

## **POLICY 5.4**

### **CAPITAL STRUCTURE, ESCROW AND RESALE RESTRICTIONS**

#### **Scope of Policy**

This Policy sets out requirements relating to capital structure, escrow for Principals and resale restrictions for certain other Shareholders that apply to New Listings; however, this Policy does not apply to the escrow of securities in connection with the IPO of a Capital Pool Company. This Policy does apply to a Qualifying Transaction undertaken by a CPC, and may apply to NEX Companies graduating to Tier 1 or Tier 2.

In addition, this Policy sets out requirements that apply where an Issuer is required under Policy 5.3 – *Acquisitions and Dispositions of Non-Cash Assets* or otherwise to provide support for the value ascribed to the assets, business or property (or interest) being acquired or disposed of.

Notwithstanding anything else in this Policy, the Exchange may impose escrow or other resale restrictions on securities beneficially owned directly or indirectly by any party in connection with any transaction where it deems appropriate.

The main headings in this Policy are:

1. Definitions
2. Capital Structure
3. Escrow for Principals' Securities
4. Seed Share Resale Restrictions
5. Amendments and Transfers of Securities Subject to Escrow
6. Spin-off Transactions and Other Direct Listings
7. Acquisitions and Dispositions – Evidence of Value
8. Transition

# 1. Definitions

In this Policy:

“**Below 1% Holder**” has the meaning ascribed to that phrase in section 4.1(e)(ii).

“**Below 1% Principal**” has the meaning ascribed to that phrase in section 3.1(b)(ii).

“**Bulletin Date**” has the meaning ascribed to that phrase in section 3.5.

“**Consideration**” includes all payments made or to be made by the Issuer, including (i) all cash payments; (ii) the product of the maximum number of Listed Shares issuable multiplied by the Discounted Market Price of the Issuer; (iii) the value of all other securities to be issued; and (iv) the cash equivalent value of all other non-cash consideration.

Generally, the securities referenced in (iii) will:

- (a) exclude stock options and share purchase warrants issued to replace equivalent securities previously issued by the Target Company in the normal course; and
- (b) include all other securities of the Issuer as may be required by the Exchange to be included, such as preferred, non-voting, subordinate voting, multiple voting and restricted voting securities, and certain securities that are convertible into Listed Shares for nominal consideration.

“**Escrow Agreement**” has the meaning ascribed to that phrase in section 3.4 and includes, where appropriate, any Existing Escrow Agreement.

“**Existing Escrow Agreement**” means any existing escrow agreement in the form of Form 5D – *Escrow Agreement* (as at June 14, 2010) that was in effect on June 1, 2025 or any predecessor thereto, and for further clarity, does not include a CPC Escrow Agreement.

“**Financing**” has the meaning ascribed to that term in section 2.1(a).

“**Former Policy 5.4**” means the version of Policy 5.4 – *Escrow, Vendor Consideration and Resale Restrictions* (as at June 14, 2010) that was in effect on June 1, 2025 or any predecessor thereto.

“**Former SSRRs**” has the meaning ascribed to that phrase in section 8.2(a).

“**holding company**” has the meaning ascribed to that phrase in section 3.3.

“**Issuer**” has the meaning ascribed to that term in Policy 1.1 – *Interpretation*, or means the Resulting Issuer, as applicable.

“**Non-IPO Transaction**” means any Transaction that is not an IPO, and for greater certainty, includes a New Listing where the disclosure document is a non-offering Prospectus.

“**NP 46-201**” means National Policy 46-201 – *Escrow for Initial Public Offerings*.

**“Option”** means an option, warrant, right of conversion or exchange, or other right to acquire an equity security of an Issuer, but does not include a non-transferable incentive stock option exercisable solely for cash or cash equivalent (which for the purpose of this definition does not include property or services) at a price per underlying equity security not less than the price at which the equity securities of the Issuer are being issued or are deemed to be issued in connection with the New Listing.

**“Principals’ Securities”** means:

- (a) all Options of the Issuer; and
- (b) all equity securities of the Issuer that carry a residual right to participate in the earnings of the Issuer and, on the liquidation or winding-up of the Issuer, in its assets,

which in the case of an IPO, immediately before completion of the Issuer’s IPO are beneficially owned, directly or indirectly by Principals, or over which Principals have control or direction, or in all other cases, which immediately before the date of the Exchange Bulletin confirming final acceptance of the Transaction, are beneficially owned, directly or indirectly by Principals, or over which Principals have control or direction, and includes “additional escrow securities” as defined in the Escrow Agreement;

**“SSRR Securities”** has the meaning ascribed to that phrase in section 4.2.

**“SSRRs”** means the Seed Share Resale Restrictions described more fully in Part 4.

**“Target Company Financing”** has the meaning ascribed to that phrase in section 2.1(a).

**“Transaction”** means an Initial Listing (other than the IPO of a Capital Pool Company), Reverse Takeover, Change of Business or Qualifying Transaction.

