

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

PART 1 APPLICATION

1.1 Application - Multilateral Instrument 45-102 ("MI 45-102") has been implemented in all jurisdictions except Quebec.

1.2 Purpose

- (1) MI 45-102 provides that a trade of securities initially distributed under an exemption from the prospectus requirement is a distribution unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were initially distributed under a private placement or other exemption listed in Appendix D to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a specified period and that a specified period of time has elapsed from the date of the initial distribution. If the securities were initially distributed under an exemption listed in Appendix E to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a specified period. If the issuer is a qualifying issuer, MI 45-102 reduces the hold periods and seasoning periods. 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) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the hold period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

1.3 Distribution

- (1) An issuer, or the seller in the case of a control distribution, distributing securities may be subject to a requirement to file a prospectus in a jurisdiction because either the securities are distributed to purchasers in the jurisdiction or, as a result of the factors connecting the issuer to the jurisdiction, the offering constitutes a distribution in the jurisdiction even though there are no offerees or purchasers in the jurisdiction. The connecting factors that may result in an issue or sale of securities to purchasers outside of a jurisdiction being subject to the securities legislation of the

jurisdiction are set out in section 2.2 of Companion Policy 72-101CP Distributions Outside of the Local Jurisdiction.

- (2) The definition of "distribution" in securities legislation in effect in most jurisdictions includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution. A secondary market trade of securities into a jurisdiction may be a distribution if the securities have not been qualified by a prospectus in that jurisdiction by virtue of the definition of distribution even if the securities are freely tradeable in another jurisdiction in which they were distributed under a prospectus or a prospectus exemption.

1.4 Open System Jurisdictions

- (1) Sections 2.5 and 2.6 of MI 45-102, which provide that a trade of securities initially distributed under an exemption from the prospectus requirement is a distribution unless certain conditions are satisfied, and section 2.11 of MI 45-102, which provides an exemption from the prospectus requirement, do not apply to trades in the provinces of Manitoba, New Brunswick and Prince Edward Island and in the Yukon Territory as those jurisdictions do not impose resale restrictions on trades in securities distributed under an exemption from the prospectus requirement.
- (2) For example, if an issuer with its executive office in British Columbia distributes securities to a purchaser in Manitoba, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of Manitoba and British Columbia. If the issuer relies upon the British Columbia \$97,000 exemption, section 74(2)(4) of the *Securities Act* (British Columbia), subject to securities legislation, section 2.5 of MI 45-102 imposes a four or 12 month hold period on resale of the securities into each jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory. Alternatively, the issuer may rely in British Columbia upon an exemption from the prospectus requirement under section 2.4 of Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction ("MI 72-101") for a distribution of securities to a purchaser in Manitoba, in which case section 2.6 of MI 72-101 would impose a four or 12 month restricted period on

resales into each jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

- 1.5 Qualifying Issuer** - In order to be a qualifying issuer, among other conditions, an issuer must be a reporting issuer or a reporting issuer equivalent in one of the jurisdictions listed in Appendix B to MI 45-102. The reporting issuer jurisdictions are Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan. The reporting issuer equivalent jurisdiction is Manitoba.
- 1.6 Tacking of Hold Period and Restricted Period** - A purchaser of securities that were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102 and consequently are subject to a hold period under section 2.5 of MI 45-102 may resell those securities during the hold period outside the local jurisdiction under section 2.4 of MI 72-101. Section 2.6 of MI 72-101 imposes a restricted period on the resale of the securities that commences on the later of the date the issuer became a reporting issuer or a reporting issuer equivalent and the distribution date. The distribution date is the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution. The restricted period begins on the date the securities were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102. In effect, MI 45-102 and MI 72-101 permit a "tacking" of the hold period under MI 45-102 and the restricted period under MI 72-101.
- 1.7 Underlying Securities** - The hold 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.
- 1.8 Pledges by Control Persons** - In addition to the provisions of MI 45-102, in particular section 2.8, the provisions of National Instrument 62-101 Control Block Distribution Issues may also apply to a trade of securities upon the exercise of a pledge or other security interest in securities acquired in a control distribution.
- 1.9 Resales of Securities of a Non-Reporting Issuer**
- (1) For the purposes of section 2.11 of MI 45-102, in determining the percentage of the outstanding securities of the class or series that are

directly or indirectly held of record by residents of Canada and the number of holders of record directly or indirectly in Canada

- (a) include 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 pursuant to 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).

