

**NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 45-102,  
COMPANION POLICY 45-102CP, AND FORMS 45-102F1, 45-102F2 and 45-102F3**

**RESALE OF SECURITIES**

This Notice is accompanied by proposed Multilateral Instrument 45-102 Resale of Securities (the "Instrument"), Forms 45-102F1, 45-102F2 and 45-102F3 (collectively, the "Forms"), and Companion Policy 45-102CP (the "Policy"), all of which are being published for comment.

**Substance and Purpose of the Instrument, Forms and Policy**

*Introduction*

The Instrument, Forms and Policy are initiatives of certain members of the Canadian Securities Administrators (the "CSA"). The Instrument and Forms are expected to be adopted as a rule in each of British Columbia, Alberta, Ontario, Manitoba and Nova Scotia, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Newfoundland, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. It is expected that the Policy will be implemented as a policy in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Yukon Territory, the Northwest Territories, and Nunavut (the "adopting jurisdictions"). The Instrument, Forms and Policy will not be adopted in Quebec.

The purpose of the Instrument is to harmonize certain provincial and territorial resale restrictions imposed on subsequent trades of securities initially acquired under an exemption from the prospectus requirement. The Instrument also takes a harmonized approach to distributions from a control block and to trades in securities of a non-reporting issuer over a foreign exchange or market.

The approach taken in the Instrument is based on the System for Shorter Hold Periods for Issuers Filing an AIF (the "SHAIF System") adopted in each of British Columbia and Alberta in 1998. The SHAIF System provides for a reduced hold period for first trades of securities previously acquired under a prospectus exemption where the issuer has a current Annual Information Form ("AIF") and has satisfied certain other conditions. The general principle underlying both the SHAIF System and the Instrument is that where a reporting issuer provides the market with current information, securities distributed pursuant to an exemption from the prospectus requirement may be traded in the secondary market after a reduced hold period.

**Summary of the Instrument**

The Instrument has five parts.

Part 1 contains the definitions of terms and phrases used in the Instrument that are not defined in or interpreted under a national definition instrument in force in an adopting jurisdiction. National Instrument 14-101 Definitions sets out definitions for commonly used terms and should be read together with the Instrument.

Part 2 addresses subsequent trades in securities:

- initially distributed under an exemption from the prospectus requirement and which must be resold pursuant to a prospectus, pursuant to a further exemption from the prospectus requirement or after the seller has held the securities for a specified period of time (a "private placement exemption");
- initially distributed under an exemption from the prospectus requirement and which must be resold pursuant to a prospectus, pursuant to a further exemption from the prospectus requirement or upon the issuer having been a reporting issuer for a specified period of time (a "seasoning exemption");
- from the holdings of any person or company or combination thereof holding a sufficient number of voting securities of that issuer to affect materially the control of the issuer (a "control distribution"); and
- of a non-reporting issuer over a foreign exchange or market.

Section 2.1 provides that the sections of Part 2 dealing with resale restrictions applicable to securities: (i) acquired pursuant to a private placement exemption or a seasoning exemption, (ii) acquired by an underwriter acting as purchaser, or (iii) of non-reporting issuers (if the subsequent trade is over a foreign exchange or market), do not apply in Manitoba, New Brunswick, Prince Edward Island or the Yukon Territory. Section 2.8, which deals with resale restrictions in connection with control distributions, applies in all of the adopting jurisdictions.

Section 2.2 removes the provisions currently set out in the securities legislation of British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia which impose resale restrictions on subsequent trades of securities initially acquired under an exemption from the prospectus requirement. Securities initially acquired under a private placement exemption are subject to section 2.5, and those acquired under a seasoning exemption are subject to section 2.6.

Subsection 2.5(2) provides a four-month hold period for securities acquired under a private placement exemption where the issuer is a qualifying issuer at the time of the initial distribution. A qualifying issuer is any issuer that is a reporting issuer (or equivalent) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec or Nova Scotia, is an electronic filer under SEDAR, has filed a current AIF, and either has a class of equity securities listed or quoted on certain specified exchanges or markets, or outstanding securities that have received an approved rating.

Subsection 2.5(3) provides for a 12-month hold period for securities acquired under a private placement exemption where the issuer is not a qualifying issuer.

Subsection 2.6(2) provides that the prospectus requirement does not apply to subsequent trades in securities acquired under a seasoning exemption, including the first trade in previously issued securities of an issuer that has ceased to be a private company or private issuer, where the initial

distribution was made by a qualifying issuer that has been a reporting issuer or the equivalent in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec or Nova Scotia for at least four months.

Subsection 2.6(3) provides for a 12-month seasoning period for securities of an issuer that is not a qualifying issuer.

