

GENERAL RULING/ORDER 32-901

DIRECT PURCHASE PLANS

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

AND

IN THE MATTER OF DIRECT PURCHASE PLANS

RULING

WHEREAS the Saskatchewan Securities Commission (the "Commission") has assigned to the Director of the Commission 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 that the provisions section 27 of the Act do not apply to a trade by a reporting issuer or an administrator of the reporting issuer in a security of the reporting issuer's own issue under a direct purchase plan of the reporting issuer on certain conditions;

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

IT IS HEREBY RULED that in this Ruling:

"administrator" means, for a direct purchase plan:

- (a) a trustee, a custodian or an administrator of the direct purchase plan; or
- (b) if the reporting issuer administers the direct purchase plan itself, the reporting issuer;

"direct purchase plan" means an arrangement operated by or on behalf of a reporting issuer under which a person or company is permitted to purchase securities of the reporting issuer's own issue:

- (a) directly from the treasury of the reporting issuer; or
- (b) on a marketplace through the administrator of the direct purchase plan;

"plan advertisement" means a communication that is published or designed for use on or through a public medium for the purpose of disseminating information about a direct purchase plan;

"promotional activities" means any activities or communications intended to induce the purchase of securities through a particular direct purchase plan;

"public medium" includes announcements, newspaper, television or radio advertisements, circulars, notices, investor fairs, and Internet Web site; and

“reporting issuer” means a reporting issuer that:

- (a) is not a mutual fund; and
- (b) complies with National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

IT IS FURTHER RULED pursuant to subclause 83(1)(a)(i) of the Act that the provisions of section 27 of the Act do not apply to a trade by a reporting issuer, or an administrator of the reporting issuer in a security of the reporting issuer’s own issue under a direct purchase plan of the reporting issuer provided that the following conditions are complied with:

Delivery of prospectus

1. For a trade of a security from treasury of the reporting issuer:
 - (a) the reporting issuer or the administrator of the plan, unless it has previously done so, sends by prepaid mail or delivers to the purchaser the latest prospectus relating to the plan and any amendment to the prospectus filed either:
 - (i) before the purchaser enters into the agreement of purchase and sale resulting from the order or subscription; or
 - (ii) not later than midnight on the second day, excluding Saturday, Sundays and holidays, after the purchaser has entered into the agreement; and
 - (b) the reporting issuer provides to the purchaser, in the prospectus, the right to withdraw from the purchase analogous to the rights of a purchaser, and subject to the conditions, contained in section 79 of the Act;

Disclosure statement

2. Before they enter into a binding agreement of purchase and sale for securities under a direct purchase plan, purchasers are given a separate document which contains substantially the following disclosure:

“Securities sold through the [name of reporting issuer] direct purchase plan are sold under rules of the securities regulatory authorities that permit these sales without the involvement of a registered broker or dealer. A person or company making such a purchase therefore receives no investment advice concerning the purchase, does not have the benefit of the assistance of a broker or dealer, and is solely responsible for assessing the appropriateness of the investment for themselves. A person or company that wishes to receive investment advice in connection with the direct purchase plan should contact their broker or dealer.”

Segregation of Funds

3. The administrator promptly deposits all funds received for investment through the direct purchase plan into a segregated bank account with a Canadian financial institution, and uses the funds only to purchase securities under the direct purchase plan or to pay fees associated with the direct purchase plan.

Segregation of securities

4. For securities issued under a direct purchase plan and held on behalf of a purchaser, the administrator:
 - (a) maintains the securities in a separate account directly in the names of the purchasers, or in the name of the administrator, and allocated to each purchaser on a register maintained by the administrator; and
 - (b) keeps the securities separate from any other securities that the administrator holds.

Segregation of securities - book-based system

5. For securities deposited with a depository or clearing agency that operates a book-based system, the administrator ensures that the applicable participants in the book-based system or the administrator contain a designation sufficient to show that the beneficial ownership of the securities is vested in the purchasers under the direct purchase plan.

Bonding

6. The administrator maintains bonding or insurance, by means of a broker's blanket bond, in an amount of not less than \$25,000.

Record keeping

7. The administrator maintains books and records necessary to record properly all transactions involving the direct purchase plan, and in doing keeps the records referred to in subsection 25(3) of *The Securities Regulations*.

Statements of account

8. (a) The administrator sends to each investor in the direct purchase plan a statement of account which lists the securities held for the investor and indicates clearly which securities are held for safekeeping or in segregation;
 - (b) the administrator sends a statement of account to each investor at the end of each month in which the client has effected a transaction, where there is a debit or credit balance or securities held; and
 - (c) where the investor has not effected a transaction, but there are either funds or securities held by the administrator on a continuing basis, the administrator sends, not less than once every three months, a statement of account to the investor showing any debit or credit balance, and the details of any securities held or owned.

Exemption for regulated institutions

9. Sections 6, 7, and 8 do not apply to an administrator of a direct purchase plan that is an institution that is subject to requirements under its governing legislation that are substantially similar to those contained in sections 6, 7 and 8.

Restriction on promotional activities

10. No person or company engages in promotional activities concerning a direct purchase plan, except to place or distribute advertisements that describe only:

- (a) the existence and availability of the direct purchase plan;
- (b) the name of the reporting issuer whose securities are distributed under the direct purchase plan, and a brief description of the business carried on by the reporting issuer;
- (c) the securities to be issued under the direct purchase plan;
- (d) a description of how the direct purchase plan operates; and
- (e) information about how a person or company may obtain a copy of the prospectus for the direct purchase plan.

Prohibition on advice by a non-registrant

11. No person or company, other than a person or company that is registered under the Act, provides any investment advice or recommendations in connection with the purchase of securities under a direct purchase plan.

DATED August 21, 2002

Barbara Shourounis
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Director