THE MANITOBA SECURITIES COMMISSION
NOTICE 2001-10

MULTILATERAL INSTRUMENT 45-102
FORMS 45-102F1, 45-102F2 AND 45-102F3
AND COMPANION POLICY 45-102CP

RESALE OF SECURITIES

A. IMPLEMENTATION OF INSTRUMENT

The Manitoba Securities Commission (the "Commission") has, under section 149.1 of *The Securities Act*, R.S.M. 1988 c. S50, as amended (the "Act"), made Multilateral Instrument 45-102 Resale of Securities (the "Multilateral Instrument") as a rule under the Act, and has adopted Companion Policy 45-102CP (the "Companion Policy") as a policy under the Act. The Multilateral Instrument contains Forms 45-102F1, 45-102F2 and 45-102F3 (collectively, the "Forms"). The Multilateral Instrument, the Forms and the Companion Policy are collectively referred to as the "Instrument".

The Instrument is an initiative of certain members of the Canadian Securities Administrators (the "CSA"). The Multilateral Instrument has been, or is expected to be, adopted as a rule in each of British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and Newfoundland, as a commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. The Companion Policy has been, or is expected to 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 Multilateral Instrument, Forms and Companion Policy will not be adopted in Quebec.

The Multilateral Instrument will come into force, pursuant to section 5.1 therein, on June 29, 2001. The Companion Policy will be adopted on the date that the Multilateral Instrument comes into force.

B. PURPOSE AND SUBSTANCE OF MULTILATERAL INSTRUMENT, FORMS AND COMPANION POLICY

1. Introduction

On September 8, 2000, certain members of the CSA published for comment the following proposed instruments (collectively, the “proposed Documents”):

Multilateral Instrument 45-102 Resale of Securities (the “proposed Rule”)

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 (the “proposed Form 45-102F1”)

Form 45-102F2 Certificate Under Subsection 2.7 of Multilateral Instrument 45-102 Resale of Securities (the "proposed Form 45-102F2")

Form 45-102F3 Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities (the "proposed Form 45-102F3")

(The proposed Form 45-102F1, proposed Form 45-102F2 and proposed Form 45-102F3 are collectively referred to in this Notice as the "proposed Forms")

Companion Policy 45-102CP (the "proposed Policy")

The proposed Documents were published at (2000) 23 OSCB 6238. The accompanying notice (the "2000 Notice") summarized the proposed Documents, generally requested comment and specifically requested comment on the following two issues:

(i) the requirement that a legended certificate representing the securities distributed under section 2.5 be provided to investors; and
(ii) the provision for a four-month hold period for investment grade securities.

The CSA received submissions on the proposed Documents from nine commentators. The commentators are generally supportive of the proposed Documents and of the CSA's initiative to harmonize and clarify the resale rules. Some commentators state that the proposed Documents will indeed provide harmonization and regulatory certainty of the resale rules in the jurisdictions which will be beneficial for maintaining the global competitiveness of the adopting jurisdictions as centres for raising capital.

The list of commentators is contained in Appendix A of this Notice and a summary of their comments, together with the CSA response to the comments, are contained in Appendix B of this Notice. As a result of the CSA's consideration of the comments received on the proposed Documents and as a result of further deliberations of the CSA, the Commission is publishing the Instrument in final form.

2. Purpose and Substance of the Instrument

The purpose and substance 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.

In Manitoba the Instrument will permit Manitoba issuers to rely upon this instrument when making distributions of securities in closed system jurisdictions. Manitoba issuers will be allowed to rely upon their local reporting history when calculating the length of hold periods for first trades in other jurisdictions. The Instrument also establishes a prospectus exemption for certain sales from a control block by a shareholder or a creditor selling pledged securities.

The Instrument also provides for the filing of an Annual Information Form in by issuers not otherwise eligible to rely on National Instrument 44-101 *Short Form Prospectus Distributions* for the purposes of becoming a qualifying issuer under the Instrument.

The Instrument does not impose hold periods or first trade restrictions on Manitoba security holders except in connection with the new prospectus exemption for control block distributions. With the exception of Parts 2.1, 2.10 and 2.11, Part 2 of the Multilateral Instrument does not apply in Manitoba.

For additional information concerning the background of the proposed Documents, reference should be made to the 2000 Notice that accompanied the publication of the proposed Rule, proposed Forms and proposed Policy.

C. SUMMARY OF CHANGES FROM THE PROPOSED DOCUMENTS

This section describes changes made in the Instrument from the proposed Rule, Forms and Policy published for comment in September 2000, except that changes of a minor nature, or those made only for purposes of clarification or drafting reasons, are generally not discussed. The changes made are not material changes. The majority of the changes were made by the CSA in response to comments received; others were made as a result of further deliberations by the CSA.

