

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

PART 1 APPLICATION

1.1 Application

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

1.2 Purpose

- (1) MI 45-102 provides that first trades of securities distributed under certain exemptions from the prospectus requirement are distributions unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were distributed under any of the provisions listed in Appendix D to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a seasoning period and that a restricted period has elapsed from the date of the initial distribution. If the securities were distributed under any of the provisions listed in Appendix E to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a seasoning period. If the issuer is a qualifying issuer, MI 45-102 reduces the restricted period and seasoning period. MI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

1.3 Transition

- (1) Part 2 of MI 45-102 applies to first trades of securities made on or after the effective date of this Instrument, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to the effective date of this Instrument. As a result, in determining whether the restricted period in section 2.5 or 2.8 of MI 45-102 or the seasoning period in subsection 2.6(3) or (4) or subsection 2.8(2) or (3) of MI 45-102 has expired,

a seller making a first trade must determine whether the issuer was a qualifying issuer at the date the security that is the subject of the trade was distributed or, in the case of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the control person selling the security. In the case of a trade of an underlying security, the seller must determine whether the issuer of the underlying security was a qualifying issuer at the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed.

- (2) Items 2.5(2)3. and 2.5(3)3. of MI 45-102 impose a condition that if the security that is the subject of the trade was distributed on or after the effective date of MI 45-102, the certificate representing the securities must carry a legend disclosing the resale restriction. Certificates representing securities distributed prior to the effective date of MI 45-102 do not have to be legended under MI 45-102.
- (3) Form 45-102F1 is required to be filed under subsection 2.7(1) of MI 45-102 if an issuer ceases to be a private company or a private issuer on or after the effective date of MI 45-102. Similarly, Form 45-102F2 is filed under subsection 2.7(2) of MI 45-102 if the issuer of the securities is a qualifying issuer and the distribution date is on or after the effective date of MI 45-102. Form 45-102F2 is filed under subsection 2.7(3) of MI 45-102 if the issuer becomes a qualifying issuer in certain circumstances on or after the effective date of MI 45-102.

1.4 Open System Jurisdictions - Sections 2.5 and 2.6 of MI 45-102 do not apply in the provinces of Manitoba, New Brunswick and Prince Edward Island and in the Yukon Territory as those jurisdictions do not impose restrictions on first trades in securities distributed under an exemption from the prospectus requirement in those jurisdictions unless the trade is a control distribution.

1.5 Example of Application of Section 2.5 - If an issuer distributes securities to a purchaser in British Columbia, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of British Columbia. If the issuer relies upon a British Columbia prospectus exemption listed in Appendix D to MI 45-102, section 2.3 of MI 45-102 applies and the first trade of the securities is subject to section 2.5 of MI 45-102. Section 2.5 provides that the first trade is a distribution unless, among other conditions, a four or 12 month restricted period has elapsed. If the British Columbia purchaser seeks to resell the securities into Ontario, a prospectus must be filed in Ontario or a prospectus exemption relied upon unless the conditions in subsection 2.5(2) or (3) of MI 45-102 are satisfied.