**“Transaction Price”** means the greater of: (i) the Discounted Market Price, and (ii) the price of the financing completed in connection with the Transaction, or if there is no such price or more than one financing, then such price as the Exchange determines; and in each case, adjusted as appropriate to reflect any share exchange ratio and/or any other changes being made to the capital structure (including a security consolidation or a security split) in connection with or prior to the completion of the Transaction.

Other capitalized terms used but not specifically defined in this Policy have the meanings ascribed to them elsewhere in the Manual, including Policy 1.1 – *Interpretation*, Policy 2.4 – *Capital Pool Companies* and Policy 5.2 – *Changes of Business and Reverse Takeovers*.

## 2. Capital Structure

### 2.1 Acceptable Capital Structure

The capital structure of the Issuer seeking a New Listing must be acceptable to the Exchange. This may be demonstrated in any one of the following manners:

- (a) **Contemporaneous Equity Financing** - any contemporaneous equity financing(s), which for the purposes of this section includes financings involving the issuance of securities that are converted into Listed Shares of the Issuer on or before the closing of the Transaction (the “**Financing**”) where:
  - (i) the Financing is announced contemporaneously with or after the dissemination of a news release announcing the Transaction;
  - (ii) a majority of the securities are issued to subscribers not Non-Arm’s Length Parties of the Issuer and not Non-Arm’s Length Parties of the Target Company; and
  - (iii) either:
    - (A) the number of Listed Shares of the Issuer to be issued pursuant to the Financing is not less than 10% of the number of issued and outstanding Listed Shares of the Issuer upon completion of the Transaction and the Financing, including in the denominator:
      - (I) all Listed Shares of the Issuer that are issuable in connection with the Transaction on, prior to or within 12 months after listing of the Issuer; and
      - (II) all other securities of the Issuer as may be required by the Exchange to be included, such as non-voting, subordinate voting, multiple voting and restricted voting securities, and certain securities that are convertible into Listed Shares for nominal consideration; or
    - (B) the gross proceeds of the Financing are not less than \$5,000,000,

including in both cases equity financings completed by the Target Company within the six months immediately preceding the dissemination of a news release announcing the Transaction at a price per security that is not less than the applicable Discounted Market Price of the Issuer’s Listed Shares, notwithstanding that such financing is not included in the news release referred to in section 2.1(a)(i) (a “**Target Company Financing**”), and in each case, adjusted as appropriate to reflect any share exchange ratio and/or any other changes being made to the capital structure (including a security

consolidation or a security split) in connection with or prior to the completion of the Transaction;

- (b) **Appraisal or Valuation** - an appraisal or valuation that supports at least 50% of the Consideration and:
  - (i) for a mining property, is a Comprehensive Valuation Report as defined in the Canadian Institute of Mining, Metallurgy and Petroleum Code for the Valuation of Mineral Properties (the “**CIMVal Code**”) prepared:
    - (A) by an independent Qualified Person(s) as defined in National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* or an independent Qualified Valuator(s) as defined in the CIMVal Code; and
    - (B) in accordance with the CIMVal Code and in accordance with Appendix 3G – *Valuation Standards and Guidelines for Mineral Exploration Properties*;
  - (ii) for an oil and gas property, is an evaluation report (prepared by an independent, qualified reserves evaluator or auditor in accordance with NI 51-101 – *Standards of Disclosure for Oil and Gas Activities* and the COGE Handbook) based on net present value of future net revenue for total proved plus probable reserves using forecast pricing discounted at 10% before income taxes;
  - (iii) for a real estate property, an appraisal prepared by an independent professional appraiser that is a member of the Appraisal Institute of Canada or an analogous body in another jurisdiction that is acceptable to the Exchange;
  - (iv) for an Issuer that is not a mining issuer, oil & gas issuer or real estate issuer:
    - (A) the Target Company has generated significant revenue; and
    - (B) the report is a comprehensive valuation report prepared by an independent Chartered Business Valuator(s) in accordance with the Practice Standards and Code of Ethics of the CBV Institute, or such other appraisal or valuation report prepared by an independent, qualified party(ies) as is acceptable to the Exchange;
- (c) **Expenditures** - in relation to an asset, expenditures incurred within the five previous years that support at least 50% of the Consideration and:
  - (i) for mining issuers, the expenditures must be exploration and development expenditures that are costs incurred by the vendor within the five previous years and can include the acquisition cost of the property;

- (ii) for an oil and gas property with no proved plus probable reserves, the expenditures must be exploration expenditures that are costs incurred by the vendor within the five previous years and can include the acquisition cost of the property; and
- (iii) for industrial, technology, and research and development issuers that have not yet generated significant revenue, the expenditures must be research and development costs that have contributed to or can reasonably be expected to contribute to the future operations of the Issuer and can include relevant acquisition costs;

provided that any payments made to Non-Arm's Length Parties to the vendor will generally be excluded from these amounts;