1. Changes in the Proposed Rule

Section 1.1 Definitions

The definition of “approved rating” has been changed to delete the references to CBRS Inc., Duff & Phelps Credit Rating Co., Thomson Bankwatch, Inc. and their respective ratings due to the recent mergers or consolidations of operations of those rating organizations.

The definition of "current AIF" has been clarified to identify the five types of documents that qualify as a "current AIF" for the purpose of the Instrument.

The definition of "NPS 2-B" and item (e) of the definition of "qualifying issuer" have been amended to clarify that "NPS 2-B" means the form of that policy in place on the effective date of the Multilateral Instrument.

Item (d) of the definition of "qualifying issuer" has been amended to require only that the issuer "has not been notified by the qualified market that it does not meet the requirements to maintain" the listing or quotation standards. This amendment has been made as a result of two comments received and the CSA's further deliberations. The amendment deletes the requirement in the proposed Rule that an issuer must meet the listing or quotation maintenance standards in order to be a qualifying issuer.

Section 2.5 Hold Period

The wording “subject to securities legislation” in the legend required to be carried on securities certificates has been amended to “unless permitted under securities legislation”. This amendment

has been made in response to a comment that the wording “subject to securities legislation” is vague and that similar language to the legend required by the Canadian Venture Exchange Inc. ("CDNX") should be used.

Section 2.6 Seasoning Period

Item 2.6(4)6. has been clarified so that Form 45-102F1 is only required to be filed in each jurisdiction in which an issuer has ceased to be a private company or a private issuer. This clarification has been made in response to a comment received.

Subsection 2.6(5) is new to the Multilateral Instrument. It provides for a four-month seasoning period from the date of the trade for securities issued to employees of an issuer or its affiliates pursuant to the exercise of employee stock options, so long as the issuer is a qualifying issuer at the date of the trade. The effect of the amendment is that securities issued to employees of an issuer will be subject to the same seasoning period requirements regardless whether the employees acquired the securities before or after the issuer's initial public offering ("IPO"). The CSA recognize that many issuers, especially in the high tech industry, issue securities to their employees or employees of their affiliates under prospectus exemptions prior to the IPO of the issuers. The CSA believe that an issuer's employees who acquired its securities prior to its IPO should not be subject to longer seasoning periods than those employees who acquired the issuer’s securities after its IPO. The addition of subsection 2.6(5) will encourage issuers to continue to use employee stock options, stock purchase plans and other similar employee incentives in the issuers’ business development strategies prior to their IPOs.

Items 2.5(2)7., 2.5(3)7., 2.6(3)5., 2.6(4)5., 2.6(5)5., 2.10(2)5. and 2.10(3)4. Insider or Officer of Issuer

Items 2.5(2)7., 2.5(3)7., 2.6(3)5., 2.6(4)5., 2.6(5)5., 2.10(2)5. and 2.10(3)4. have been amended to provide a less onerous resale condition on sellers who are insiders or officers of the issuer. In the proposed Rule, such a seller must have “reasonable grounds to believe that the issuer is not in default of securities legislation”. The wording in the proposed Rule would require the seller to have evidence to believe there has been no default. The CSA have decided that a less onerous standard would be sufficient. Accordingly, items 2.5(2)7., 2.5(3)7., 2.6(3)5., 2.6(4)5., 2.6(5)5., 2.10(2)5. and 2.10(3)4. have been amended to require that a seller who is an insider or officer of the issuer to have “no reasonable grounds to believe that the issuer is in default of securities legislation.”

Section 2.7 Hold Period and Seasoning Period Exception

Section 2.7 is new and has been added to clarify that after the first trade of securities that satisfies the hold period and other conditions in subsection 2.5(2) or 2.5(3), the securities will be freely tradeable unless the trade is a control distribution. Similarly, after the first trade of securities that satisfies the seasoning period and other conditions in subsection 2.6(3), 2.6(4) or 2.6(5), the securities will be freely tradeable unless the trade is a control distribution.

Section 2.9 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid

Section 2.9 is new to the Multilateral Instrument and harmonizes provisions previously existing in securities legislation. It provides an exemption from the resale restrictions in section 2.6 for trades of securities previously issued in a securities exchange take-over bid or securities exchange issuer bid if a take-over bid circular or an issuer bid circular was filed under securities legislation. The CSA have decided to retain the existing resale exemptions for securities distributed pursuant to take-over bid circulars and issuer bid circulars. However, in some jurisdictions, an issuer becomes a reporting issuer upon the filing of a securities exchange take-over bid circular, in one jurisdiction an issuer becomes a reporting issuer upon completion of the bid and in other jurisdictions an issuer does not become a reporting issuer upon filing a securities exchange take-over bid circular. For the purpose of harmonization, the CSA have imposed a requirement in paragraph (c) of section 2.9 that a selling security holder cannot rely on this exemption unless the offeror issuer is a reporting issuer at the date of the take up and payment for securities under the take-over bid or issuer bid.

