ALBERTA SECURITIES COMMISSION
NOTICE

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

RESALE OF SECURITIES

Implementation
The Alberta Securities Commission has made Multilateral Instrument 45-102 *Resale of Securities* (the Instrument) as a rule and has adopted Companion Policy 45-102CP (the Companion Policy) as a policy to come into force on November 30, 2001. The Instrument contains Forms 45-102F1, 45-102F2 and 45-102F3 (the Forms).

The Instrument and Companion Policy are initiatives of certain members of the Canadian Securities Administrators (the CSA). The Instrument has been, or is expected to be, adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario, 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 adopting jurisdictions). The Instrument, Forms and Companion Policy will not be adopted in Québec.

The November 30, 2001 implementation will permit the British Columbia and Ontario Securities Commissions to obtain the ministerial approvals required under their rule-making procedures before the Instrument can come into effect.

Repeal or Amendment of Alberta Rule 45-501, Forms 21, 22 and 23 and Various Securities Rules
The following consequential amendments to the *Alberta Securities Commission Rules* will come into effect on the effective date of the Instrument:

- section 123.1(1)(d) of the Rules will be amended by striking the reference to Form 23 and substituting Form 45-102F3,
- sections 126, 131, 132 and 133 of the Rules will be repealed ,
- Forms 21, 22 and 23 will be repealed,
- Alberta Rule 45-501 *System for Shorter Hold Periods For Issuers Filing An AIF* will be repealed.

As a result of the repeal of sections 126, 131, 132 and 133 and Forms 21, 22 and 23 of the Rules, the notification procedures and forms necessary for the utilization of sections 109 to 112 of the Act are no longer available. Issuers and their counsel are directed to the Instrument and Forms for the new resale restrictions. The following chart provides a cross-reference of existing resale provisions and their counterparts in the Instrument:

Statutory Provision	MI 45-102 Provision
section 109	section 2.5
section 109.1	section 2.5
section 110	section 2.6
section 110.1	section 2.10
section 110.2	section 2.11
section 111 (underwriters only)	section 2.13 (underwriters only)
section 112	section 2.8
section 126(3) Rules	section 2.14

Consequential Amendments to the Securities Act

The Instrument is intended to replace the resale restrictions contained in sections 109, 109.1, 110, 110.1, 110.2, 111 (as it relates to underwriters) and 112 of the Securities Act. Sections 109 to 112 of the Act will be repealed at the earliest available opportunity.

Background

The Commission, together with certain members of the CSA, first published drafts of the Instruments for public comment on September 8, 2000 (in Alberta: (2000) 9 ASCS 3374). The CSA received submissions from nine commentators. The commentators were generally supportive of the proposed Instrument and of the CSA's initiative to harmonize and clarify the resale rules. Some commentators stated that the proposed Instrument will provide harmonization and regulatory certainty of the resale rules that will be beneficial for maintaining the global competitiveness of the adopting jurisdictions as centres for raising capital. The CSA has considered the comments received in these submissions and the final version of the Instrument and Companion Policy reflects the further deliberations of the CSA.

The Instrument was published by the British Columbia and Ontario securities commissions on April 20, 2001 and submitted for approval to the Ministers of Finance in those jurisdictions. The Instrument was subsequently withdrawn in mid-May when implementation issues arose. The Instrument has now been resubmitted to the British Columbia and Ontario Ministers of Finance for approval.

A list of commentators is contained in Appendix A to this Notice and a summary of their comments, together with the CSA response to the comments, are found in Appendix B to this Notice.

Substance and Purpose of the Instrument, Forms and Companion Policy

The Instrument harmonizes certain provincial and territorial resale restrictions imposed on first trades of securities initially distributed under an exemption from the prospectus requirement. The Instrument also harmonizes the regulation of distributions of securities from a control block and provides a prospectus exemption to permit the resale of securities of a non-reporting issuer with a minimal connection to Canada over a foreign exchange or market.

The Instrument imposes resale restrictions on

- the first trade of securities distributed under a prospectus exemption listed in Appendix D for which the issuer is reqruied to have been a reporting issuer for a specified period of time and the seller is required to have held the securities for a specified period of time (a restricted period);

- the first trade of securities distributed under a prospectus exemption listed in Appendix E for which the issuer of the securities is required to have been a reporting issuer for a specified period of time (a seasoning period); and

- trades of securities from the holdings of a control person (control distributions).

The Instrument reduces, for an issuer that is a qualifying issuer at the distribution date:

- the restricted period applicable to securities of the issuer distributed under an exemption listed in Appendix D from 12 months to four months

- the seasoning period applicable to securities of the issuer distributed under an exemption listed in Appendix E from 12 months to four months

- the restricted period applicable to control distributions from six months to four months

A qualifying issuer is defined in the Instrument as an issuer that, among other things

- 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 a qualified market and has not been notified that it does not meet the requirements to maintain that listing or quotation and is not designated inactive or suspended, or

    - has outstanding securities that have received an approved rating.

