

**GENERAL RULING/ORDER 47-901
TESTING THE WATERS**

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

AND

IN THE MATTER OF AN EXEMPTION TO PERMIT CERTAIN ACTIVITY TO GAUGE
POTENTIAL INVESTOR INTEREST IN A PROPOSED TRADE OF SECURITIES

GENERAL RULING
(Section 83)

Whereas an application has been received by the Saskatchewan Securities Commission (the "Commission") from the staff of the Commission for a ruling pursuant to clause 83(1)(a) of *The Securities Act, 1988* (the "Act") that the provisions of sections 27 and 58 do not apply to certain activity which is undertaken for the purpose of gauging the interest of potential investors in a proposed trade of securities ("testing the waters");

AND WHEREAS it has been represented to the Commission that:

- a. section 27 prohibits anyone from trading in a security without being registered;
- b. section 58 of the Act also prohibits anyone from trading in a security before a prospectus receipt is issued;
- c. there are exemptions in the Act that waive these requirements, some of which require a decision of the Commission or approval of an offering memorandum before trading can begin;
- d. the definition of trade in the Act includes anything done directly or indirectly in furtherance of trading in securities;
- e. the foregoing provisions mean that persons or companies cannot discuss a proposed offering without registration, a prospectus receipt, approval of an offering memorandum or Commission decision;
- f. without being able to gauge the interest of investors in a planned offering of securities, they could incur the expense of applying for a Commission decision and preparing a

prospectus or offering memorandum, and later find that there is no investor interest in the offering; and

- g. an exemption is required to allow limited activity for the purpose of "testing the waters" before registration, issuance of a prospectus receipt, approval of an offering memorandum or Commission decision;

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

IT IS HEREBY RULED pursuant to clause 83(1)(a) of the Act that the provisions of sections 27 and 58 do not apply to:

- a. an issuer, its officers, directors, promoters, agents, and consultants; or
- b. the promoters, agents, and consultants of an issuer to be formed

who have imminent plans to:

- c. trade in securities under a prospectus;
- d. trade in securities pursuant to the exemptions in clauses 39(1)(y) and 81(1)(s) of the Act ("the qualified investor exemption");
- e. apply to the Commission for a ruling pursuant to section 83 of the Act under Saskatchewan Policy Statement 45-601 - *Community Ventures - Section 83 Rulings*, and trade in securities pursuant to that ruling;

when they undertake the following activities for the purpose of gauging the interest of potential investors in the proposed trade in securities:

- 1. talk to potential investors either individually or in groups, provided that such potential investors are given only the following information:
 - a. a general overview of who the issuer is or will be;
 - b. the amount of money planned to be raised and who it will be raised from;
 - c. what the money will be used for;

- d. if the money is being raised for a specific project, a general overview of the project and how it will be created and developed; and
- e. whether there are any tax incentives connected with the proposed offering of securities;

provided further that if there is a public meeting of potential investors, those holding the meeting must begin it with a statement that the meeting is being held only for the purpose of gauging potential interest in the proposed offering, and not to sell securities;

- 2. except in proposed offerings under the qualified investor exemption, place advertisements inviting potential investors to a meeting for the purpose of giving the information mentioned in paragraph 1 above, provided that the Director approves such advertisement before it is placed;
- 3. take and record the names, addresses, telephone and fax numbers of individuals who express an interest in obtaining the prospectus or offering memorandum, as the case may be, if the offering proceeds;
- 4. gather information in a survey from potential investors provided that:
 - a. the Director approves the survey form before it is used;
 - b. the survey form contains warnings that investors should:
 - i. read and consider the offering document they will receive with respect to the trade in securities should the offering proceed;
 - ii. consult with a professional advisor after they receive the offering document and before deciding to buy securities under the offering; and
 - iii. be aware that by completing the survey the potential investor is not in any way committed to purchase securities; and
 - c. potential investors are not asked to sign the survey form, although the names, addresses and phone numbers of potential investors can be on the form;

PROVIDED THAT an issuer, its officers, directors, promoters, agents, and promoters or the promoters, agents, and consultants of an issuer to be formed must not:

- a. give any other details about the specific attributes or price of the securities proposed to be sold or any other details about the proposed trade in securities other than those specified in paragraph 1 above;
- b. place any advertisement with respect to the proposed trade in securities except as permitted in paragraph 2 above;
- c. distribute any written information to potential investors without the prior approval of the Director; or
- d. collect cash, post-dated cheques or commitments to purchase securities from potential investors;

AND FURTHER PROVIDED THAT a person or company may not use this exemption if the person or company:

- a. has been convicted of any offence in Canada or a foreign jurisdiction under securities legislation or of any offence involving fraud, theft or deceit,
- b. has been the subject of any enforcement order issued by a securities regulatory authority in Canada or a foreign jurisdiction within the past five years;
- c. has been the subject of any order or judgment of any court in Canada or a foreign jurisdiction that restrains such person or company from engaging in or continuing any activity in connection with a trade in any security; or
- d. has been the subject of an action of any self-regulatory organization operating under the authority of a securities regulatory authority in Canada or in a foreign jurisdiction which suspends or expels such person or company from membership in such a self-regulatory organization;

Dated at Regina, Saskatchewan this 9th day of July, 1996.

"Marcel de la Gorgendière"

Marcel de la Gorgendiere, Q.C.

Chairperson