Subsection 2.10 Exemption for a Trade by Control Person (section 2.8 in the Proposed Rule)

Paragraph 2.10(4)(a) has been amended to provide clarification that Form 45-102F3 is only required to be filed in jurisdictions in which the securities are being distributed, and, if applicable, with the exchange in Canada on which the securities that are the subject of the trade are listed. This amendment addresses the concern raised by a commentator that the wording in the proposed Rule may require the filing of the Forms in all jurisdictions including jurisdictions in which no securities were distributed.

Subsections 2.10(5), 2.10(6) and 2.10(7) provide clearer instructions on the timing of Form 45-102F3 filings and on when the filing of Form 45-102F3 is no longer required for a person or a company who has filed a Form 45-102F3 previously.

Section 2.12 Exemption for a Trade in an Underlying Security if the Right to Purchase, Convert or Exchange is Qualified by a Prospectus

Section 2.12 is new and reflects existing securities legislation in a number of jurisdictions. It has been added to provide an exemption from the resale rules for underlying securities issued or transferred under the terms of convertible securities if the convertible securities are distributed under a prospectus. This section has been added in response to two comments that the proposed Rule does not provide an exemption for underlying securities similar to the exemptions that currently exist.

Section 2.13 Exemption for a Trade in an Underlying Security if the Right to Purchase, Convert or Exchange is Qualified by a Securities Exchange Take-over Bid Circular or an Issuer Bid Circular

Section 2.13 is new and has been added to provide an exemption for a trade of underlying securities issued or transferred under the terms of convertible securities if the convertible securities are distributed under a securities exchange take-over bid circular or a securities exchange issuer bid circular. The CSA have decided to provide this exemption to retain the current resale exemptions under securities legislation for such underlying securities.

Part 3 Current AIF Filing Requirements

Part 3 Current AIF Filing Requirements has been restructured to clarify current AIF filing requirements for those issuers who have not filed an AIF under NI 44-101.

Appendix C

The securities legislation references to British Columbia and Saskatchewan have been deleted due to the fact that British Columbia and Saskatchewan will repeal these provisions as part of their consequential amendments.

The reference to subsection 72(4) of the *Securities Act* (Ontario) has been amended to reserve the application of subsection 72(4) in OSC Rule 45-503 Trades to Employees, Executives and Consultants.

Appendix D

The securities legislation reference for Nova Scotia has been amended to change "77(1)(f)(iii) as applicable" to "subclause 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia)". This amendment has been made to address the concern of one commentator that "77(1)(f)(iii) as applicable" is too vague. The CSA have decided to make similar clarification with respect to the references to the Alberta legislation~~,~~ Ontario legislation and Newfoundland legislation in Appendix D.

References to sections 74(2)(*11*)(ii), 74(2)(*12*) and 74(2)(*13*) of the *Securities Act* (British Columbia) have been added to the securities legislation references for British Columbia.

Reference to clause 81(1)(e) of *The Securities Act, 1988* (Saskatchewan) has been added to the securities legislation references for Saskatchewan.

Appendix E

The securities legislation reference for Nova Scotia has been amended to change "77(1)(f), as applicable" to "77(1)(f) of the *Securities Act* (Nova Scotia) if not included in Appendix D". Similarly, the securities legislation references for Alberta, Ontario and Newfoundland have also been changed. These amendments are related to the amendments made to Appendix D referred to above. In addition, the securities legislation references for British Columbia and Saskatchewan have also been amended to reflect the changes made to Appendix D.

Appendix F

A new Appendix F has been added to refer to the employee exemption from the prospectus requirement in each jurisdiction that imposes a seasoning period on securities acquired under the employee exemption.

2. Changes in the Proposed Forms

Forms 45-102F1 and 45-102F3

Item 5 of Form 45-102F1 has been restructured to provide clearer instructions on information required to be disclosed. In addition, the requirement to disclose "address" has been replaced by the requirement to disclose "municipality and jurisdiction of residence".

Item 6 of Form 45-102F1 is new and provides that the selling security holder must prepare and deliver to securities regulatory authorities a statement containing the required information of persons who were beneficial owners of securities of an issuer immediately before the issuer ceased to be a private company or a private issuer.

Notice - Collection and Use of Personal Information has been added to Form 45-102F1 and Form 45-102F3 to comply with the disclosure requirements for collection and use of personal information in various legislation dealing with freedom of information and protection of privacy.

Under the heading “Declaration, Certificate and Undertaking” of Form 45-102F3, the term “represents” has been changed to “declares”, reflecting the CSA’s intention that Form 45-102F3 be a declaration of the selling security holder.