With the exception of the resale restrictions for control distributions, the resale restrictions in the Instrument do not apply in the open system jurisdictions of Manitoba, New Brunswick, Prince Edward Island or the Yukon Territory . These jurisdictions do not impose resale restrictions on securities distributed under a prospectus exemption.

Under the Instrument, a purchaser of securities acquired under a private placement exemption may resell the securities after the expiry of the applicable restricted period and/or seasoning period, if among other conditions, the issuer is either a SEDAR filer or a reporting issuer in the jurisdiction of the purchaser. If an issuer is a SEDAR filer, a purchaser in a jurisdiction in which the issuer is not a reporting issuer will be able to resell the securities of the issuer, provided that the issuer has been a reporting issuer in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec or Nova Scotia for at least twelve months and the securities being sold have been held for at least 12 months, or four months in the case of a qualifying issuer. If an issuer is not

a SEDAR filer, the issuer must be a reporting issuer in the jurisdiction of the purchaser for twelve months and the purchaser has held the securities being resold for at least 12 months. If an issuer is neither a SEDAR filer nor a reporting issuer in the jurisdiction of the purchaser, the securities of the issuer acquired by the purchaser will be subject to an indefinite hold period.

Under the Instrument, securities acquired under a seasoning exemption, may be resold, provided the issuer of the securities has been a reporting issuer in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec or Nova Scotia for at least twelve months, or four months in the case of a qualifying issuer. If an issuer is not a SEDAR filer, the issuer must be a reporting issuer in the jurisdiction of the purchaser for twelve months.

The Instrument also provides relief from the prospectus requirement for the resale of securities initially acquired under a prospectus exemption from an issuer that is not a reporting issuer in any Canadian jurisdiction at the date of the distribution and has a minimal connection to Canada, provided the securities are resold over an exchange or market outside Canada.

Summary of Changes from the Proposed Instrument

This summary outlines substantive changes made in the Instrument, Forms and Companion Policy from the proposed Instrument, Forms and Companion Policy published for comment in September, 2000. Changes of a minor nature or those made only for the purposes of clarification or for drafting reasons are not explained. The majority of changes were made by the CSA in response to comments received. Others were made as a result of further deliberations by the CSA.

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 consolidation of operations of those rating organizations.

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

The definition of "distribution date" has been amended to define the "distribution date" of an underlying security.

The definition of "NP 2-B" has been amended to clarify that "NP 2-B" means the form of that policy in place on the effective date of the Multilateral Instrument.

The definition of "private issuer" has been amended to define "private issuer" in Ontario.

Paragraph (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 Instrument that an issuer must meet the listing or quotation maintenance standards in order to be a qualifying issuer.

Section 2.3 Section 2.5 Applies
Section 2.3 has been amended to clarify that the first trade, rather than any trade, of a security distributed under a prospectus exemption listed in Appendix D is subject to section 2.5 of the Instrument.

Section 2.4 Section 2.6 Applies
Section 2.4 has been amended to clarify that the first trade, rather than any trade, of a security distributed under a prospectus exemption listed in Appendix E is subject to section 2.6 of the Instrument.

Section 2.5 Restricted Period
The title of this section has been changed from "Hold Period" to "Restricted 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 2.5 also clarifies that the certificate is only required to carry a legend if the distribution date is on or after the effective date of the Instrument.

Section 2.6 Seasoning Period
Subsection 2.6(5) is new to the Instrument. It provides for a four month seasoning period preceding the date of the trade for securities issued to employees of an issuer or its affiliate, so long as, among other conditions, the issuer became a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market. The effect of the amendment is that securities issued to employees of an issuer will be subject to the same seasoning period requirements regardless of 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 issuer. 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.

First trades of securities distributed in Ontario under OSC Rule 45-503 Trades to Employees, Executives and Consultants will continue to be governed by Rule 45-503 until consequential amendments to OSC Rule 45-503 are implemented. Once these consequential amendments are implemented, first trades of securities distributed under OSC Rule 45-503 will be governed by the Instrument.

Items 2.5(2)7., 2.5(3)7., 2.6(3)5., 2.6(4)5., 2.8(2)5. and 2.8(3)4. In Default of Securities Legislation

Items 2.5(2)7., 2.5(3)7., 2.6(3)5., 2.6(4)5., 2.8(2)5. and 2.8(3)4. have been amended to provide a less onerous resale condition on sellers. In the proposed Instrument, if the seller is an insider or officer of the issuer, the seller must have "reasonable grounds to believe that the issuer is not in default of securities legislation". The wording in the proposed Instrument 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. and 2.6(4)5. have been amended to require that a seller who is an insider or officer of the issuer, has "no reasonable grounds to believe that the issuer is in default of securities legislation". Items 2.8(2)5. and 2.8(3)4. have been amended to require that the seller has no reasonable grounds to believe that the issuer is in default of securities legislation.

