

Nova Scotia Securities Commission

Rule 45-106 (Amendment)
Prospectus Exemptions

-and-

Consequential Amendments to Rules 41-101, 44-101, 45-102, 11-102, 13-101, and 13-102

-and-

Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions*, National Instrument 45-102 *Resale of Securities*, Multilateral Instrument 11-102 *Passport System*, National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*, and Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (collectively, the Rule Amendments)

-and-

Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* (the Policy Amendment)

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. The Rule Amendments and the Policy Amendment, copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule Amendments and makes the same a rule of the Commission;

- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policy Amendment as a policy statement of the Commission; and
- (c) declares that the Rule Amendments approved and made pursuant to clause (a) and the issuance of the Policy Amendment pursuant to clause (b) shall both take effect on **December 8, 2015**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Vice-chair and Acting Chair of the Commission, being the member of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 24th day of September, 2015.



Paul Radford, Q.C.,
Vice-chair and Acting Chair

Attachments

**Amendments to
National Instrument 41-101 *General Prospectus Requirements***

1. *National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.*
2. *The following Part is added after section 8.3:*

PART 8A: Rights Offerings

Application and definitions

8A.1(1) This Part applies to an issuer that files a preliminary or final prospectus to distribute rights.

(2) In this Part,

“additional subscription privilege” means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

“basic subscription privilege” means a privilege to subscribe for the number or amount of securities set out in a rights certificate held by the holder of the rights certificate;

“managing dealer” means a person or company that has entered into an agreement with an issuer under which the person or company has agreed to organize and participate in the solicitation of the exercise of the rights issued by the issuer;

“market price” means, for securities of a class for which there is a published market,

- (a) except as provided in paragraph (b),
 - (i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
 - (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for

each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

- (b) if trading of securities of the class on the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:
 - (i) the average of the closing bid and closing ask prices for each day on which there was no trading;
 - (ii) if the published market
 - (A) provides a closing price of securities of the class for each day that there was trading, the closing price, or
 - (B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there was trading;

“published market” means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“soliciting dealer” means a person or company whose interest in a distribution of rights is limited to soliciting the exercise of the rights by holders of those rights;

“stand-by commitment” means an agreement by a person or company to acquire the securities of an issuer not subscribed for under the basic subscription privilege or the additional subscription privilege.

- (3) For the purpose of the definition of “market price”, if there is more than one published market for a security and
 - (a) only one of the published markets is in Canada, the market price is determined solely by reference to that market,
 - (b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities

occurred during the 20 trading days immediately before the date as of which the market price is being determined, and

- (c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined.

Filing of prospectus for a rights offering

8A.2 (1) An issuer must not file a prospectus for a distribution of rights unless all of the following apply:

- (a) in addition to qualifying the distribution of the rights, the prospectus qualifies the distribution of the securities issuable upon the exercise of the rights;
- (b) if there is a managing dealer, the managing dealer complies with section 5.9 as if the dealer were an underwriter;
- (c) the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to security holders;
- (d) the subscription price for a security to be issued upon the exercise of a right is,
 - (i) if there is a published market for the security, lower than the market price of the security on the date of the final prospectus, or
 - (ii) if there is no published market for the security, lower than the fair value of the security on the date of the final prospectus unless the issuer restricts all of its insiders from increasing their proportionate interest in the issuer through the exercise of the rights distributed under the prospectus or through a stand-by commitment.

(2) If subparagraph (1)(d)(ii) applies, the issuer must deliver to the regulator or, in Québec, the securities regulatory authority independent evidence of fair value.

Additional subscription privilege

8A.3 An issuer must not grant an additional subscription privilege to a holder of a right unless all of the following apply:

- (a) the issuer grants the additional subscription privilege to all holders of a right;

- (b) each holder of a right is entitled to receive, upon the exercise of the additional subscription privilege, the number or amount of securities equal to the lesser of
- (i) the number or amount of securities subscribed for by the holder under the additional subscription privilege, and
 - (ii) the number calculated in accordance with the following formula:
 $x(y/z)$ where
 x = the aggregate number or amount of securities available through unexercised rights after giving effect to the basic subscription privilege;
 y = the number of rights exercised by the holder under the basic subscription privilege;
 z = the aggregate number of rights exercised under the basic subscription privilege by holders of the rights that have subscribed for securities under the additional subscription privilege;
- (c) all unexercised rights have been allocated on a pro rata basis to holders who subscribed for additional securities under the additional subscription privilege;
- (d) the subscription price for the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

Stand-by commitments

8A.4 If an issuer enters into a stand-by commitment for a distribution of rights, all of the following apply:

- (a) the issuer must grant an additional subscription privilege to all holders of a right;
- (b) the issuer must deliver to the regulator or, in Québec, the securities regulatory authority evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment;
- (c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

Appointment of depository

8A.5 If an issuer has stated in a prospectus that no security will be issued upon the exercise of a right unless a stand-by commitment is provided, or unless proceeds of no less than the stated minimum amount are received by the issuer, all of the following apply:

- (a) the issuer must appoint a depository to hold all money received upon the exercise of the rights until either the stand-by commitment is provided or the stated minimum amount is received and the depository is one of the following:
 - (i) a Canadian financial institution;
 - (ii) a registrant in the jurisdiction in which the funds are proposed to be held that is acting as managing dealer for the distribution of the rights, or, if there is no managing dealer for the distribution of the rights, that is acting as a soliciting dealer;
- (b) the issuer and the depository must enter into an agreement, the terms of which require the depository to return the money referred to in paragraph (a) in full to the holders of rights that have subscribed for securities under the distribution of the rights if the stand-by commitment is not provided or if the stated minimum amount is not received by the depository during the exercise period for the rights.