3. Changes In the Proposed Policy

Section 1.2 Purpose

Section 1.2 has been amended to add a reference to the seasoning period for securities initially distributed under the employee exemptions listed in Appendix F of the Multilateral Instrument.

Section 1.6 Legending of Securities

This section is new and replaces section 1.6 in the proposed Policy. New section 1.6 provides an explanation for the legending requirement in the Multilateral Instrument and the CSA’s rationale for the legending requirement. Several commentators have raised objections to the legending requirement and the CSA consider it helpful to explain the need for the legending requirement to achieve compliance with hold period requirements.

Corresponding to the amendment to section 2.5 of the proposed Rule, section 1.6 of the Companion Policy replaces the phrase “subject to securities regulation” with “unless permitted under securities legislation”. This amendment has been made in response to a comment that the phrase “subject to securities legislation” is too vague and that similar language to the CDNX legend should be used.

Section 1.9 Securities Exchange Take-over Bid or Issuer Bid

Section 1.9 is new and clarifies that regardless of whether a take-over bid circular or issuer bid circular is prepared in connection with a formal bid or an exempt bid, the circular relied upon for purposes of section 2.9 of the Multilateral Instrument must meet the prospectus-type disclosure

standards applicable to the form and content of take-over bid circulars or issuer bid circulars, as the case may be, as if the bid was a formal bid.

Section 1.11 Filing of Form 45-102 F1, Form 45-102 F2 and Form 45-102 F3

Subsections 1.11(1), (2) and (3) of the proposed Policy have been amended to discuss where the Forms must be filed. Item 2.6(4)6. of the Multilateral Instrument has been amended so that Form 45-102F1 is only required to be filed in each jurisdiction in which the issuer has ceased to be a private company or private issuer. Subsection 1.11(2) of the Companion Policy has been amended to specify that Form 45-102F2 is only required to be filed in jurisdictions in which the securities are distributed except those jurisdictions which do not have resale restrictions. Similarly, paragraph 2.10(4)(a) of the Multilateral Instrument has been amended to provide that Form 45-102F3 is only required to be filed in jurisdictions in which the securities are distributed and with the exchange in Canada on which the securities that are the subject of the trade are listed.

The amendments to the Multilateral Instrument and to section 1.11 of the Companion Policy have been made in response to commentators' concern that the proposed Rule and the proposed Policy seem to require the Forms to be filed in those jurisdictions in which no securities were distributed. The CSA have made the amendments for clarity.

Part 2 AIF Requirements

Part 2 AIF Requirements have been restructured in response to the clarification of the definition of "current AIF" in the Multilateral Instrument.

D. TEXT OF THE MULTILATERAL INSTRUMENT, FORMS AND COMPANION POLICY

The text of the Multilateral Instrument, Forms and Companion Policy follows.

Dated: April 25, 2001

APPENDIX A
TO NOTICE

LIST OF COMMENTATORS ON
MULTILATERAL INSTRUMENT 45-102
FORMS 45-102F1, 45-102F2 AND 45-102F3
COMPANION POLICY 45-102CP

RESALE OF SECURITIES

1. Simon Romano by letter dated October 18, 2000
2. McKercher McKercher & Whitmore by letter dated October 26, 2000
3. BCE Inc. by letter dated November 14, 2000
4. The Canadian Bankers Association by letter dated December 4, 2000
5. International Northair Mines Ltd. by letter dated December 6, 2000
6. Canadian Capital Markets Association by letter dated December 8, 2000
7. The Canadian Advocacy Council of the Association for Investment Management and Research by letter dated December 8, 2000
8. Stewart McKelvey Stirling Scales by letter dated December 15, 2000*
9. Canadian Venture Exchange Inc. by letter dated January 9, 2001*

* These letters were received following the expiry of the comment period.

APPENDIX B
TO NOTICE

SUMMARY OF COMMENTS RECEIVED ON
PROPOSED MULTILATERAL INSTRUMENT 45-102,
PROPOSED FORMS 45-102F1, 45-102F2 AND 45-102F3
AND PROPOSED COMPANION POLICY 45-102CP
AND
RESPONSE OF THE CANADIAN SECURITIES ADMINISTRATORS

A. INTRODUCTION

On September 8, 2000, certain members of the CSA published the proposed Documents for comment. The CSA specifically requested comments on the following two issues:

(i) the requirement that a legended certificate representing the securities distributed be provided to investors; and

(ii) the provision for four-month hold period for investment grade securities.

The comment period for these materials expired on December 8, 2000. The CSA received nine submissions on the proposed Documents. The CSA has considered all submissions received and thanks all commentators for providing their comments. The following is a summary of the comments received, together with the CSA's responses, organized by topic.