- (d) **Net Tangible Assets of the Target Company** - in relation to a Company, Net Tangible Assets of the Target Company are equal to at least 50% of the Consideration, where the Net Tangible Assets have been adjusted as appropriate to reflect any appraisal or valuation described above in section 2.1(b) if applicable;
- (e) **Operating Cash Flow of the Target Company** - ten times the average annual cash flows from operating activities of the Target Company prior to any working capital adjustments (calculated over the last eight fiscal quarters) is equal to at least 50% of the Consideration;
- (f) **Securities Issued by the Target Company** - where an Issuer proposes to acquire a Target Company, at least 50% of the outstanding equity securities of the Target Company have been issued either:
  - (i) at or above prices which would constitute the Discounted Market Price of the Issuer's Listed Shares; or
  - (ii) at least 12 months prior to the dissemination of a news release announcing the Transaction at prices that are at least 50% of the current Market Price of the Issuer's Listed Shares;

and in each case, adjusted as appropriate to reflect any share exchange ratio and/or any other changes being made to the capital structure (including a security consolidation or a security split) in connection with or prior to the completion of the Transaction; and provided that for issuances of equity securities for consideration other than cash, the Exchange may require satisfactory evidence to support the deemed issue price, and in the absence of such evidence, the Exchange may deem such securities to have been issued for nominal consideration;

- (g) **Current Listing** - the Issuer has been listed and trading on a recognized stock exchange, other than the Exchange, for at least one year immediately preceding the date of the filing of the Application for Listing on the Exchange (and for clarity, the Issuer must not have completed a Reverse Takeover, Qualifying Transaction or Change of Business or analogous transaction during that one year period); or

- (h) **Initial Public Offering** - the New Listing involves an Initial Public Offering that includes a financing and for greater clarity, is not a New Listing by way of a non-offering Prospectus.

If the Issuer is unable to provide support for its capital structure using any of the alternatives set out in section 2.1, the Issuer is encouraged to arrange a pre-filing conference with Exchange staff. See Policy 2.7 – *Pre-Filing Conferences*.

### 3. Escrow for Principals' Securities

#### 3.1 General Escrow Application

- (a) **IPO** - The Exchange will generally defer to the escrow requirements imposed by NP 46-201 for an Initial Listing in connection with an IPO. For the purposes of harmonization with NP 46-201, Tier 1 Issuers will be deemed to be “Established Issuers”, and Tier 2 Issuers will be deemed to be “Emerging Issuers”, as those terms are defined in NP 46-201. Accordingly, Tier 1 Issuers and Tier 2 Issuers will be subject to different escrow release schedules based on their Tier.
- (b) **Non-IPO Transaction** - This Policy also provides for various situations which are not covered by NP 46-201. Where NP 46-201 does not impose escrow in a Non-IPO Transaction, Principals' Securities outstanding on completion of a Non-IPO Transaction will generally be subject to Exchange escrow requirements which are substantially the same as those required by NP 46-201, but with the following notable differences:
  - (i) The Exchange will impose escrow where an Issuer will have a market capitalization of at least \$100 million immediately after the completion of the Non-IPO Transaction; however, such an Issuer may request an exemption from this escrow requirement in its Application for Listing. (In calculating market capitalization, multiply the number of Listed Shares of the Issuer which are outstanding on completion of the Non-IPO Transaction by the Transaction Price);
  - (ii) Escrow does not generally apply to securities held by a Principal who holds securities carrying less than 1% of the voting rights attached to the outstanding securities of the Issuer immediately after the completion of the Non-IPO Transaction (a “**Below 1% Principal**”). (In calculating this percentage, include securities that may be issued to that Person under outstanding convertible securities in both the Person's securities and the total securities outstanding.) However, the Exchange reserves the right to impose escrow on all Below 1% Principals if the aggregate holdings of all Below 1% Principals and the holdings of SSRR Securities of all Below 1% Holders exceeds 5% of the number of Listed Shares of the Issuer outstanding immediately after the completion of the Non-IPO Transaction; and

- (iii) If an Issuer has previously traded in another market, the Exchange will generally require that the Principals of the Issuer enter into escrow arrangements which would result in them having been put in a substantially similar position to what would have been required if the Issuer had previously complied with this Policy.