- 1.6 Reporting Issuer History** - If an issuer is a SEDAR filer, reporting issuer history in any of the jurisdictions listed in Appendix B will satisfy the reporting issuer history requirements in sections 2.5, 2.6 and 2.8 of MI 45-102. If the issuer is not an electronic filer under NI 13-101, the reporting issuer history must be in the jurisdiction of the purchaser of the securities that are the subject of the trade.
- 1.7 Eligibility** - Securities that were distributed when an issuer had a current AIF and met the other eligibility requirements of a qualifying issuer may be sold in accordance with subsection 2.5(2) or 2.6(3) of MI 45-102, even if the issuer is no longer a qualifying issuer at the time of the trade. However, if the issuer subsequently distributes securities at a time when it is not a qualifying issuer, purchasers of those securities may not rely upon the reduced restricted period or seasoning period in subsection 2.5(2) or 2.6(3) of MI 45-102.
- 1.8 Legending of Securities** - Items 2.5(2)3. and 2.5(3)3. of MI 45-102 require that, for securities distributed under any of the provisions listed in Appendix D to MI 45-102 or another prospectus exemption subject to the resale restrictions in section 2.5 of MI 45-102, if the distribution date is on or after the effective date of MI 45-102 a certificate representing the securities must have been issued that carried a legend stating that, unless permitted under securities legislation, the holder of the securities shall not trade the securities before the expiry of the applicable restricted period. Placing a restricted period legend on a share certificate is the most practical manner of providing certainty as to the applicable restricted period and of ensuring more effective regulation of the exempt market in the closed system jurisdictions.
- 1.9 Calculation of Restricted Periods** - The restricted periods in items 2.5(2)2. and 2.5(3)2. of MI 45-102 are calculated from the distribution date, that is, the date the securities were distributed in reliance on an exemption from the prospectus requirement by the issuer or a control person. For example, if an issuer or control person distributes securities under a private placement exemption to a purchaser in Saskatchewan and the private placee resells the securities during the restricted period to a purchaser in Alberta under a further private placement exemption, upon resale by the Alberta purchaser, that purchaser will determine whether the restricted period has expired by calculating the time period from the date the issuer or control person distributed the securities to the Saskatchewan purchaser.

In the case of a trade that is a control distribution, the restricted periods in items 2.8(2)2. and 2.8(3)5. of MI 45-102 are calculated from the distribution date, that is, the date the securities were acquired by the control person that is selling the securities.

- 1.10 Underlying Securities** - The restricted period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security.
- 1.11 Employees** - Section 2.6 of MI 45-102 provides that the first trade of securities distributed under an exemption from the prospectus requirement for employees is a distribution unless certain conditions are met. If the issuer is a qualifying issuer at the distribution date, the conditions include a seasoning period of four months. If the issuer is not a qualifying issuer at the distribution date, the seasoning period is 12 months. However, if the securities were distributed under an employee exemption or exercise of an option exemption at a time when the issuer was not a qualifying issuer and the issuer of the securities subsequently 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, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period.
- 1.12 Control Block Distributions** - In addition to the provisions of MI 45-102, in particular section 2.8, the provisions of National Instrument 62-101 Control Block Distribution Issues may also apply to a trade of securities that is a control block distribution by an institutional investor.
- 1.13 Securities Exchange Take-over Bid or Issuer Bid** - Section 2.11 of MI 45-102 provides relief from the seasoning requirement for a trade of securities issued in connection with a securities exchange take-over bid or securities exchange issuer bid in circumstances in which, among other things, a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror under securities legislation of the local jurisdiction. The basis for this exemption is that a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. In the view of the securities regulatory authority, if a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular must meet the disclosure standards in securities legislation relating to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid in order for the exemption in section 2.11 to be available. If a take-over bid circular or issuer bid circular is prepared in connection with a formal bid, the circular must be filed under the take-over bid or issuer bid requirements of securities legislation. If the circular is prepared in connection with an exempt bid, the circular must be filed by the offeror on SEDAR.

1.14 Resales of Securities of a Non-Reporting Issuer

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

1.15 Filing of Forms 45-102F1, 45-102F2 and 45-102F3

- (1) Subsection 2.6(2) of MI 45-102 provides that the first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection 2.6(4) are satisfied. Subsection 2.7(1) of MI 45-102 requires an issuer to file Form 45-102F1 if the issuer ceases to be a private company or private issuer on or after the effective date of MI 45-102. 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 MI 45-102 has been implemented. Section 2.7 has been implemented in Alberta, British Columbia, Newfoundland, Nova Scotia, Nunavut, Ontario and Saskatchewan.

