

REVISED POLICY 4.4: INCENTIVE STOCK OPTIONS



SECURITIES LEGAL ALERT

FEBRUARY, 2003

THE TSX VENTURE EXCHANGE HAS REVISED ITS POLICY 4.4: INCENTIVE STOCK OPTIONS.

Listed companies that do not have a Stock Option Plan or have a plan that does not comply with the new policy are required to adopt a new plan and obtain shareholder approval at their next meeting of shareholders.

Some of the more important provisions of the new policy are described below.

MAXIMUM NUMBER OF OPTIONS

Option plans must specify a maximum number of shares which may be issued under options. The maximum may be either a “rolling” percentage of issued shares, to a maximum of 10% at the time the option is granted, or a fixed number of shares to a maximum of 20% of issued shares at the time the plan is approved.

Certain maximums also apply to individual grants. In general, during any 12 month period options may not be granted to any one individual to purchase more than 5% of the issued shares. Other maximums apply to consultants and to consultants performing investor relations activities.

REQUIREMENT FOR VESTING PROVISIONS

Option plans specifying either a “rolling” maximum or a fixed number maximum which is 10% or less of issued shares at the time the plan is approved need not contain vesting provisions. Option plans which specify a fixed number maximum in excess of 10% at the time the plan is approved must contain vesting provisions unless the issuer is a Tier 1 Issuer and options are granted at market price. The vesting period must be “reasonably structured and equitable in relation to the size and duration of the plan” and vesting periods of less than 18 months or vesting schedules where a majority of options vest early in the vesting period are normally not acceptable.

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ELIGIBILITY FOR OPTION GRANTS

Directors, senior officers, employees, consultants and certain management company employees are eligible for option grants. Consultants must satisfy a number of criteria, including the requirement that services be provided under a written contract.

OPTION EXERCISE PRICE, TERM AND TERMINATION

Minimum option exercise prices continue to be based on prescribed discounts from market price. The maximum option term remains at 5 years for Tier 2 Issuers and 10 years for Tier 1 Issuers. Options must terminate one year after death or 90 days after the optionee ceases to be eligible for option grants for any other reason (30 days for investor relations consultants).

HOLD PERIOD

Shares acquired on exercise of options granted by Tier 2 Issuers (or Tier 1 Issuers where the exercise price is less than the market price at the time of grant) will be subject to a 4 month Exchange hold period, in addition to any hold period prescribed by securities laws.

SHAREHOLDER APPROVAL

Option plans specifying a “rolling” maximum currently require approval at each annual meeting, although we expect an amendment to the policy which will reduce this requirement to approval prior to the first issuance of options under the plan. Option plans specifying a fixed number maximum require shareholder approval only once. Disinterested shareholder approval is required in certain cases.

FURTHER INFORMATION

Further information relative to these changes can be obtained from any of the lawyers in our Securities Practice Group.

THE FINE PRINT

This legal alert is intended to provide general information concerning developments in the law and is not intended to provide legal advice in respect of any particular situation.