### **3.2 Securities Subject to Escrow**

- (a) Subject to section 3.2(b) and section 3.2(c), for any New Listing, the Exchange will require that all Principals' Securities of the Issuer which will be outstanding on the completion of the Transaction, and those which will be issued subsequently in connection with the Transaction, to be escrowed. In addition, all securities that would have been considered Principals' Securities if they had not been transferred, but which have been transferred from a Principal of the Issuer to a Person who is not a Principal of the Issuer within the six months immediately preceding the submission of the Application for Listing, must also be escrowed.
- (b) The following Principals' Securities are generally exempted from the requirement to be deposited into escrow:
  - (i) Principals' Securities that were previously held in escrow pursuant to NP 46-201 or Exchange escrow requirements, and have already been released from such escrow; for further clarity, Principals' Securities that have not yet been released from such escrow will remain subject to that escrow;
  - (ii) Principals' Securities issued in connection with a financing offered by way of a Prospectus to a Person who will be a Principal of the Issuer; and
  - (iii) Principals' Securities issued in connection with a Private Placement, including a Bridge Financing (as defined in Policy 2.4 – *Capital Pool Companies* or Policy 5.2 – *Changes of Business and Reverse Takeovers*), to a Person who will be a Principal of the Resulting Issuer where the Private Placement is announced concurrently with or after the dissemination of a news release announcing the Transaction and:
    - (A) at least 50% of the proceeds from the Private Placement are not from Principals of the Resulting Issuer;
    - (B) in addition to any Resale Restrictions under applicable Securities Laws, any securities issued to Principals will be required to be legended with the Exchange Hold Period; and
    - (C) none of the proceeds from the Private Placement are allocated to pay compensation to or settle indebtedness owing to Principals of the Resulting Issuer.
- (c) Subject to section 3.2(b)(i), where the Resulting Issuer is a Tier 2 Issuer, any previously issued securities of the Listed Issuer that will be, or will be exchanged



into, Principals' Securities on the completion of the Transaction must be escrowed with the releases of such securities from escrow occurring in accordance with the release schedule for Tier 2 Issuers set out in section 3.5 unless they were issued:

- (i) at or above the Transaction Price; or
- (ii) more than one year prior to the date of the Exchange's conditional acceptance letter for the Transaction;

in which case the releases of such securities from escrow will occur in accordance with the release schedule for Tier 1 Issuers set out in section 3.5.

### **3.3 Securities Held by a Company**

If Principals' Securities required to be held in escrow are held by a non-individual (a "**holding company**"), the Exchange will require that the holding company and the controlling securityholders of that holding company sign and deliver to the Exchange undertakings in the form set out in Schedule C of Form 5D – *Escrow Agreement*, in which they agree not to permit or authorize any securities of the holding company to be issued or transferred, nor otherwise permit or authorize the holding company to carry out any transaction that could reasonably result in a change of control of the holding company, without the prior written consent of the Exchange.

### **3.4 Escrow Agreement Forms**

Escrow agreements pursuant to NP 46-201 must be in the required form of Form 46-201F1 – *Escrow Agreement*. Escrow agreements required under NP 46-201 will be administered by the applicable Securities Commissions, and not by the Exchange.

Every escrow agreement required only by the Exchange must be in the form of Form 5D – *Escrow Agreement*, or any replacement form prescribed by the Exchange (the "**Escrow Agreement**"). Except as specifically contemplated by the form, no additions, deletions, exceptions, amendments or other modifications to such form can be made without the prior written approval of the Exchange. Acceptance or conditional acceptance of a proposed transaction does not constitute acceptance or approval by the Exchange of any amendment to the Exchange form of Escrow Agreement unless specifically stated in the acceptance or conditional acceptance letter. Modification in any way of the substance of the Exchange form of Escrow Agreement is a breach of Exchange Requirements unless prior Exchange acceptance is obtained.

### 3.5 Escrow Release Schedules

Commencing from the date of the Exchange Bulletin confirming its final acceptance of the Transaction (the “**Bulletin Date**”), Principals’ Securities are released from escrow as follows:

<b>Tier 1 Issuers:</b>		<b>Tier 2 Issuers:</b>	
<b>%</b>	<b><u>Release Date</u></b>	<b>%</b>	<b><u>Release Date</u></b>
25%	On the Bulletin Date	10%	On the Bulletin Date
25%	6 months following the Bulletin Date	15%	6 months following the Bulletin Date
25%	12 months following the Bulletin Date	15%	12 months following the Bulletin Date
25%	18 months following the Bulletin Date	15%	18 months following the Bulletin Date
		15%	24 months following the Bulletin Date
		15%	30 months following the Bulletin Date
		15%	36 months following the Bulletin Date

### 3.6 Graduations and Delisting

Subject to the procedural requirements in the Escrow Agreement, where a Tier 2 Issuer becomes a Tier 1 Issuer, the release schedule for its securities will be amended to comply with the applicable Tier 1 release schedule.

If an Issuer ceases to be listed on the Exchange for any reason, the Issuer will no longer be required to obtain Exchange acceptance for any amendments to the terms of the Escrow Agreement, including early release of shares from escrow.

### 3.7 Escrow for Other Transactions

In connection with transactions other than New Listings, the Exchange can require that all or part of the share consideration be escrowed under an Escrow Agreement where the Exchange has not been provided with adequate support for the value ascribed to the assets, business or property (or interest) that are the subject of the transaction.