B. COMMENTS ON ISSUES SPECIFIED BY THE CSA

1. Requirement to Legend Certificates (section 2.5 of the proposed Rule)

Comment (i): Four commentators do not support the requirement that securities certificates include a legend to state that subject to securities legislation, the holder of the securities shall not trade the securities before the expiry of the appropriate hold period. Two of these commentators note that the market is increasingly relying on the book-entry form of securities and one commentator believes that the legend would not be effective for the book-entry form securities because the lack of physical certificates.

Response: The CSA note the increasing use of book-entry form securities. However, the CSA believe that the legend requirement currently is the most practical manner of providing certainty as to the applicable hold periods and of ensuring more effective regulation of the exempt market. The CSA maintain the legend requirement in the Multilateral Instrument.

Comment (ii): Two commentators point out that the Canadian market is likely to follow the U.S. market in 2004 to move from the current practice of settling securities in 3 days after the trade ("T+3") to settling securities the day after the trade ("T+1"). These commentators believe that the transition from T+3 to T+1 would require greater automization and less reliance on physical certificates, and that the legend requirement would be counterproductive and incompatible with the

technological requirements of a T+1 system. One commentator suggests that the CSA should seek other options to make the information required in the legend available to potential purchasers without using physical certificates.

Response: The CSA note the concerns regarding the possible transition from T+3 to T+1 clearance system. However, the transition is not likely to occur until 2004. The CSA will revisit the legend issue prior to the implementation of the T+1 system.

Comment (iii): One commentator believes that the legend requirement would cause problems on resale under the rules of The Toronto Stock Exchange Inc. (the "TSE") and other stock exchanges even after the applicable hold periods have elapsed.

Response: The CSA do not believe that the legend requirement will cause problems since the legend may be removed by the transfer agent after the applicable hold periods have expired. In addition, British Columbia and the CDNX have legending requirements and have not experienced any problems relating to the resale after the expiry of the applicable hold periods.

Comment (iv): One commentator states that the language "subject to securities legislation" in the legend is vague and suggests the CSA adopt the language of the CDNX legend.

Response: The CSA have amended the legend language in the Multilateral Instrument to incorporate wording similar to the CDNX legend.

Comment (v): One commentator proposes that the legend requirement be imposed on non-qualifying issuers but not on qualifying issuers. The commentator believes that the four-month hold period for securities of qualifying issuers is too short to justify the cost and administrative burden of placing the legend.

Response: It is the CSA's view that it is necessary for clarity to impose the legend requirement on both qualifying issuers and non-qualifying issuers.

Comment (vi): One commentator states that a legend requirement is workable for share certificates, special warrants and subscription agreements.

Response: The CSA have maintained the legend requirement.

2. Four-Month Hold Periods for Investment Grade Securities

No comment was received on this issue. The CSA plan to retain the four-month hold period for investment grade securities.

C. GENERAL COMMENTS

Comment (i): The commentators are generally very supportive of the proposed Documents. Four commentators expressed their support of CSA's initiative to harmonize and clarify the restrictions on resale of securities previously issued under prospectus exemptions. One commentator states that

the harmonization would help all market participants by reducing the cost and complexity for the distribution and resale of securities in Canada. One commentator supports the proposed Documents and believes that they will greatly clarify the hold period and/or resale restrictions when securities issued in one jurisdiction under exemptions are transferred to purchasers in other jurisdictions.

Response: The CSA agree.

Comment (ii): One commentator expresses regret that Quebec is not a party to the Multilateral Instrument and states that Quebec's absence would be detrimental to Ontario issuers and investors due to the close relationship between the Ontario and Quebec capital markets. The commentator encourages the Ontario Securities Commission to seek to harmonize the resale rules with Quebec.

Response: The CSA will continue to seek to harmonize the resale rules to the extent possible.

Comment (iii): One commentator recommends that the CSA take further initiatives to harmonize rules regarding filing of documents and payment of filing fees in order to reduce the filing of duplicate documents and payment of multiple fees under different provincial legislation.

Response: The CSA acknowledge the commentator's concern and agree that harmonization would be beneficial. However, the issues regarding filing of documents and payment of fees are not within the purpose of this Instrument. These issues are currently being assessed by other project groups.

Comment (iv): One commentator believes the proposed Documents would provide issuers with an incentive to improve their continuous disclosure.

Response: The CSA agree and believe that the shorter hold period for qualifying issuers will encourage more issuers to file AIFs thereby improving disclosure of issuers in the marketplace.

D. SPECIFIC COMMENTS ON THE PROPOSED RULE

1. Definition of "Private Company"

Comment: One commentator notes that the Ontario Securities Commission has proposed to remove the private company exemption in proposed OSC Rule 45-501 Exempt Distributions which was published for comment on September 8, 2000 at (2000) 23 OSCB 6205 (the "proposed OSC Rule 45-501"). The commentator suggests that in order to avoid confusion, the term "private company" should not be used in the proposed Documents. Alternatively, the commentator recommends that the "private company" exemption be retained in the proposed OSC Rule 45-501 so that the "private company" definition can also be retained in the proposed Documents.