- (2) Subsection 2.7(2) of MI 45-102 provides that if an issuer, or a selling security holder in the case of a control distribution, has distributed securities under a provision listed in Appendix D or E or a provision of securities legislation that specifies that the first trade of the securities is subject to section 2.5 or 2.6 of MI 45-102, Form 45-102F2 must be filed on or before the tenth day after the distribution date if the issuer is a qualifying issuer. However, if an issuer has distributed securities under a provision listed in Appendix F or a provision of securities legislation that specifies that the first trade of securities distributed to an employee, executive, consultant or administrator is subject to section 2.6 of MI 45-102, and the issuer becomes a qualifying issuer after the distribution date by filing a prospectus and listing or quoting equity securities on a qualified market, the issuer must file Form 45-102F2 even though the issuer was not a qualifying issuer at the distribution date. Form 45-102F2 must be filed in the jurisdictions of the purchasers of the securities in which section 2.7 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan. Form 45-102F2 should be filed on SEDAR under the issuer's profile under "Continuous Disclosure - SHAIIF - Other" until the SEDAR filer manual is updated to include MI 45-102 filings. Purchasers of securities will be able to determine whether the applicable restricted period or seasoning period is four months or 12 months from a review of SEDAR filings.
- (3) Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in subsection (2) or (3) of section 2.8 are met. Subsection 2.8(4) requires a person or company selling securities under subsection 2.8(2) or (3) of MI 45-102 to file Form 45-102F3. Form 45-102F3 must be filed whether the distribution date is before or after the effective date of MI 45-102.

1.16 Filings in the Local Jurisdiction - Sections 2.10, 2.11 and 2.12 of MI 45-102 state that section 2.6 of MI 45-102 does not apply to a trade in an underlying security if the convertible security, exchangeable security or multiple convertible security is qualified by a prospectus, a trade of a security issued in connection with a take-over bid or issuer bid and 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, respectively. Each of the exemptions from section 2.6 is subject to a 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. Similarly, the exemptions in sections 2.10 and 2.12 of MI 45-102 require that the issuer of the underlying security be a reporting issuer in the local

jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of MI 45-102 are subject to a condition that the offeror was a reporting issuer in the local jurisdiction on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid.

PART 2 AIF REQUIREMENTS

- 2.1 Filing of Current AIF** - Issuers that want to enable their security holders to take advantage of a provision of MI 45-102 that requires an issuer to have a current AIF may file a current AIF at any time. An issuer filing a current AIF for the purposes of MI 45-102 should file the notice and the current AIF, if not already filed, under "Continuous Disclosure - SHAIIF" on SEDAR selecting the appropriate filing subtype/document type (i.e. either an AIF, amended AIF or notice) until the SEDAR filer manual is updated to include MI 45-102 filings. A filer that elects to use a current AIF that has previously been filed on SEDAR is not required to refile the document for the purposes of MI 45-102.
- 2.2 Most Recent Financial Year** - Issuers wishing to file a current AIF before they have filed their audited financial statements for the most recently completed financial year may include the audited financial statements for the financial year preceding the most recently completed financial year. For example, an issuer with a December 31 financial year end could continue to use a current AIF containing or incorporating by reference audited annual financial statements for the year ended December 31, 2000 during the first 139 days of 2002, until such time as annual audited financial statements for the year ended December 31, 2001 have been prepared and filed in accordance with securities legislation.
- 2.3 Review of Current AIF** - An issuer's current AIF may be reviewed at any time and, as a result of this review, changes may need to be made to the current AIF. If an issuer is advised by any regulator that its current AIF does not comply with securities legislation, any of a wide range of compliance actions may be taken by the securities regulatory authorities, from requiring the next AIF to be filed correctly, or a clarifying press release to be issued, to more serious actions such as issuing a cease trade order against the issuer's securities, or initiating appropriate enforcement proceedings against the issuer and its directors and officers.
- 2.4 Review before Distribution** - If the current AIF is reviewed before a distribution of securities and an issuer is advised by any regulator that its current AIF is unacceptable, an issuer will not be a qualifying issuer at the distribution date unless the issuer has made the necessary changes to the current AIF. Security holders that acquire securities under the distribution will not be able to take advantage of subsection 2.5(2), 2.6(3) or 2.8(2) of MI 45-102.

2.5 **Review after Distribution** - If the current AIF is reviewed after a distribution of securities, and an issuer is advised by any regulator that its current AIF is unacceptable, securities that were distributed while the issuer was a qualifying issuer may be sold in accordance with subsection 2.5(2), 2.6(3) or 2.8(2) of MI 45-102 if the other conditions in the relevant subsection are met.

PART 3 **FEES**

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