## 4. Seed Share Resale Restrictions

### 4.1 General SSRRs Application

- (a) The Seed Share Resale Restrictions (“**SSRRs**”) are hold periods imposed by the Exchange on certain securities held by Persons who are not Principals of the Issuer on completion of a Transaction.
- (b) The SSRRs do not replace any hold periods that are imposed by Securities Laws. The SSRRs are imposed in addition to, and run concurrently with, statutory hold periods imposed under Securities Laws. As a result, securities may still be subject to a statutory hold period although they have been released pursuant to the SSRRs.

- (c) The SSRRs do not apply to securities that are subject to escrow pursuant to NP 46-201 or Exchange escrow requirements.
- (d) In the case of an Application for Listing from an Issuer that has been listed on another exchange for at least one year immediately preceding the date of the filing of the Application for Listing on the Exchange, the SSRRs do not apply to previously issued securities of the Issuer that are outstanding immediately prior to the date of listing on the Exchange.
- (e) Notwithstanding section 4.2:
  - (i) Where an Issuer will have a market capitalization of at least \$100 million immediately after the completion of the Transaction, the Issuer may request an exemption from the SSRRs in its Application for Listing. (In calculating market capitalization, multiply the number of Listed Shares of the Issuer which are outstanding on completion of the Transaction by the Transaction Price); and
  - (ii) The SSRRs do not apply to SSRR Securities held by a Person who is not a Principal of the Issuer on completion of the Transaction and holds SSRR Securities carrying less than 1% of the voting rights attached to the outstanding securities of the Issuer immediately after the completion of the Transaction (a “**Below 1% Holder**”). (In calculating this percentage, include SSRR Securities that may be issued to that Person under outstanding convertible securities in both the Person’s SSRR Securities and the total securities outstanding.) However, the Exchange reserves the right to impose SSRRs on all Below 1% Holders if the aggregate holdings of SSRR Securities of all Below 1% Holders exceeds 5% of the number of Listed Shares of the Issuer outstanding immediately after the completion of the Transaction.
- (f) The SSRRs may not be avoided by:
  - (i) qualifying the resale of the Seed Shares under a Prospectus; or
  - (ii) Companies applying for listing using a Listing Application without a public offering.
- (g) The issue price of the Seed Shares relative to the Transaction Price, and the date of their issuance relative to the date of the Exchange’s conditional acceptance letter for the Transaction, determine whether the SSRRs apply.
- (h) For issuances of securities to Non-Arm’s Length Parties (including whether they were Non-Arm’s Length Parties before or after the securities issuance) for consideration other than cash, the Exchange may require satisfactory evidence to support the deemed issue price. In the absence of such evidence, the Exchange may deem such securities to have been issued for nominal consideration.

- (i) Where securities have been transferred, the Exchange will use the original issue date and original issue price in applying the SSRRs unless it is provided with satisfactory evidence to support the use of the transfer date and price.
- (j) The price or deemed price of securities issued by the Target Company undertaking a share exchange with an Issuer will be adjusted as appropriate to reflect any share exchange ratio and/or any other changes being made to the capital structure (including a security consolidation or a security split) in connection with or prior to the completion of the Transaction.
- (k) Although the SSRRs do not generally apply to Listed Shares issued by a Listed Issuer prior to a Non-IPO Transaction, the Exchange reserves the right to require additional hold periods on such shares in situations where those shares were issued at a date close to the announcement of the Non-IPO Transaction and at a price which represents a substantial discount to the Transaction Price.

## 4.2 Securities Subject to SSRRs

All Listed Shares of the Issuer, and all securities convertible or exercisable into Listed Shares of the Issuer, and all other securities of the Issuer, held by Persons who are not Principals of the Issuer on the completion of the Transaction, are subject to SSRRs if they satisfy any of the following criteria:

- (a) they were issued, or issued in exchange for a security that was originally issued, at a price or deemed price per security, or are convertible or exercisable at a price per security, that is less than the lesser of:
    - (i) \$0.05; and
    - (ii) 50% of the Transaction Price;(the “**Minimum Price**”); or
  - (b) they were issued, or issued in exchange for a security that was originally issued, within 12 months immediately preceding the date of the Exchange’s conditional acceptance letter for the Transaction at a price or deemed price per security (or are convertible or exercisable at a price per security) that is less than 25% of the Transaction Price; or
  - (c) they were issued, or issued in exchange for a security that was originally issued, within 3 months immediately preceding the date of the Exchange’s conditional acceptance letter for the Transaction at a price or deemed price per security (or are convertible or exercisable at a price per security) that is less than 50% of the Transaction Price;
- (collectively, the “**SSRR Securities**”).

### 4.3 SSRRs Release Schedule

All SSRR Securities are subject to a one year hold period, with 20% of such SSRR Securities released every three months, with the first release on the Bulletin Date.

Accordingly, SSRR Securities are released from the SSRRs as illustrated in the table below.

Price	Held <3 months*	Held <12 months*	Held ≥12 months*
< Minimum Price	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date
≥Minimum Price and <25% of the Transaction Price	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	No hold
≥Minimum Price and ≥25% of the Transaction Price and <50% of the Transaction Price	1 year hold, with 20% released every 3 months with the first release on the Bulletin Date	No hold if held more than 3 months	No hold

\* In calculating how long Shareholders have already held the securities, count backwards from the date of the Exchange's conditional acceptance letter for the Transaction.