Response: The CSA believe that the issue whether to retain the private company exemption should be dealt with by the Ontaario Securities Commission in the implementation of the proposed OSC Rule 45-501. The CSA note that the "private company" exemption is currently still in effect in Ontario. Furthermore, the CSA recognize that subsequent to the removal of the private company

exemption in Ontario by proposed OSC Rule 45-501, the "private company" exemption or the "private issuer" exemption will remain in effect in other jurisdictions. In Ontario, existing private companies will continue to exist although no new private companies will be created. Accordingly, the CSA have decided to retain the term "private company" in the Instrument.

2. Definition of "Qualifying Issuer"

Comment (i): One commentator supports the adoption of the concept of "qualifying issuer" and believes the shorter hold period for securities of qualifying issuers would make it easier for listed companies to compete for investment funding without sacrificing investor protection.

Response: The CSA confirm that one of the CSA's objectives is to shorten the hold period for securities of qualifying issuers. The CSA also believe it is important to set eligibility standards for qualifying issuers.

Comment (ii): One commentator states that often the securities exchanges do not delist or suspend those issuers who fail to meet the listing maintenance standards. The commentator suggests that in order to be a qualifying issuer, it should be sufficient that an issuer is listed and posted on a qualified market and it should not be required that the issuer meet the listing maintenance standards.

Response: The CSA regard the exchange listing maintenance standards as measures implemented for the protection of the market and of the investors. So long as an issuer has not been notified by an exchange or market that it no longer meets the listing maintenance standards of the securities exchange the issuer will remain a qualifying issuer. This will encourage issuers to be more diligent in maintaining their listing standards, which is beneficial to the market and to the investors.

3. Definition of "Qualified Market"

Comment (i): One commentator suggests that the *Paris Bourse, now Euronext*, should be a "qualified market".

Response: The CSA have traditionally accepted documents from the markets listed in the definition.

Comment (ii): One commentator disagrees with the exclusion of Tier 3 issuers of CDNX from the definition of "qualified market". The commentator states that Tier 3 issuers are subject to the same continuous disclosure requirements as Tier 1 and Tier 2 issuers. The only difference is that Tier 3 issuers do not have active businesses. The commentator states that a longer hold period for a Tier 3 issuer is not justified provided that the Tier 3 issuer discloses its current state of affairs pursuant to applicable regulations.

Response: The CSA has not amended the definition of "qualified market" to include Tier 3 issuers as Tier 3 issuers do not have active businesses.

Comment (iii): One commentator expresses concern that an issuer may drop from one listing category to another listing category on a multi-tiered market such as the TSE.

Response: An issuer will remain eligible so long as it is listed on the TSE and has not been notified by the exchange that it does not meet the requirements to maintain that listing and is not designated inactive or suspended.

Comment (iv): One commentator asks why CDN is not included as a qualifying market particularly if junior capital pools are included.

Response: Most issuers on CDN (now Canadian Unlisted Board or CUB) have been transferred to CDNX. CUB is a trade reporting or quotation system without listing requirements. Accordingly, the CSA have decided not to include CUB as a qualified market.

4. Application to First Trades (sections 2.3, 2.4 and 2.11 of the proposed Rule, now sections 2.3, 2.4 and 2.14 of the Multilateral Instrument)

Comment: One commentator states that sections 2.3, 2.4 and 2.11 of the proposed Rule (now 2.3, 2.4 and 2.14 of the Multilateral Instrument) seem to apply to any trade, not just a first trade. The commentator believes this is excessive.

Response: Each of sections 2.3 and 2.4 of the proposed Rule refers to "a trade of securities initially distributed under an exemption from the prospectus requirement…". Section 2.11 of the proposed Rule (now section 2.14 of the Multilateral Instrument) refers to "a trade by an underwriter of securities distributed under an exemption from the prospectus requirement listed in Appendix H". Section 2.14 is intended to apply to any subsequent trade, not just the first trade. Section 2.7 Hold Period and Seasoning Period Exception has been added to the Multilateral Instrument to clarify the meaning of "a trade". Further, subsection 1.2(2) of the Companion Policy clarifies that exempt trades may be made during a hold period or seasoning period.

5. Convertible Securities (sections 2.3 and 2.5 and Appendix D of the proposed Rule)

Comment: One commentator notes that there is a contradiction between 2.3 of the proposed Rule and 2.13 [sic] of OSC Rule 45-501. Section 2.16 of OSC Rule 45-501 provides an exemption from the prospectus requirement for a trade of underlying securities acquired in accordance with the terms of convertible securities if the convertible securities were distributed under a prospectus. Section 2.3 of the proposed Rule places a hold period on these underlying securities. Another commentator recommends that the language should be clarified regarding the grant of an exemption for resale of underlying securities similar to the existing exemption in section 77(8) of the *Securities Act* (Nova Scotia).