Section 2.7 mandates the filing of a certificate stating that the issuer was a qualifying issuer at the time of the initial exempt trade referred to in subsections 2.5(2) and 2.6(2).

Subsection 2.8(2) provides an exemption from the prospectus requirement for control distributions as long as the seller, or the creditor, if the distribution is for the purposes of liquidating a debt made in good faith, has held the securities for at least four months and the issuer is a qualifying issuer which has been a reporting issuer or the equivalent in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec or Nova Scotia for at least four months.

Subsection 2.8(3) provides for a six or a 12-month hold period for securities of an issuer that is not a qualifying issuer and the securities are sold from a control block.

Section 2.11 provides relief from the prospectus requirement for a subsequent trade in securities initially acquired under a private placement exemption or seasoning exemption from an issuer that is not a reporting issuer in any Canadian jurisdiction. This relief is limited to situations where: (i) at the time of acquisition of the security, no more than 10 percent of the securities (by number of securities and number of holders) were held of record directly or indirectly by residents of Canada, and (ii) the first trade is executed through the facilities of an exchange or market outside Canada.

As further clarified in the Policy, the number of securities and of holders held of record directly or indirectly should, to the extent reasonably possible, include beneficial holders.

Part 3 sets out the AIF requirements under the Instrument. It should be noted that a prospectus can qualify as an AIF for the purposes of the Instrument.

Part 4 provides for exemptions from the Instrument.

## **Summary of Forms**

**Form 45-102F1** - *Report Made Under Section 2.6 of Multilateral Instrument 45-102 Resale of Securities with respect to a Person or Company that has Ceased to be a Private Company or Private Issuer*

Form 45-102F1 provides notice to the market that a person or company has ceased to be a private issuer or private company.

**Form 45-102F2** - *Certificate Under Subsection 2.7 of Multilateral Instrument 45-102 Resale Of Securities*

Form 45-102F2 is a certificate stating that an issuer was a qualifying issuer at the time of the initial exempt trade.

**Form 45-102F3 - *Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities***

Form 45-102F3 provides notice to the market of an intention to sell securities from a control block.

**Summary of the Policy**

The purpose of the Policy is to provide information relating to the manner in which the provisions of Instrument are intended to be interpreted or applied by the securities regulatory authorities of the adopting jurisdictions.

Section 1.1 states that the Instrument has been implemented in all jurisdictions except Quebec. Subsection 1.2(2) clarifies that the Instrument does not restrict the ability of a purchaser to resell securities during a hold period or seasoning period in reliance upon a prospectus or a further exemption from the prospectus requirement.

Section 1.3 reminds market participants that an issuer, or the seller in the case of a control distribution, may be subject to the prospectus requirement in a local jurisdiction even where there are no offerees or purchasers in the jurisdiction as a result of factors connecting the issuer to that jurisdiction. The connecting factors are set out in Companion Policy 72-101CP Distributions Outside of the Local Jurisdiction. This section also reminds market participants that a secondary market trade of securities may be a distribution in a jurisdiction if the initial distribution of the securities was not qualified by a prospectus in that jurisdiction. This may occur even if the securities are freely tradeable in the jurisdiction in which they were originally distributed.

Section 1.4 clarifies that because Manitoba, New Brunswick, and Prince Edward Island and the Yukon Territory ("the open system jurisdictions") do not impose resale restrictions on trades in securities distributed under a prospectus exemption, sections 2.5, 2.6 and 2.11 of the Instrument do not apply to trades in the open system jurisdictions. The section provides an illustrative example of the hold period applicable to securities which are traded into an open system jurisdiction from a jurisdiction other than an open system jurisdiction. The section explains that a four or 12-month period would be imposed on the resale of securities whether an issuer distributes securities pursuant to an exemption from the prospectus requirement referred to in the Instrument or pursuant to an exemption under Multilateral Instrument 72-101 Distributions outside of the Local Jurisdiction ("MI 72-101"). Finally, section 1.6 explains that the Instrument and MI 72-101 permit a "tacking" of the hold period under the Instrument and MI 72-101.

Section 1.9 clarifies that, for the purposes of section 2.11 of the Instrument, (i) the securities held of record by brokers, dealers, banks, trust companies or nominees for the accounts of their customers, and (ii) the securities beneficially owned by Canadian residents as reported on reports of beneficial

ownership, are to be included in determining the number and holders of securities that are directly or indirectly held of record in Canada.

Part 2 clarifies the AIF requirements under the Instrument, including when AIFs may be filed, AIF form requirements, and review procedures.

Part 3 clarifies the application of fee requirements.

### **Authority for the Instrument - Ontario**

In those adopting jurisdictions in which the Instrument and Forms are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Instrument and Forms.