### 4.4 Legending/Pooling

- (a) The Issuer must apply and enforce the SSRRs either by:
- (i) legending each certificate representing securities that are subject to SSRRs with the statement, "Subject to securities legislation, the holder of the securities shall not trade the securities before [specify date]", and instructing its transfer agent not to remove the legend until the specified date has passed, except in accordance with the SSRRs; or
  - (ii) requiring each holder of securities that are subject to SSRRs to enter into a pooling agreement with the Issuer's transfer agent whereby the transfer agent will hold the certificates representing such securities until the SSRRs have expired;

and must provide written confirmation to the Exchange that it has complied with this section 4.4(a).

- (b) If the statutory hold period applies, the securities must also be legended accordingly to ensure they are not released prior to that date, notwithstanding that the SSRs may impose a shorter hold period.

## **5. AMENDMENTS AND TRANSFERS OF SECURITIES SUBJECT TO ESCROW**

### **5.1 General Requirements**

- (a) For escrow agreements required under NP 46-201, Issuers must apply to the relevant Securities Commission which originally required the escrow agreement for any specific request to amend the terms of the escrow agreement, transfer securities within escrow or release securities from escrow. For escrow agreements required by another exchange or other entity, Issuers must apply to the Exchange and to the relevant exchange or entity which originally required the escrow agreement for any specific request to amend the terms of the escrow agreement, transfer securities within escrow or release securities from escrow.
- (b) Transfers of securities escrowed pursuant to Exchange Requirements require the prior written consent of the Exchange. Except as specifically provided in this Policy and in the applicable Escrow Agreement, Existing Escrow Agreement or CPC Escrow Agreement, Principals' Securities may only be transferred to new or existing Principals of the Issuer in accordance with the terms of the applicable Escrow Agreement, Existing Escrow Agreement or CPC Escrow Agreement and subject to any legal or other restriction on transfer and with the approval of the Issuer's board of directors. Where the Issuer is a CPC, additional requirements may apply.

### **5.2 Amendments to Escrow Agreements**

For Escrow Agreements, Existing Escrow Agreements and CPC Escrow Agreements required by the Exchange, Issuers may apply to the Exchange for its consent to amend the terms of any Escrow Agreement, Existing Escrow Agreement or CPC Escrow Agreement by submitting to the Exchange:

- (a) a letter requesting such consent, including a summary of the proposed amendments and a detailed analysis of the effect of the proposed amendments;
- (b) a draft of the amending agreement, with a blacklined version showing the amendments proposed to be made, if applicable;
- (c) draft Information Circular or form of written consent to be signed by Shareholders proposed to be used to obtain the required disinterested Shareholder approval;
- (d) analysis that demonstrates that the proposed amendments comply with all other terms and conditions of the agreement that are applicable to its amendment;

- (e) draft news release disclosing the proposed amendments; and
- (f) the applicable filing fee as prescribed by Policy 1.3 – *Schedule of Fees*.

### **5.3 Transfers within Escrow**

For Escrow Agreements, Existing Escrow Agreements and CPC Escrow Agreements required by the Exchange, Issuers may apply to the Exchange for its consent to a transfer of securities within escrow by submitting to the Exchange:

- (a) a letter requesting such consent:
  - (i) identifying the registered and beneficial owner of the escrowed securities (including name and address), and the proposed registered and beneficial owner of the escrowed securities after giving effect to the transfer, and the rationale for the transfer;
  - (ii) confirming that the transferee is a Principal of the Issuer or such other transferee permitted under this Policy and under the applicable Escrow Agreement, Existing Escrow Agreement or CPC Escrow Agreement;
  - (iii) confirming that, including securities of the Issuer held by Associates and Affiliates of the transferee, no new Insider or Control Person of the Issuer will be created as a result of the proposed escrow transfer; and
  - (iv) including a brief description of the transaction pursuant to which the escrowed securities were originally required to be deposited into escrow;
- (b) a copy of the transfer agreement, including the transfer price;
- (c) Form 5E signed by the transferee consenting to be bound by the terms of the applicable Escrow Agreement, Existing Escrow Agreement or CPC Escrow Agreement;
- (d) a certified copy of the resolution of the board of directors of the Issuer approving the transfer;
- (e) analysis that demonstrates that the proposed transfer complies with all other terms and conditions of the agreement that are applicable to it,
- (f) a letter from the escrow agent confirming the escrow securities currently held in escrow under the applicable Escrow Agreement, Existing Escrow Agreement or CPC Escrow Agreement, including the names of the registered owners and the number of securities held by each;
- (g) if the Issuer is a CPC, any additional requirements imposed by the Exchange pursuant to Policy 2.4 – *Capital Pool Companies* which must be satisfied before the transfer may occur; and

- (h) the applicable filing fee as prescribed by Policy 1.3 – *Schedule of Fees*.

