

NOTICE
Applications under section 20
The Securities Act

Community Based Development Offerings

Introduction

The Manitoba Securities Commission (the "Commission") is responsible for administering *The Securities Act*. In general, persons trading in securities are required to be registered with the Commission. In addition, trades of securities cannot be offered to the public in Manitoba without a prospectus or other offering document authorized by the Act and regulations to the Act.

The Commission also has the authority to exempt or modify the requirements of the Act where it would not be prejudicial to the public interest to do so.

The Commission periodically receives applications for orders under section 20 *The Securities Act* exempting an issuer of securities from the registration and prospectus requirements of the Act in cases where a local community group proposes to sell securities to finance a project designed to benefit that community.

The amount of money required to be raised by the sale of securities and the limited number of persons required to invest in the project does not generally justify the costs associated with the preparation of a full prospectus. Also, the size and nature of the project and the types of investors may not allow the use of private placement exemptions and limited offering exemptions contained in the Act.

The Commission has developed the following guidelines for community groups to consider when deciding whether to proceed with an application to the Commission under section 20 of the Act to exempt the sale of securities to finance a community based development project from the registration and prospectus requirements of the Act¹.

¹ For further information as to the procedure to be followed in making an application to the Commission refer to the notice issued by the Commission on August 4, 1982.

Guidelines to be applied by the Commission when application is made for an exemption from the prospectus and registration requirements of the Act to facilitate a community based development offering:

1. The purpose of the offering of securities must be to raise capital to develop a project which is expected to provide investment, jobs and economic development to an identifiable community. In particular, projects which result in new construction and infrastructure in a community qualify for consideration under these guidelines. Projects which provide intangible benefits, or which finance businesses that are highly mobile will not be considered under these guidelines;

2. Unless a compelling argument for an increased amount can be made, the maximum dollar amount that can be raised from the public under these guidelines is three million dollars. Applicants are expected to demonstrate that a substantial portion of the monies raised in the offering will be spent in the community;

3. The dollar amount to be raised in the offering must be reasonable given the type of project proposed and the size of the community in which the offering of securities is to be made;

4. The names of all persons to be authorized to sell securities of the issuer under the order must be provided to the Commission as part of the application. These persons will be limited to the following:

- a. officers and directors of the issuer, and
- b. other individuals who can demonstrate to the Commission they have a substantial connection to the community and the project to be financed;

No sales commissions will be permitted, although reasonable expenses may be paid by the issuer to individuals authorized to sell securities under the order if this payment is disclosed in the offering document;

5. The issuer, as well as directors and officers of the issuer must have a substantial tie to the community in which the offering is to be conducted. A substantial tie to a community will include all or a portion of the following:

- a. ownership of property in the community affected;
- b. ownership and/or employment in a business operating in the community;
- c. residence in the community and the length of time of that residence;
- d. community and/or volunteer work in the community.

Although no specific time requirement is set out to establish a substantial tie to a community, the Commission will examine each application on a case by case basis to ensure the issuer and its principals are known to the community and intend to remain part of the community after the offering is completed;

6. The issuer of securities will be required to use a prospectus document unless the issuer demonstrates there would be no prejudice to the public if an offering memorandum (Form 26 of the regulations to the Act) is used. Staff of the Commission will review the offering document prior to the commencement of the offering to ensure minimal standards of disclosure are satisfied. The review by staff of the Commission is not an approval process and the issuer will continue to comply with the Act by producing an offering document that contains full, true and plain disclosure;

7. Sales of securities under the offering will be limited to an area of no greater than 150 kilometres surrounding the proposed project (the "trading area") to ensure the offering is made to the community that will benefit from the project. Sales will be limited to individuals within the trading area or a corporation a majority of the equity shares of which are owned by individuals

within the trading area. The Commission will entertain applications to modify this requirement if it can be shown there would be no prejudice to the public if this requirement is modified;

8. A purchaser of securities will be required to sign a written declaration which states:

- a. the purchaser resides in the selling area of the offering;
- b. the securities purchased;
- c. the purchaser has received the offering document and the order issued by the Commission;
- d. they are aware the securities purchased cannot be sold for 12 months (unless prior approval of director of the Commission is granted);
- e. confirm they are aware that the effect of the order issued by the Commission is to deny purchasers statutory rights of action contained in the Act; and
- f. confirm they are aware there is no published market for the securities if they choose to sell.

9. All securities purchased will be subject to a 12 month hold period prohibiting resale. The director of the Commission will have the authority to allow a trade of a security during the hold period if written justification satisfactory to the director is provided;

10. The order issued will allow limited advertising within the community affected advising of informational meetings for potential investors. Advertisements of a promotional nature will not be permitted. All advertising must be filed with the Commission a minimum of five (5) business days prior to use. Written notice advising where the advertisements are to be published must also be provided to the Commission at the time the advertisements are filed. No documentation outside of the offering document and permitted advertisements will be allowed;

11. All monies raised in the offering will be paid to a trustee and held until the offering is completed. The trustee must be acceptable to the Commission and independent of the issuer of the securities. It is not sufficient to segregate monies raised without independent control over those monies;

12. The offering will be limited to 180 days from the later of the date an order is issued by the Commission pursuant to section 20 of the Act, or the date the offering document has been finalized; and

13. The issuer will be required to file with the Commission within fourteen days of the completion of the offering:

- a. a report providing details of trades made under the offering, and
- b. original declarations signed by each purchaser.

Conclusion

It is expected that the implementation of these guidelines will avoid situations where applicants provide incomplete information to the Commission. However, the Commission will continue to

examine each application on a case by case basis and applicants are encouraged to provide as much information as possible about the community based development project and persons involved in the project to assist the Commission in its consideration of the application.

Staff will not consider or process any application if incomplete information is provided.

Dated: August 27, 1997