In Ontario, the following provisions of the Securities Act (Ontario) (the "Act") provide the Ontario Securities Commission (the "Ontario Commission") with authority to adopt the Instrument.

Paragraph 143(1)20 authorizes the Ontario Commission to make rules providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements.

Paragraph 143(1)22 authorizes the Ontario Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of an annual information form.

Paragraph 143(1)48 authorizes the Ontario Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Paragraph 143(1)54 authorizes the Ontario Commission to make rules respecting exemptions from or varying the requirements of subsections 72(4), (5), (6) and (7) of the Act.

### **Alternatives Considered**

The adopting jurisdictions considered maintaining the current system regulating resale restrictions for certain trades in securities. However, in light of the problems encountered by stakeholders in dealing with the differing requirements across Canada, they have determined it was advisable to develop a more harmonized approach to restrictions on resale. The adopting jurisdictions also note that the SHAIF System was well received by market participants and that it has successfully implemented shortened hold periods for securities previously acquired under a prospectus exemption in British Columbia and Alberta.

## **Related Instruments**

The Instrument, Forms, and Policy are related to each other.

The CSA, other than the Commission des valeurs mobilières du Québec, will be simultaneously publishing for comment Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction ("MI 72-101"). MI 72-101 regulates the requirements governing the sale of securities outside of the local jurisdiction by providing exemptions from the registration and prospectus requirements and imposing certain resale restrictions.

## **Unpublished Materials**

In proposing the Instrument and Policy, the adopting jurisdictions have not relied on any significant unpublished study, report, decision or other written materials.

## **Anticipated Costs and Benefits**

The principal benefit of the Instrument and Forms will be to more effectively harmonize the approach of securities regulatory authorities in the adopting jurisdictions and provide for more regulatory certainty. In addition, because the hold periods commence once an issuer becomes a reporting issuer in one of the specified jurisdictions, most security holders will be subject to the same restrictions on resale, regardless of the reporting issuer status in the local jurisdiction.

The costs associated with the Instrument and Forms are the costs associated with filing AIFs and continuous disclosure materials in a jurisdiction. Issuers may also incur greater costs in the preparation of current AIFs.

In the view of the adopting jurisdictions, the benefits outweigh the costs.

## **Regulations to be Revoked or Amended**

It is intended that the Instrument will replace the resale provisions of the various jurisdictions listed in Appendix C of the Instrument. The method of implementing this will vary in accordance with the requirements of the local jurisdiction.

## **Specific Request for Comment**

In addition to welcoming submissions on any provision in the Instrument, Forms, and Policy, the adopting jurisdictions seek comment on the specific matters referred to below.

## **Requirement that a Legended Certificate Representing the Securities Distributed Under Section 2.5 be Provided to Investors**

Part 2 of the Instrument provides that in order to reduce the hold period, if securities are distributed in reliance on a private placement exemption, the certificate representing the securities must carry a legend stating that, subject to securities legislation, the holder of the securities shall not trade the securities before the expiry of the appropriate hold period. In many jurisdictions, there is currently no requirement to legend certificates. Under the SHAIIF System, certificates must bear a legend stating that the securities may not be traded during the hold period.

The adopting jurisdictions believe that, while the legending requirement may represent a change in current commercial practice in some jurisdictions, it will ensure better regulation of the exempt market.

### **Provision for a Four-Month Hold Period for Investment Grade Securities**

The Instrument provides for a four-month hold period for investment grade securities (i.e., debt, asset-backed securities, preferred shares) acquired under exemptions from the prospectus requirement. This goes beyond the SHAIIF System and moves away from the "legal for life" criteria of some jurisdictions.

### **Comments**

Interested parties are invited to make written submissions with respect to the Instrument, Forms and Policy. Submissions received by December 8, 2000 will be considered.

Submissions should be sent to the securities regulatory authorities listed below in care of the Saskatchewan Securities Commission, in duplicate, as indicated below:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Securities Commission  
The Manitoba Securities Commission  
Nova Scotia Securities Commission  
Ontario Securities Commission

c/o Dean Murrison, Committee Chair  
Saskatchewan Securities Commission  
800, 1920 Broad Street  
Regina, Saskatchewan S4P 3V7  
Telephone: 306-787-5879  
E-mail:dmurrison@ssc.gov.sk.ca

A diskette containing the submission (in DOS or Windows format, preferably WordPerfect) should also be submitted to the Chair of the Committee.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated amongst the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation in certain jurisdictions may require the securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the Chair and/or any of the following members of the Committee:

Margaret Sheehy or Brenda Leong  
British Columbia Securities Commission  
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**Instrument and Policy**

The text of the Instrument and Policy follow, together with footnotes that are not part of the Instrument or Policy, but have been included to provide background and explanation.

**Dated:** September 8, 2000