Subsection 2.7(1) Filing of Form 45-102F1
Subsection 2.7(1) is new and provides that an issuer must file Form 45-102F1 when it ceases to be a private company or private issuer.

Section 2.8 Exemption for a Trade by a Control Person
Subsections 2.8(5), 2.8(6), 2.8(7) and 2.8(8) 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 company who has filed a Form 45-102F3 previously.

Section 2.10 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Prospectus
Section 2.10 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, exchangeable securities or multiple convertible securities if the convertible securities, exchangeable securities or multiple convertible securities are distributed under a prospectus. This section has been added in response to two comments that the proposed Instrument does not provide an exemption for underlying securities similar to the exemptions that currently exist.

Section 2.11 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid
Section 2.11 is new to the 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 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 on SEDAR. 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 2.11 that a selling security holder cannot rely on this exemption unless the offeror was a reporting issuer on the date securities are first taken up under the take-over bid or issuer bid.

Section 2.12 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Securities Exchange Take-over Bid Circular or Issuer Bid Circular
Section 2.12 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, exchangeable securities or multiple convertible securities, if the convertible securities, exchangeable securities or multiple 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 or, prior to the effective date of NI 44-101, under NP 47.

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.

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 clarifications with respect to the references to the legislation of Alberta, Newfoundland and Ontario 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 and exercise of an option exemptions 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, 45-102F2 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 issuer 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 private issuer.

An instruction has been added to Form 45-102F1 to clarify where Form 45-102F1 must be filed.

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.

Form 45-102F2 has been amended to reflect the addition of subsection 2.6(5) to the Multilateral Instrument. The issuer completes item 2 of Form 45-102F2 if it has distributed securities under an employee exemption and becomes a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market.

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.

An instruction has been added to Form 45-102F3 to clarify 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 instruction addresses the concern raised by a commentator that the wording in the proposed Instrument may require the filing of the Forms in all jurisdictions including jurisdictions in which no securities were distributed.

3. Changes In the Proposed Companion Policy

Section 1.1 Application
Subsection 1.1(2) has been added to state that only sections 2.1, 2.8 and 2.9 of Part 2 of the Instrument apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

Section 1.3 Transition
Section 1.3 is new. Subsection 1.3(1) has been added to clarify that Part 2 of the Instrument applies to first trades on or after the effective date of the Instrument even if the securities were initially distributed prior to the effective date.

Subsection 1.3(2) points out that items 2.5(2)3. and 2.5(3)3. only impose a legending condition in connection with securities distributed on or after the effective date of the Instrument. Similarly, subsection 1.3(3) states that Forms 45-102F1, 45-102F2 and 45-102F3 have to be filed on or after the effective date of the Instrument.

Section 1.4 Distribution
Section 1.4 has been deleted.

Section 1.6 Reporting Issuer History
The title of this section (section 1.7 in the proposed Companion Policy) has been changed from Qualifying Issuer to Reporting Issuer History. Section 1.6 has been amended to point out that reporting issuer history in any of the jurisdictions listed in Appendix B satisfies the reporting issuer history requirements in sections 2.5, 2.6 and 2.8 of the Instrument if the issuer is a SEDAR filer. If the issuer is not a SEDAR filer, the reporting issuer history must be in the jurisdiction of the purchaser of the securities that are the subject of the trade.

Section 1.7 Eligibility
Section 2.3 Loss of Eligibility in the proposed Companion Policy has been moved to section 1.7 and renamed Eligibility. Section 1.7 points out that the reduced restricted and seasoning periods apply if an issuer is a qualifying issuer at the distribution date even if the issuer ceases to be a qualifying issuer before the first trade.

Section 1.8 Legending of Securities
This section is new and provides an explanation of the legending requirement in the 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 restricted period requirements.

Corresponding to the amendment to section 2.5 of the proposed Instrument, section 1.8 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 Calculation of Restricted Periods
Section 1.9 replaces section 1.6 of the proposed Companion Policy and illustrates the calculation of restricted periods through use of an example.

Section 1.11 Employees
Section 1.11 is new and explains that subsection 2.6(5) of the Instrument reduces the seasoning period from 12 months to four months if the securities that are the subject of the trade were distributed to employees and the issuer became a qualifying issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and listing or quoting a class of its equity securities on a qualified market.