The Issuer must also issue a news release where required by Policy 3.3 – *Timely Disclosure*.

## **5.4 Early Release from Escrow**

In exceptional circumstances, for Escrow Agreements, Existing Escrow Agreements and CPC Escrow Agreements required by the Exchange, Issuers may apply to the Exchange for its consent to the early release of securities from escrow in such circumstances and on terms and on conditions as the Exchange in its sole discretion deems appropriate by submitting to the Exchange:

- (a) a letter requesting such consent, including the details of and rationale for the requested early release; and
- (b) the applicable filing fee as prescribed by Policy 1.3 – *Schedule of Fees*.

## **6. SPIN-OFF TRANSACTIONS AND OTHER DIRECT LISTINGS**

### **6.1 Spin-off Transactions**

A transaction (a “**Spin-off**”) may involve the transfer of the assets or business of one entity (“**Parentco**”) to another entity (“**Spinco**”) in consideration for a distribution of securities of Spinco to the securityholders of Parentco, or may involve the distribution of securities of a subsidiary of Parentco (also referred to as “**Spinco**”) to the existing securityholders of Parentco, or any analogous transaction. Spinco may also concurrently or subsequently undertake a financing, reverse takeover or other significant acquisition. When Spinco applies for listing on the Exchange:

- (a) the capital structure of Spinco must be acceptable to the Exchange, which may be demonstrated in any one of the manners set out in section 2.1; and
- (b) Spinco must satisfy the Initial Listing Requirements, and in that regard, if the adjusted Net Tangible Asset value of the assets or business transferred from Parentco to Spinco is less than \$0.05 per security issued by Spinco as consideration, such securities will be considered gifts as described in Guidance Note N.2 of Policy 2.1 – *Initial Listing Requirements* and:
  - (i) will not be included in determining whether the public distribution requirements in Policy 2.1 – *Initial Listing Requirements* are demonstrated; and
  - (ii) will be subject to the SSRRs.

### **6.2 Other Direct Listings**

The Exchange may also apply the provisions of section 6.1 in other Applications for Listing where appropriate.



## 7. ACQUISITIONS AND DISPOSITIONS – EVIDENCE OF VALUE

### 7.1 Evidence of Value

Where an Issuer is required under Policy 5.3 – *Acquisitions and Dispositions of Non-Cash Assets* or otherwise to provide support for the value ascribed to the assets, business or property (or interest) being acquired or disposed of, any one of the methods set out in section 2.1(b), 2.1(c), 2.1(d) or 2.1(e) may be used, provided that any reference in those sections to 50% must be read as 100%. Alternatively, such support may be demonstrated by way of a contemporaneous equity financing(s), which for the purposes of this section includes financings involving the issuance of securities that are converted into Listed Shares of the Issuer on or before the closing of the transaction (the “**Asset Financing**”) where:

- (a) the Asset Financing is announced contemporaneously with or after the dissemination of a news release announcing the acquisition or disposition;
- (b) a majority of the securities are issued to subscribers not Non-Arm’s Length Parties of the Issuer; and
- (c) either:
  - (i) the number of Listed Shares of the Issuer to be issued pursuant to the Asset Financing is not less than 10% of the number of issued and outstanding Listed Shares of the Issuer upon completion of the transaction and the Asset Financing, including in the denominator:
    - (A) all Listed Shares of the Issuer that are issuable in connection with the transaction on, prior to or within 12 months after completion of that transaction; and
    - (B) all other securities of the Issuer as may be required by the Exchange to be included, such as non-voting, subordinate voting, multiple voting and restricted voting securities, and certain securities that are convertible into Listed Shares for no additional consideration; or
  - (ii) the gross proceeds of the Asset Financing are not less than \$5,000,000.

### 7.2 Discretionary Waivers

Where an Issuer is required under Policy 5.3 – *Acquisitions and Dispositions of Non-Cash Assets* to provide support for the value ascribed to the assets, business or property (or interest) being acquired or disposed of because the transaction involves one or more Non-Arm’s Length Parties, the Issuer may apply to the Exchange for a waiver of the requirement for such support, and in exercising its discretion to grant such a waiver, the Exchange will consider, among other things, the following:

- (a) rationale provided to support the Exchange's exercise of its discretion, such as information relied upon by the Issuer in approving the transaction;
- (b) MI 61-101 does not apply to the transaction, or alternatively, if applicable, there is an exemption from the formal valuation requirement set out in MI 61-101;
- (c) where the transaction involves two Companies:
  - (i) they are not controlled by the same Person or group of Persons; and
  - (ii) not more than one individual is a director or officer of both Companies;
- (d) at the time the transaction is announced, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction exceeds 10% of the Issuer's market capitalization;
- (e) the securities to be issued as consideration will be subject to escrow or other resale restrictions;
- (f) the transaction is subject to the approval of the disinterested Shareholders of the Issuer; and
- (g) the news release announcing the transaction includes all of the disclosure required by Policy 5.3 – *Acquisitions and Dispositions of Non-Cash Assets* and also includes:
  - (i) the name of each of the Non-Arm's Length Parties of the Issuer and each of the Non-Arm's Length Parties of any other party to the transaction, and the relationship and the direct or indirect beneficial interest of each of such Non-Arm's Length Parties; and
  - (ii) whether or not the transaction will be subject to disinterested Shareholder approval.