Response: The CSA agree and have amended the proposed Rule by adding subsection 2.12 to provide an exemption from section 2.6 for underlying securities corresponding to section 2.16 of OSC Rule 45-501. The language regarding section 77(8) of the Securities Act (Nova Scotia) has been clarified.

6. Becoming a Reporting Issuer (sections 2.5, 2.6 and 2.8 of the proposed Rule, now sections 2.5, 2.6 and 2.10 of the Multilateral Instrument)

Comment: One commentator welcomes the initiative of setting the commencement for the resale hold period at the date the issuer becomes a reporting issuer in a qualifying jurisdiction. The commentator believes this will result in more certainty among issuers as to the length of the resale hold period and will reduce the need for jurisdiction shopping.

Response: The CSA agree.

7. Filing of the Forms (subsections 2.6(3) and 2.8(4) and section 2.7 of the proposed Rule, now subsections 2.6(4) and 2.10(4) and section 2.8 of the Multilateral Instrument)

Comment (i): One commentator raises the question whether the Forms must be filed in all jurisdictions or only in the jurisdictions where the purchasers reside. The commentator states that there could be a constitutional issue if filings are required in a jurisdiction where the issuer has no activity or nexus.

Response: The CSA have clarified in the Multilateral Instrument and the Companion Policy that the Forms are to be filed solely in jurisdictions in which the securities are distributed. With respect to the filing of Form 45-102F1, the Multilateral Instrument has been clarified so that filing is only required in each jurisdiction in which an issuer has ceased to be a private company or private issuer.

Comment (ii): One commentator suggests that if filing of the Forms is required in jurisdictions in which no purchasers reside, the filing fees should be waived in these jurisdictions.

Response: The commentator's concern has been addressed by the clarifications to the filing requirements of the Forms as discussed above.

8. Trade by Control Persons (section 2.8 of the proposed Rule, now section 2.10 of the Multilateral Instrument)

Comment: One commentator notes that the CSA have introduced new requirements regarding trades by pledgees in section 2.8 of the proposed Rule. The commentator further notes that National 62-101 Control Block Distribution Issues ("NI 62-101") contains provisions regarding control block trades by pledgees. The commentator asks the CSA to adopt a more consistent and logical approach regarding section 2.8 of the proposed Rule and NI 62-101, particularly relating to the following issues:

(a) The commentator notes that the requirement in subsection 2.8(1) of the proposed Rule that "if such security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution" is new and seems to change existing law.

(b) The commentator points out that NI 62-101 still refers to OSC Rule 45-501 regarding hold periods for control block trades by pledgees and recommends that NI 62-101 be amended;

(c) The commentator asks the CSA to confirm that the new requirement for pledgees in section 2.8 of the proposed Rule does not affect the pledgees' reliance on the provisions in NI 62-101;

(d) The commentator states that in NI 62-101, "seller" and "vendor" are construed as "pledgees", while in section 2.8 of the proposed Rule, "creditor" and "seller" are separate concepts. The commentator thinks that the reference to "creditor" and "seller" as different persons may cause problems in items 2.8(2)5. and 2.8(3)5. of the proposed Rule where the creditor must rely on the seller's knowledge as to whether the issuer is not in default of any requirement of securities legislation. Similarly, a creditor may have to rely on a seller's filing of Form 45-102F3 as required in subsection 2.8(5) of the proposed Rule.

Response:

(a) The CSA disagree and the wording in subsection 2.8(1) of the proposed Rule (subsection 2.10(1) of the Multilateral Instrument) has been retained as the trade may be a subsequent resale.

(b) The CSA will recommend that NI 62-101 be amended as a consequential amendment to the implementation of the Multilateral Instrument.

(c) Section 2.8 of the proposed Rule (section 2.10 of the Multilateral Instrument) will not affect a pledgee's reliance on NI 62-101.

(d) The CSA do not agree that the drafting will result in such confusion.

9. Determining the Time Periods (section 2.9 of the proposed Rule, now section 2.11 of the Multilateral Instrument)

Comment: One commentator suggests that the same language in subsection 2.9(1) of the proposed Rule (now subsection 2.11(1) of the Rule) regarding amalgamated, merged or continuing corporations should be adopted in subsection 2.9(2) of the proposed Rule so that a merger does not restart the seasoning period for trades by control persons.

Response: The CSA have not amended the proposed Rule to permit the inclusion of the period of time that the selling security holder had held the securities of one of the amalgamated, merged or continuing issuers in determining the seasoning period for securities acquired under prospectus exemptions for amalgamation, arrangement and statutory procedures because it is not currently contemplated in securities legislation of the jurisdictions implementing the Multilateral Instrument.

