

August 8, 2001

Marvin Singer  
Direct Line: 416.595.2340  
E-mail: msinger@goodmancarr.com

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 800, P.O. Box 55  
Toronto, ON M5H 3S8

Dear Sir:

**Re: Proposed OSC Rule 45-501 Exempt Distributions**

---

We concur that the inclusion of the government incentive security exemption (Section 2.13) is appropriate; however, we wish to submit the following comments.

1. This exemption should be expanded to permit an issuer to trade in units comprised of government incentive securities and other securities; provided that the portion of the gross proceeds raised through such trade attributable to the "non-government incentive securities" be limited to a stipulated percentage of the gross proceeds (for example, 15%). By permitting an issuer to issue non-government incentive securities as part of an offering primarily comprised of government incentive securities, the issuer will be able to raise the funds required to pay any commissions and costs of issue as well as a modest amount of working capital. In the past, there has been uncertainty whether the exemption contained in Section 2.4 of Rule 45-501 and its predecessor permitted an issuer to allocate a portion of the proceeds of the offering of government incentive securities to pay expenses which did not constitute "qualifying expenses".

This matter is of obvious concern where an issuer has insufficient working capital to pay the commissions and costs of issue and, as a result, needs to use part of the proceeds of the offering for these purposes. It has been our experience that investors in "flow-through" offerings will permit the issuer to use part of the proceeds for such purposes, recognizing that the deductions available to the investors will be reduced.

2. Section 2.13(c) requires that "the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide". This requirement raises many difficult issues; for instance:
  - (a) it appears that this provision (when combined with the requirements of Section 2.13(b) of this Rule and Section 4.2(4) of NI 43-101) requires the issuer to prepare and file a qualifying report on any "material" resource property on which the proceeds of the offering are intended to be spent. Is this a correct interpretation?;

- (b) does the issuer have to update its financial statements so as to comply with part 4 of National Instrument No. 41-501; and
- (c) what information that is required to be included in a prospectus may be excluded from the offering memorandum required to be delivered to prospective purchasers pursuant to Section 2.13(b) or may otherwise not be made available?

As a result of the uncertainty respecting the requirements of the predecessor exemption equivalent to Section 2.13(c), counsel to issuers often recommend that the offering memorandum contain all information required under Rule 41-501. These offerings are generally undertaken by junior resource companies with limited funds (including non-reporting issuers which may have limited disclosure documents available) and the proceeds of this type of offering generally do not justify incurring significant costs. In view of this, we submit that this condition contained in Section 2.13(c) is counter productive and should be removed. As an alternative, we submit that the Commission should clarify in the Companion Policy what information the Commission expects to be contained in the offering memorandum and, in particular, that there is no requirement for the issuer to prepare an up-to-date qualifying report and up-to-date financial statements.

Thank you for considering our submission.

Yours very truly,

Marvin Singer

MS/as