Amendment

8A.6 If an issuer has filed a final prospectus for a distribution of rights, the issuer must not change the terms of the distribution..

3. *Paragraph 9.2(b) is amended by deleting “and” at the end of subparagraph (ii), by replacing the “.” with “;” and by adding the following subparagraphs:*

(iv) **Evidence of financial ability** – the evidence of financial ability required to be delivered under section 8A.4 if it has not previously been delivered; and

(v) **Evidence of fair value** – the evidence of fair value required to be delivered under subsection 8A.2(2) if it has not previously been delivered..

4. This Instrument comes into force on December 8, 2015.

**Amendments to
National Instrument 44-101 *Short Form Prospectus Distributions***

1. *National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.*
2. *Paragraph 4.2(b) is amended by deleting “and” at the end of subparagraph (ii), by replacing the “.” with “,” and by adding the following subparagraphs:*
 - (iv) the evidence of financial ability required to be delivered under section 8A.4 of NI 41-101 if it has not previously been delivered, and
 - (v) the evidence of fair value required to be delivered under subsection 8A.2(2) of NI 41-101 if it has not previously been delivered..
3. This Instrument comes into force on December 8, 2015.

**Amendments to
National Instrument 45-102 Resale of Securities**

1. *National Instrument 45-102 Resale of Securities is amended by this Instrument.*
2. *Appendix E is amended by replacing “section 2.1 [Rights offering]” with:*
 - section 2.1 *[Rights offering – reporting issuer]*
 - section 2.1.1 *[Rights offering – stand-by commitment]*
 - section 2.1.2 *[Rights offering – issuer with a minimal connection to Canada].*
3. This Instrument comes into force on December 8, 2015.

**Amendments to
Multilateral Instrument 11-102 *Passport System***

1. *Multilateral Instrument 11-102 Passport System is amended by this Instrument.*
2. *Appendix D is amended by repealing the following:*

Rights offering requirements	NI 45-101
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3. This Instrument comes into force on December 8, 2015.

**Amendments to
National Instrument 13-101 System for Electronic Document Analysis and Retrieval
(SEDAR)**

1. *National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by this Instrument.*
2. *Paragraph II.A.(a) of Appendix A is amended by*
 - a. *repealing items 17 and 18, and*
 - b. *adding the following items:*
 19. Rights Offering – Circular
 20. Rights Offering – Minimal Connection .
3. This Instrument comes into force on December 8, 2015.

**Amendments to
Multilateral Instrument 13-102 System Fees for SEDAR and NRD**

1. ***Multilateral Instrument 13-102 System Fees for SEDAR and NRD is amended by this Instrument.***
2. ***Subsection 1(2) is amended by replacing***

rights offering	National Instrument 45-101 <i>Rights Offerings</i>
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with

rights offering circular	Section 2.1 of National Instrument 45-106 <i>Prospectus Exemptions</i>
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3. ***Column B of Item 13 of Appendix B is amended by replacing “Rights offering material” with “Rights offering circular”.***
4. **This Instrument comes into force on December 8, 2015.**

**Changes to
Companion Policy 41-101CP *General Prospectus Requirements***

- 1. *Companion Policy 41-101CP General Prospectus Requirements is changed by this Instrument.***
- 2. *Part 2 is changed by adding the following section:***

Rights offerings

- 2.11(1)** The regulator or, in Québec, the securities regulatory authority may refuse to issue a receipt for a prospectus filed for a rights offering under which rights are issued if the rights are exercisable into convertible securities that require an additional payment by the holder on conversion and the securities underlying the convertible securities are not qualified under the prospectus. This will ensure that the remedies for misrepresentation in the prospectus are available to the person or company who pays value.
- (2)** Subparagraph 8A.2(1)(d)(ii) of the Instrument provides that if there is no published market for the securities, the subscription price must be lower than fair value unless the issuer restricts all insiders from increasing their proportionate interest in the issuer through the rights offering or a stand-by commitment. Under subsection 8A.2(2), the issuer must deliver to the regulator or, in Québec, the securities regulatory authority evidence of fair value. For this purpose, the regulator will consider such things as fairness opinions, valuations and letters from registered dealers as evidence of the fair value.
 - (3)** Under paragraph 8A.4(b) of the Instrument, if there is a stand-by commitment for a rights offering, the issuer must deliver to the regulator or, in Québec, the securities regulatory authority evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment. For this purpose, the regulator or, in Québec, the securities regulatory authority may consider any of the following:
 - a statement of net worth attested to by the person or company making the commitment,
 - a bank letter of credit,
 - the most recent audited financial statements of the person or company making the commitment,
 - other evidence that provides comfort to the regulator or, in Québec, the securities regulatory authority..

3. These changes become effective on December 8, 2015.