10. Trades by Underwriters (section 2.10 of the proposed Rule, now section 2.14 of the Multilateral Instrument)

Comment: One commentator asks the CSA to clarify the hold period for trades by underwriters referred to in section 2.10 of the proposed Rule (now section 2.14 of the Multilateral Instrument).

Response: The proposed Rule does not change the current law on trades by underwriters. A first trade of securities acquired under the exemption from the prospectus requirement set out in Appendix H is a distribution regardless how long the securities have been held.

11. Replacing Seasoning Requirements

Comment: One commentator suggests that the CSA should replace the seasoning requirements in the Rule with the CDNX proposed Exchange Seed Share Resale Restriction Rules ("SSRR"). SSRR imposes various hold periods from 0 to 3 years depending on the time the securities are held and the price of the securities relative to the price at the issuer's IPO.

Response: The CSA believe it is premature to consider the utilization of SSRR by the CSA before SSRR is finalized. The CSA will reconsider the issue after SSRR is formally adopted by CDNX.

12. Appendix D

Comment: One commentator states that the legislation reference to "clause 77(1)(f)(iii) as applicable" for Nova Scotia is too vague and asks the CSA to clarify that reference.

Response: Appendix D and Appendix E have been amended to clarify the reference to clause 77(1)(f)(iii) for Nova Scotia. Corresponding changes have been made to the Alberta and Ontario references.

E. SPECIFIC COMMENTS ON THE PROPOSED FORMS

1. Form 45-102F1

Comment: One commentator believes that it is excessive to require an issuer to certify as to beneficial ownership of its securities without a knowledge qualification.

Response: The CSA have amended the form to provide that if, after reasonable effort, it was not possible to identify the beneficial owner, the filer is required to explain why and disclose the registered owner.

2. Form 45-102F3

Comment (i): One commentator notes that paragraph 8 of the proposed Form 45-102F3 uses the term "sales" while the current Form 23 in Ontario uses the term "distribution". The commentator suggests that "distribution" is more flexible and it should replace "sales" in Form 45-102F3.

Response: The CSA agree and have amended paragraph 8 of proposed Form 45-102F3 by replacing the word "sold" with "distributed".

Comment (ii): One commentator asks the CSA to clarify the type of pre-sale activities allowed in private sales that will not be considered as "acts in furtherance of a trade".

Response: *The term "distribution" is defined in securities legislation and has been interpreted by securities commissions and by the courts. The CSA do not consider it necessary to expand upon the meaning of "distribution" in the Instrument.*

Comment (iii): One commentator states that it would be difficult for a creditor to state when the creditor decided to sell the securities as required by paragraph 11 of proposed Form 45-102F3.

Response: *The language has been deleted.*

F. SPECIFIC COMMENTS ON THE PROPOSED POLICY

1. Connecting Jurisdiction (section 1.3 of the proposed Policy)

Comment: One commentator considers the connecting jurisdiction concept in section 1.3(1) of the proposed Policy is inappropriate as it changes the current state of the law. The commentator believes the current state of the law should be maintained so that a trade is only subject to the legislation of the jurisdictions in which the purchasers reside.

Response: *The CSA believe it is more appropriate to deal with this issue in proposed MI 72-101 Distributions Outside of the Local Jurisdiction. Further, see section D7 Filing of the Forms above.*

2. Resale of Securities of a Non-Reporting Issuer (section 1.9 of the proposed Policy, now section 1.10 of the Companion Policy)

Comment (i): One commentator suggests that section 1.9 of the proposed Policy should be moved to the Multilateral Instrument.

Response: The CSA do not consider it necessary to move section 1.9 of the proposed Policy (now section 1.10 of the Companion Policy) to the Multilateral Instrument. The Companion Policy is designed to provide information relating to the manner in which the provisions of the Multilateral Instrument are intended to be interpreted or applied. Section 1.10 of the Companion Policy provides information on how certain information required in the Multilateral Instrument is to be obtained and accordingly the CSA consider it appropriate for this section to remain in the Companion Policy.

Comment (ii): One commentator believes section 1.9 of the proposed Policy (now section 1.10 of the Companion Policy) imposes an unreasonable limit on Canadian residents in reselling foreign securities over foreign markets, if such resales are deemed to be distributions in Canada.

Response: *The CSA believe the restrictions are appropriate.*

Comment (iii): One commentator states it is difficult for sellers to obtain information required by section 1.9 of the proposed Policy (now section 1.10 of the Companion Policy) to determine the percentage of securities holding in Canada, particularly if the information required is of a historical date.

<u>Response:</u> The CSA do not believe it is unduly difficult for an issuer to obtain the information referred to in section 1.10 of the Companion Policy at the time of the initial distribution.