## 8. TRANSITION

### 8.1 Escrow

An Issuer may apply to the Exchange to amend any Existing Escrow Agreement to which it is a party to:

- (a) reduce the length of the term of any escrow provision to a term that is not less than such as would have been permitted by this Policy had it been in effect at the time the Existing Escrow Agreement was entered into, and amend the escrow release schedule accordingly, which may result in the early release of some or all of the escrow securities still held subject to such Existing Escrow Agreement; and/or
- (b) remove the requirement to cancel escrow securities where the relevant asset, property, business or interest therein in consideration of which the escrow securities

were issued is lost or abandoned or the operations or development of such asset, property or business is discontinued, and remove the related requirement for a certificate from the Issuer prior to any escrow release date;

provided that it **first**:

- (c) issues a news release at the time the board of directors decides to implement the amendments and in any case, not less than 10 business days prior to the effective date of such amendments that discloses its intention to so amend the Existing Escrow Agreement and includes:
  - (i) summaries of the substantive amendments being made as described in (a) and/or (b) above;
  - (ii) the number of escrow securities affected;
  - (iii) the existing and revised escrow release dates and numbers, including the number of escrow securities to be released immediately upon receipt of Exchange acceptance; and
  - (iv) that the amendments are subject to disinterested Shareholder approval;
- (d) obtains the prior acceptance of the Exchange following the Issuer's submission of an application to the Exchange (filed not less than 10 business days prior to the printing deadline for the Information Circular, if applicable) that includes:
  - (i) a summary of the proposed amendments and a detailed analysis of the effect of the proposed amendments to the Existing Escrow Agreement on the release dates for all of the escrow securities that are still subject to the Existing Escrow Agreement;
  - (ii) a draft of the amending agreement, with a blacklined version showing the amendments proposed to be made to the Existing Escrow Agreement, if applicable;
  - (iii) draft Information Circular or form of written consent to be signed by Shareholders proposed to be used to obtain the required disinterested Shareholder approval;
  - (iv) analysis that demonstrates that the proposed amendments comply with all other terms and conditions of the Existing Escrow Agreement that are applicable to its amendment;
  - (v) a letter from the escrow agent confirming the escrow securities currently held in escrow under the applicable Escrow Agreement or Existing Escrow Agreement, including the names of the registered owners and the number of securities held by each; and

- (vi) the fee as prescribed by Policy 1.3 – *Schedule of Fees*; and
- (e) obtains disinterested Shareholder approval of the proposed amendments at a meeting of Shareholders or by the written consent of Shareholders holding more than 50% of the issued Listed Shares of the Issuer, provided that the votes attached to the Listed Shares of the Issuer held by Shareholders who own securities that are subject to the Existing Escrow Agreement and their Associates and Affiliates are excluded from the calculation of any such approval or written consent, and provides the Exchange with evidence of its receipt of the requisite Shareholder approval.

Any escrow securities that were previously cancelled are not permitted to be re-issued.

## 8.2 SSRRs

Without obtaining Shareholder approval, an Issuer may apply to the Exchange to:

- (a) reduce the length of the term of any existing Seed Share resale restrictions that are still in effect pursuant to Part 10 of the Former Policy 5.4 (the “**Former SSRRs**”) to a term that is not less than such as would have been permitted by this Policy had it been in effect at the time the securities were made subject to the Former SSRRs, which may result in the early release of some or all of the securities still held subject to such Former SSRRs;

provided that it **first**:

- (b) issues a news release at the time the board of directors decides to implement the amendments and in any case, not less than 10 business days prior to the effective date of such amendments that discloses its intention to do so and includes:
  - (i) the number of securities affected; and
  - (ii) the existing and revised release dates and numbers, including the number of securities to be released immediately upon receipt of Exchange acceptance;
- (c) obtains the prior acceptance of the Exchange following the Issuer’s submission of an application to the Exchange that includes:
  - (i) a detailed analysis of the effect of the proposed amendments to the Former SSRRs on the release dates for all of the securities that are still subject to the Former SSRRs;
  - (ii) if applicable, a draft of the amending agreement, with a blacklined version showing the amendments proposed to be made to the existing agreement that sets out the Former SSRRs;
  - (iii) a description of the process to be used to implement the amendments;

- (iv) analysis that demonstrates that the proposed amendments and process comply with all other terms and conditions of any existing agreement applicable to its amendment; and
  - (v) the fee as prescribed by Policy 1.3 – *Schedule of Fees*.
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