Section 1.13 Securities Exchange Take-over Bid or Issuer Bid
Section 1.13 is new and clarifies that if a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular relied upon for purposes of section 2.11 of the Instrument must meet the prospectus disclosure standards applicable to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid. Further, the circular must be filed by the offeror on SEDAR.

Section 1.15 Filing of Forms 45-102F1, 45-102F2 and 45-102F3
Subsections 1.15(1), (2) and (3) of the Companion Policy have been amended to discuss where the Forms must be filed. Subsection 2.7(1) of the Instrument has been added and requires that Form 45-102F1 be filed if an issuer has ceased to be a private company or private issuer. Subsection 1.15(1) of the Companion Policy comments that Form 45-102F1 must be filed in each jurisdiction in which the issuer has ceased to be a private company or private issuer and section 2.7 of the Instrument has been implemented. Subsection 1.15(2) of the Companion Policy has been amended to specify that Form 45-102F2 is only required to be filed in each jurisdiction in which securities have been distributed to purchasers and section 2.7 of the Multilateral Instrument has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. Further, an instruction has been added to Form 45-102F3 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 Instrument and to section 1.15 of the Companion Policy have been made in response to commentators' concern that the proposed Instrument and the proposed Companion Policy seem to require the Forms to be filed in jurisdictions in which no securities were distributed. The CSA have made the amendments for clarity.

Section 1.16 Filings in the Local Jurisdiction
Section 1.16 is new and states that sections 2.10, 2.11 and 2.12 of the Instrument provide that section 2.6 of the Multilateral Instrument does not apply to a trade on condition that a take-over bid circular, an issuer bid circular or a prospectus was filed under securities legislation of the local jurisdiction of the person or company relying upon the exemption from section 2.6 of the Instrument.

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

Text of the Instrument, Forms and Companion Policy

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

Questions

Questions relating to the Instruments may be referred to:

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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 Instruments 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 Instruments. The CSA have considered all submissions received and thank 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 Instrument)

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 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 Instruments. 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 Instruments 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 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 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 Instruments would provide issuers with an incentive to improve their continuous disclosure.

Response: *The CSA agree and believe that the shorter restricted 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 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 Instrument. 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 Instrument.

Response: *The CSA believe that the issue whether to retain the private company exemption should be dealt with by the OSC 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 "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.*

3. 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.*

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

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

Response: *The CSA agree and have amended sections 2.3 , 2.4 and 2.14 of the proposed Instrument to refer to first trades. Further, subsection 1.2(2) of the Companion Policy clarifies that exempt trades may be made during a restricted period or seasoning period.*

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

Comment: One commentator notes that there is a contradiction between 2.3 of the proposed Instrument 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 Instrument 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 Instrument by adding subsection 2.10 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 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 jurisdiction listed in Appendix B. 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 Instrument, now subsections 2.6(4)and 2.8(4) and section 2.7 of the 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 Instrument and the Companion Policy that the Form 45-102 F3 is to be filed solely 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. With respect to the filing of Form 45-102F1, the Companion Policy 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 and section 2.7 of the Instrument has been implemented. Section 2.7 of the Instrument has been implemented in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.

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 Instrument)

Comment: One commentator notes that the CSA have introduced new requirements regarding trades by pledgees in section 2.8 of the proposed Instrument. 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 Instrument 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 Instrument 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 Instrument 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 Instrument, "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 Instrument 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 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 Instrument.

(c) The CSA will recommend that section 2.2 of NI 62-101 regarding pledgees be deleted as it is unnecessary given section 2.9(3) of the Instrument.

(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 Instrument)

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

Response: The CSA have not amended the proposed Instrument *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 Instrument.*

10. Trades by Underwriters (section 2.10 of the proposed Instrument, now section 2.13 of the 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 Instrument (now section 2.13 of the Instrument).

Response: The proposed Instrument 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 Instrument 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 if 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 has 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. Corresponding changes have been made to the Alberta, Newfoundland 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 Companion Policy)

Comment: One commentator considers the connecting jurisdiction concept in section 1.3(1) of the proposed Companion 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: *Section 1.3 of the proposed Companion Policy has been deleted. 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 Companion Policy, now section 1.14 of the Companion Policy)

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

Response: The CSA do not consider it necessary to move section 1.9 of the proposed Companion Policy (now section 1.14 of the Companion Policy) to the Instrument. The Companion Policy is designed to provide information relating to the manner in which the provisions of the Instrument are intended to be interpreted or applied. Section 1.14 of the Companion Policy provides information on how certain information required in the 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 Companion Policy (now section 1.14 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 Companion Policy (now section 1.14 of the Companion Policy) to determine the percentage of securities holding in Canada, particularly if the information required is of a historical date.

Response: *The CSA do not believe it is unduly difficult for an issuer to obtain the information referred to in section 1.14 of the Companion Policy at the time of the initial distribution.*