prospectus requirement in section 58 of the Act is required to allow distributions of securities in Saskatchewan under the Exchange Policy;

AND WHEREAS the Director is of the opinion that it would not be prejudicial to the public interest to make this Ruling;

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Ruling:

“AIF”:

- (a) for financial years starting before January 1, 2004, means a current AIF as defined in Multilateral Instrument 45-102 *Resale of Securities* effective November 30, 2001; and

(b) for financial years starting on or after January 1, 2004, means:

- (i) an AIF as defined in NI 51-102;
- (ii) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not yet filed or been required to file an AIF or annual financial statements under NI 51-102; or
- (iii) an information circular or filing statement in respect of a qualifying transaction for a capital pool company under a CPC Instrument, if the issuer has not yet filed or been required to file an AIF or annual financial statements under NI 51-102.

“Act” means *The Securities Act, 1988* (Saskatchewan).

“Commission” means the Saskatchewan Financial Services Commission.

“CPC Instrument” means a rule or regulation of a jurisdiction of Canada or a rule, regulation or policy of an exchange in Canada that applies only to capital pool companies.

“Designated Hold Purchaser” means a purchaser that is an insider or promoter of the issuer, the issuer’s underwriter, or a member of the underwriter’s “professional group” as defined in National Instrument 33-105 *Underwriting Conflicts*.

“Exchange” means the TSX Venture Exchange Inc./Bourse de croissance TSX Inc.

“Exchange Policy” means Exchange Policy 4.6, *Public Offering by Short Form Offering Document* and Exchange Form 4H, *Short Form Offering Document*, subject to any material amendment filed with the Commission and not objected to by the Commission within 30 days of filing.

“Gross Proceeds” means the gross proceeds that are required to be paid to the issuer for Listed Securities distributed under a Short Form Offering Document.

“Listed Security” means a security of a class listed on the Exchange.

“MD&A” has the meaning set out in NI 51-102.

“MI 45-102” means Multilateral Instrument 45-102 *Resale of Securities* effective March 30, 2004.

“NI 43-101” means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

“NI 51-101” means National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*.

“Prior Short Form Offering” means a distribution of securities by an issuer under a Short Form Offering Document that was completed during the 12 month period immediately preceding the date of the Short Form Offering Document.

“Regulations” means *The Securities Regulations*.

“Short Form Offering Document” means a short form offering document that complies with the Exchange Policy, subject to any waiver or variation the Exchange permits.

“Subsequently Triggered Report” means a material change report that must be filed no later than 10 days after a material change under section 84 of the Act or Part 7 of NI 51-102 as a result of a material change that occurs after the date the Short Form Offering Document is certified, but before a purchaser enters into an agreement of purchase and sale.

“Warrant” means a warrant of an issuer distributed under a Short Form Offering Document that entitles the holder to acquire a Listed Security or a portion of a Listed Security of the same issuer.

1.2 Interpretation - Unless otherwise defined in this Ruling, terms used in this Ruling that are defined or interpreted in the Act or Regulations should be read in accordance with the Act and Regulations.

PART 2 PROSPECTUS EXEMPTION

2.1 IT IS HEREBY ruled pursuant to subclause 83(1)(a)(i) of the Act that the provisions of section 58 of the Act shall not apply to a distribution by an issuer of securities of its own issue, if:

- (a) the issuer has filed an AIF;
- (b) the issuer is a reporting issuer in Saskatchewan;
- (c) the issuer is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;
- (d) the issuer has filed:
 - (i) all documents required to be filed under Part XIV of the Act, Part IX of the Regulations and Parts 4, 5, 6 and 7 of NI 51-102, including annual and interim financial information, press releases disclosing material changes and material change reports;
 - (ii) all documents required under NI 43-101 and NI 51-101; and
 - (iii) any Subsequently Triggered Report;
- (e) the distribution is of Listed Securities or units consisting of Listed Securities and Warrants;
- (f) the issuer has filed with the Exchange, and the Exchange has accepted, a Short Form Offering Document in respect of the distribution that:
 - (i) incorporates by reference the following documents of the issuer filed with the Commission:
 - (A) the AIF;
 - (B) the most recent annual financial statements and, for financial years starting on or after January 1, 2004, the MD&A relating to those financial statements;

- (C) all unaudited interim financial statements, and, for financial years starting on or after January 1, 2004, the MD&A relating to those financial statements, filed after the date of the AIF, but before or on the date of the Short Form Offering Document;
 - (D) all material change reports filed after the date of the AIF, but before or on the date of the Short form Offering Document; and
 - (E) all documents required under NI 45-101 and NI 51-101 filed on or after the date of the AIF, but before or on the date of the Short Form Offering Document;
- (ii) deems any Subsequently Triggered Report required to be delivered to a purchaser under this Ruling to be incorporated by reference;
 - (iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the Exchange Policy;
 - (iv) grants to purchasers contractual rights of withdrawal, as required by the Exchange Policy; and
 - (v) contains all the certificates required by the Exchange Policy;
- (g) the distribution is conducted in accordance with the Policy, subject to any waiver or variation the Exchange permits;
 - (h) the issuer or the underwriter delivers the Short form Offering Document and any Subsequently Triggered Report to each purchaser either:
 - (i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the Short form Offering Document; or
 - (ii) not later than midnight on the second business day after the agreement of purchase and sale is entered into;
 - (i) the Listed Securities issued under the Short form Offering Document, when added to the Listed Securities of the same class issued under Prior Short Form Offerings exceed neither:
 - (i) the number of securities of the same class outstanding immediately before the issuer distributes securities of the same class under the Short Form Offering Document, nor;
 - (ii) the number of securities of the same class outstanding immediately before a Prior Short Form Offering;
 - (j) the Gross Proceeds under the Short Form Offering Document, when added to the Gross Proceeds from Prior Short Form Offerings do not exceed \$2 million;
 - (k) no purchaser acquires more than 20% of the securities distributed under the Short Form Offering Documents; and
 - (l) no more than 50% of the securities distributed under the Short Form Offering Document are subject to section 2.5 of MI 45-102.

PART 3 DUE DILIGENCE REPORT

3.1 AND IT IS FURTHER RULED pursuant to subclause 83(1)(a)(i) that an underwriter that qualifies as a “Sponsor” under Exchange Policy 2.2 *Sponsorship and Sponsorship Requirements* must sign the Short Form Offering Document and comply with the requirements in Exchange Appendix 4A, *Due Diligence Report* in connection with the distribution.

PART 4 REPORT OF TRADE

4.1 AND IT IS FURTHER RULED pursuant to subclause 83(1)(a)(i) that the issuer must report all trades under a Short Form Offering Document on Form 45-103F4 on or before the 10th day after the distribution, except the issuer may indicate the total number of purchasers by jurisdiction instead of providing the names and residential addresses of each purchaser under item 5 of Form 45-103F4.

PART 5 DEEMED DISTRIBUTIONS

5.1 AND IT IS FURTHER RULED pursuant to subclause 83(1)(a)(i) that the first trade in a security acquired under this Ruling or any predecessor ruling:

- (a) by a seller that, at the time the security was acquired, was a Designated Hold Purchaser; or
- (b) that was acquired by any other purchaser in excess of \$40,000;

is subject to section 2.5 of MI 45-102.

DATED February 23, 2004

AMENDED March 1, 2004

AMENDED March 30, 2004

“Barbara Shourounis”

Barbara Shourounis
Director