1.10

Filing of Form 45-102F1, Form 45-102F2 and Form 45-102F3

- (1) Paragraph 2.6(1)2. of MI 45-102 provides that the first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer is a distribution unless the conditions in subsections (2) or (3) are satisfied. The conditions include that the issuer has filed Form 45-102F1. In order for the seasoning period to expire and the securities to be freely tradeable in each jurisdiction in which Section 2.6 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan, Form 45-102F1 must be filed in each of those jurisdictions.
- (2) Section 2.7 of MI 45-102 provides that the issuer, or the seller in the case of a control distribution, shall file Form 45-102F2 within ten days of the distribution date of a trade referred to in subsection 2.5(2) and of a trade referred to in subsection 2.6(2) of MI 45-102. Form 45-102F2 must be filed in each jurisdiction in which 2.7 of MI 45-

102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.

- (3) Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in subsection (2) or (3) of section 2.8 are met. Subsection 2.9(4) provides that the seller of the securities must file Form 45-102F3 with each securities regulatory authority, other than the Commission des valeurs mobilières du Québec, and the exchange in Canada on which the securities that are the subject of the trade are listed.

PART 2 AIF REQUIREMENTS

- 2.1 Filing of AIF** - Issuers that want to allow their securityholders to take advantage of a provision of MI 45-102 that requires an issuer to have a current AIF can file an AIF at any time. An issuer filing an AIF for the purposes of MI 45-102 should file the AIF or notice under "Continuous Disclosure - MI 45-102" selecting the appropriate filing subtype/document type (i.e. either an AIF, amended AIF or notice). A filer that elects to use an alternative form of AIF that has previously been filed on SEDAR is not required to refile the document for the purposes of MI 45-102.
- 2.2 Form of AIF** - Issuers do not need to be qualified to file a short form prospectus under NI 44-101 in order to file an AIF under MI 45-102, even though the AIF filed under MI 45-102 is to be prepared in accordance with the requirements of Form 44-101FI.
- 2.3 Current AIF** - Paragraph (b) of the definition of "current AIF" provides that an AIF filed under section 3.1 of MI 45-102 is a current AIF if filed within the time periods for an AIF to be a current AIF under NI 44-101. This paragraph only refers to time periods.
- 2.4 Most Recent Financial Year** - The reference in section 2.3 of this Companion Policy to the time periods required for a current AIF under NI 44-101 includes the provisions of the definition of "current AIF" dealing with AIFs filed during the period of 140 days after the issuer's most recently completed financial year. Accordingly issuers wishing to file an alternative form of annual information form permitted by section 3.2 of MI 45-102 before they have filed their audited financial statements for the most recently

completed financial year may include the audited financial statements for the financial year preceding the most recently completed financial year. For example, an issuer with a December 31 financial year end could continue to use an alternative form of AIF containing or incorporating by reference audited annual financial statements for the year ended December 31, 1999 during the first 140 days of 2001, until such time as annual audited financial statements for the year ended December 31, 2000 have been prepared and filed in accordance with securities legislation.

- 2.5 Loss of Eligibility** - If an issuer does not file an AIF within the time periods specified under NI 44-101, the issuer will no longer have a current AIF until it again files an AIF. If the issuer does not have a current AIF, securityholders of the issuer that acquire securities of the issuer will not be able to utilize the provisions of MI 45-102 that require that the issuer have a current AIF. However, securities that were distributed while the issuer had a current AIF and otherwise met the conditions in subsections 2.5(2) or 2.6(2) of MI 45-102 may be sold in accordance with those provisions.
- 2.6 Review of AIF** - An issuer's AIF is subject to review in each jurisdiction, and, as a result of this review, changes may need to be made to the AIF. If an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, any of a wide range of compliance action may be taken by the securities regulatory authorities, from requiring the next AIF to be filed correctly, or a clarifying press release to be issued, to more serious actions such as issuing a cease trade order against the issuer's securities, or initiating appropriate enforcement proceedings against the issuer or its directors and officers.
- 2.7 Review before Distribution** - If the AIF is reviewed before a distribution of securities and an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, an issuer will not be a qualifying issuer until the issuer has made the necessary changes to the AIF. Securityholders that acquire securities under the distribution will not be able to take advantage of subsections 2.5(2), 2.6(2) and 2.8(2) of MI 45-102.
- 2.8 Review after Distribution** - If the AIF is reviewed after a distribution of securities, and an issuer is advised by any regulator that its AIF does not comply with the applicable instrument, securities that were distributed while the issuer was a qualifying issuer may be sold in accordance with subsections 2.5(2), 2.6(2) and 2.8(2) of MI 45-102 if the other conditions in those subsections are met.

PART 3 FEES

3.1 **Fees** - An issuer filing an AIF under section 3.1 of MI 45-102 must pay the filing fees required by securities legislation, unless the AIF is in the form of a prospectus for which the regulator has issued a receipt, as permitted under subsection 3.2(1) of MI 45-102.