

**COMPANION POLICY 45-102CP
TO MULTILATERAL INSTRUMENT 45-102
*RESALE OF SECURITIES***

1.1 Application

- (1) Multilateral Instrument 45-102 ("MI 45-102") has been implemented in all jurisdictions except Québec.
- (2) Except for sections 2.1, 2.8 and 2.9, Part 2 of MI 45-102 does not apply in Manitoba, New Brunswick and the Yukon Territory.

1.2 Purpose

- (1) MI 45-102 provides that first trades of securities distributed under certain exemptions from the prospectus requirement are distributions unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were distributed under any of the provisions listed in Appendix D to MI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.5 of MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period and that a four month restricted period has elapsed from the date of the initial distribution. If the securities were distributed under any of the provisions listed in Appendix E to MI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.6 of MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period. MI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Appendices D and E to MI 45-102 have been updated to list exemptions available in multilateral instruments in effect on March 30, 2004, such as the exemptions in Multilateral Instrument 45-103 *Capital Raising Exemptions* and Multilateral Instrument 45-105 *Employees, Senior Officers, Directors and Consultants*. For all instruments, including new instruments that come into effect after March 30, 2004, you should look to the instrument itself to see if it specifies that the securities acquired are subject to section 2.5 or 2.6 of MI 45-102 as well as to Appendix D and E to MI 45-102.
- (3) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period under a prospectus or an exemption from the prospectus requirement. This includes the further exemption found in section 2.14. For example, if a person or company obtains a discretionary exemption order or ruling that imposes any of the resale restrictions contained in

section 2.5, 2.6 or 2.8 on a security that is the subject of the order or ruling, the person or company may rely on section 2.14 to resell the security.

1.3 Transition

- (1) When former MI 45-102 came into force on November 30, 2001, that instrument imposed harmonized resale restrictions on the first trade of securities made on or after that date, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to November 30, 2001. These securities were subject to prescribed restricted periods and seasoning periods of either four or twelve months under sections 2.5, 2.6 and 2.8 of former MI 45-102, depending on whether the issuer of the securities was a qualifying issuer. Under new MI 45-102, the securities of all reporting issuers are now subject to four month restricted and seasoning periods under section 2.5 and 2.8 or four month seasoning periods under section 2.6 of MI 45-102. This means that any existing restricted period or seasoning period imposed under Part 2 of former MI 45-102 that exceeds four months will be reduced to four months under MI 45-102.
- (2) Securities that were subject to a 12 month restricted period under subsection 2.5(3) or 2.8(3) of former MI 45-102 will now be subject to a four month restricted period under subsection 2.5(2) or 2.8(2) of MI 45-102. Item 3. of subsection 2.5(2) of MI 45-102 requires that the certificate or the ownership statement evidencing a security that is the subject of the first trade carry either a legend or a legend restriction notation disclosing the resale restrictions. This legend requirement applies only to securities distributed on or after MI 45-102 comes into effect on March 30, 2004.

Issuers may replace those certificates that are legended in accordance with former MI 45-102 with a certificate (or an acceptable electronic alternative) carrying the legend (or legend restriction notation) specified in item 3. of subsection 2.5(2) of MI 45-102.

This will effectively reduce to four months any existing restricted period or seasoning period imposed under Part 2 of former MI 45-102 that exceeds four months. As was the case under former MI 45-102, certificates representing securities distributed prior to November 30, 2001 do not have to be legended.

- (3) The transition provision in subsection 2.8(5) of MI 45-102 permits a person or company that filed a Form 45-102F3 or renewal Form 45-102F3 under former MI 45-102 before March 30, 2004, to continue to rely on that form for up to 30 days after the form was filed without triggering the requirement under subsection 2.8(3) to file a new Form 45-102F1. Under former MI 45-102, a Form 45-102F3 was effective for an initial period of 60 days and could be renewed every 28 days by filing a renewal Form 45-102F3. After March 30, 2004, a person or company that wishes to resell securities from a control block must file a new Form 45-102F1. This means that a person or company that filed a Form 45-102F3 or a renewal Form 45-102F3 that had not expired under former MI 45-102 as of March 30, 2004, can continue to rely on that form for up to 30 days after the notice was filed.

- 1.4 Open System Jurisdictions** - Sections 2.5 and 2.6 of MI 45-102 do not apply in Manitoba, New Brunswick and the Yukon Territory as those jurisdictions do not impose restrictions on first trades in securities distributed under an exemption from the prospectus requirement in those jurisdictions unless the trade is a control distribution.
- 1.5 Example of Application of Section 2.5** - If an issuer distributes securities to a purchaser in British Columbia, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of British Columbia. If the issuer relies upon a British Columbia prospectus exemption listed in Appendix D to MI 45-102, section 2.3 of MI 45-102 applies and the first trade of the securities is subject to section 2.5 of MI 45-102. Section 2.5 provides that the first trade is a distribution unless, among other conditions, a four month restricted period has elapsed. If the British Columbia purchaser seeks to resell the securities into Ontario, a prospectus must be filed in Ontario or a prospectus exemption relied upon unless the conditions in subsection 2.5(2) of MI 45-102 are satisfied.
- 1.6 Reporting Issuer Status** - Reporting issuer status in any jurisdiction will satisfy the reporting issuer requirements in subsections 2.5(2), 2.6(3) and 2.8(2) of MI 45-102. See section 1.11 for guidance if an issuer becomes a reporting issuer by filing a prospectus after the distribution date.
- 1.7 Legending of Securities** - Item 3. of subsection 2.5(2) of MI 45-102 imposes a legend requirement for securities distributed under any of the provisions listed in Appendix D to MI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of MI 45-102. Investors may receive either a paper certificate representing their security or an electronic alternative such as an ownership statement under a direct registration system. If a paper certificate is issued, the certificate must carry the legend specified in item 3.. Similarly, an ownership statement must carry a restricted legend notation that notifies the security holder of the applicable resale restrictions. Issuers may add additional wording to that found in item 3. of subsection 2.5(2) of MI 45-102. If you supplement the specified text of the legend on the certificate or the restricted legend notation on the ownership statement, that additional wording cannot alter the meaning of the specified wording. You should also look to section 1.10 for further guidance on the legending of convertible and underlying securities.
- 1.8 Calculation of Restricted and Seasoning Periods**
- (1) The restricted period in item 2 of subsection 2.5(2) of MI 45-102 is calculated from the distribution date, that is, the date the securities were distributed in reliance on an exemption from the prospectus requirement by the issuer or a control person. For example, if an issuer or control person distributes securities under a private placement exemption to a purchaser in Saskatchewan and the private placee resells the securities during the restricted period to a purchaser in Alberta under a further private placement exemption, upon resale by the Alberta purchaser, that purchaser will determine whether the restricted period has expired by calculating the time period from the date the issuer or control person distributed the securities to the Saskatchewan purchaser.

