

Eric T. Spink
Barrister & Solicitor

11548 78 Avenue NW
Edmonton AB
T6G 0N5

Phone: 780 435 8711
Fax: 780 435 2377
Email: spinklaw@shaw.ca

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

Dear Sir:

Re: Comment on Proposed Rule 45-501

I offer the following comment on the Proposed Materials.

Clause (r) of the definition of accredited investor in s. 1.1 of proposed 45-501 should be redrafted to ensure that entities in respect of which the issuer holds a sufficient number of shares to materially affect control fall clearly within the definition.

It is common for private or closely held issuers to acquire their own shares. This is clearly addressed in clause (s) of the definition, which makes the issuer an accredited investor.

For tax or corporate law reasons, an issuer may acquire its own shares through an entity in respect of which the issuer holds a sufficient number of securities to materially affect control. This is addressed in clause (r) of the definition, which captures two types of accredited investors. First, it captures any "affiliated entity" of the issuer. This captures entities that are "subsidiaries" of the issuer, including a company of which the issuer (or a subsidiary of the issuer), holds more than 50% of the voting securities. It also captures an entity that holds more than 50% of the voting securities of the issuer. This part of the definition is clear.

The second part of clause (r) of the definition of accredited investor captures "a person or company that, in relation to the issuer, is a ...person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the Act." Clause (c) of s. 1(1) of the Act refers to "any person or company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of...more than 20 per cent of the outstanding voting securities of an issuer shall...be deemed to affect materially the control of the issuer".

This clearly captures an entity that owns more than 20% of the issuer's voting securities, but it is not clear whether it captures an entity in which the issuer owns more than 20% of the voting securities. If it excludes such entities, that is an undesirable result.

The policy rationale for all of clause (r) should be that an entity that holds a sufficient number of securities to materially affect control of the issuer, or an entity in respect of which the issuer holds a sufficient number of securities to materially affect control, should be an accredited investor with respect to securities of that issuer. That rationale is consistent with the rationale for clause (s) of the definition, which is that issuers do not need to be protected in relation to acquiring their own shares.

The first part of clause (r) implements this policy symmetrically with respect to affiliated entities, but the second part applies the policy asymmetrically. As a result, clause (r) captures:

- 1) an entity that holds anywhere from 20% to 100% of the issuer's voting securities;
- 2) an entity of which the issuer holds more than 50% of the voting securities.

There is no evident reason for this asymmetry: i.e. an entity of which the issuer holds 49% of the voting securities does not need to be protected in relation to acquiring shares of the issuer. Arrangements where an issuer uses an entity over which it holds a sufficient number of securities to materially affect control to acquire its own shares are often structured in accordance with tax or corporate considerations, which may limit the issuer's holdings to 49% of voting securities. This is not a valid distinction upon which to hinge the application of the accredited investor definition.

Clause (r) should be redrafted to clearly apply the same test to entities over which the issuer holds a sufficient number of securities to materially affect control that it now applies to entities that hold a sufficient number of securities to materially affect control of the issuer. The result should be that all entities that may materially affect control of the issuer, and all entities over which the issuer may materially affect control, are accredited investors.

Sincerely,

Eric Spink

Enclosure (diskette)