- (2) For the purposes of subsection 2.9(1) of MI 45-102, the reference to “amalgamation, merger, continuation or arrangement” includes demergers and other statutory procedures and, in Saskatchewan, reorganizations.

- 1.9 No Unusual Effort** - Persons interested in the meaning of the concept of “no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade ” found in subsections 2.5(2), 2.6(3) and 2.8(2) of MI 45-102 should look to the case law, in particular the order of the Ontario Securities Commission dated April 24, 1985 in the matter of Daon Development Corporation and Daon Corporation as well as to the definition of unusual effort in section 4 of the Alberta Securities Commission Rules.
- 1.10 Underlying Securities** - The restricted period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security. If the applicable restricted period or seasoning period expired prior to the conversion or exchange, subsection 2.5(3) provides that an issuer is not required to place a legend on the certificate representing the underlying securities or a legend restriction notation on the ownership statement.
- 1.11 Becoming a Reporting Issuer By Filing a Prospectus After the Distribution Date** - If an issuer is not a reporting issuer at the distribution date but subsequently becomes a reporting issuer after the distribution date by filing and obtaining a receipt for a prospectus in one of the jurisdictions listed in Appendix B, section 2.7 of MI 45-102 provides that the seasoning requirement in sections 2.5, 2.6 and 2.8 of MI 45-102 will no longer apply. This means that the securities issued prior to the prospectus being filed may then be resold, provided that the restricted period under section 2.5 or 2.8 of MI 45-102 has expired.
- 1.12 Realization of Pledged Securities** - The prospectus exemption in section 2.8 of MI 45-102 is available for realizations of pledged securities under either a power of sale or by way of foreclosure. This means that a pledgee, mortgagee or other encumbrancer can rely on the exemption in section 2.8 of MI 45-102 to immediately effect a resale of pledged securities under a power of sale or to foreclose and take the securities on its own books for subsequent resale.
- 1.13 Securities Exchange Take-over Bid or Issuer Bid** - Section 2.11 of MI 45-102 provides relief from the seasoning requirement for a trade of securities issued in connection with a securities exchange take-over bid or securities exchange issuer bid if a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror under securities legislation of the local jurisdiction. A bid circular may be filed for either a formal bid or an exempt bid. The basis for this exemption is that a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus-level disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. If a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular must meet the disclosure standards in securities legislation relating to the form and content of a take-

over bid circular or issuer bid circular, as the case may be, for a formal bid for the exemption in section 2.11 to be available.

1.14 Exemptions for Certain Trades in the Local Jurisdiction - The exemption in section 2.10 of MI 45-102 is subject to a condition that the issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of MI 45-102 are subject to a condition that the offeror was a reporting issuer in the local jurisdiction on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid and, in the case of the exemption in section 2.12, an additional condition that issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. Issuers cannot rely on a prospectus filed in another jurisdiction nor can an offeror rely on a take-over bid circular or issuer bid circular filed in another jurisdiction to satisfy these conditions

1.15 Resales of Securities of a Non-Reporting Issuer

- (1) For the purposes of section 2.14 of MI 45-102, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly owned by residents of Canada and the number of owners directly or indirectly that are residents of Canada, an issuer should use reasonable efforts to
 - (a) determine securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada;
 - (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
 - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.
- (2) Lists of beneficial owners of securities maintained by intermediaries under SEC Rule 14a-13 under the *1934 Act* or other securities law analogous to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* may be useful in determining the percentages referred to in subsection (1).

1.16 Filing of Form 45-102F1 - Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in section 2.8 are met. Selling security holders are required to give advance notice of intention to resell their securities under subsection 2.8(3) of MI 45-102 by filing Form 45-102F1. The advance notice expires 30 days after the Form 45-102F1 is filed. A new Form 45-102F1 must be filed in accordance with subsection 2.8(3) if the selling security holder wishes to continue to resell securities from a control block. Form 45-102F1 should be filed on SEDAR under

the issuer's profile under "*Continuous Disclosure – Resale of Securities* (MI 45-102) - Form 45-102F1 in the jurisdiction of the issuer's principal regulator under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and AIFs*. Consult National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) and the current CSA SEDAR Filer Manual (including code updates) for further information about filing documents electronically. See subsection 1.3(3) for transition details for Forms 45-102F3 and renewal Forms 45-102F3 filed under former MI 45-102 for which the initial 60 day period or 28 day renewal period had not expired before March 30, 2004.