

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

PART 1 APPLICATION

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

1.2 Purpose

- (1) MI 45-102 provides that trades of securities initially 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 initially distributed under a private placement or other exemption listed in Appendix D to MI 45-102, the conditions include that the issuer is and has been a reporting issuer or a reporting issuer equivalent for a seasoning period and that a hold period has elapsed from the date of the initial distribution. If the securities were initially distributed under an exemption listed in Appendix E to MI 45-102, the conditions include that the issuer is and has been a reporting issuer or a reporting issuer equivalent for a seasoning period. If the securities were initially distributed under the employee exemptions listed in Appendix F, the conditions also include that the issuer is and has been a reporting issuer or a reporting issuer equivalent for a seasoning period from the date of the grant of the stock option, not the exercise of the option. If the issuer is a qualifying issuer, MI 45-102 reduces the hold periods and seasoning periods. MI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the hold period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

1.3 Distribution

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

outside of a jurisdiction being subject to the securities legislation of the jurisdiction.

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

1.4 Open System Jurisdictions

- (1) Sections 2.5 and 2.6 of MI 45-102, which provide that a trade of securities initially distributed under an exemption from the prospectus requirement is a distribution unless certain conditions are satisfied, and section 2.15 of MI 45-102 do not apply to trades in the provinces of Manitoba, New Brunswick and Prince Edward Island and in the Yukon Territory as those jurisdictions do not impose resale restrictions on trades in securities distributed under an exemption from the prospectus requirement.
- (2) For example, if an issuer with its executive office in British Columbia distributes securities to a purchaser in Manitoba, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of Manitoba and British Columbia. If the issuer relies upon the British Columbia \$97,000 exemption, section 74(2)(4) of the *Securities Act* (British Columbia), section 2.5 of MI 45-102 imposes a four or 12 month hold period on resale of the securities into each jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory unless the resale is permitted under securities legislation.

1.5 Qualifying Issuer - In order to be a qualifying issuer, among other conditions, an issuer must be a reporting issuer or a reporting issuer equivalent in one of the jurisdictions listed in Appendix B to MI 45-102. The reporting issuer jurisdictions are Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan. The reporting issuer equivalent jurisdiction is Manitoba.

1.6 Legend of Securities - Paragraphs 2.5(2)3. and 2.5(3)3. of MI 45-102 require that, for securities distributed under a prospectus exemption listed in Appendix D to MI 45-102, the certificate representing the securities must carry 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 hold period. Placing a hold period legend on a share certificate is the most practical manner of providing

certainty as to the applicable hold periods and of ensuring more effective regulation of the exempt market.

1.7 Underlying Securities - The hold period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security.

1.8 Pledges by Control Persons - In addition to the provisions of MI 45-102, in particular section 2.10, the provisions of National Instrument 62-101 Control Block Distribution Issues may also apply to a trade of securities upon the exercise of a pledge or other security interest in securities acquired in a control distribution.

1.9 Securities Exchange Take-over Bid or Issuer Bid - Section 2.9 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 where, among other things, a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror issuer under securities legislation of the local jurisdiction. The basis for this exemption is that, under securities legislation, a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus-type 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 authorities, 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 MI 45-102 must meet the disclosure standards set out in the securities regulatory requirements of the local jurisdiction 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.

1.10 Resales of Securities of a Non-Reporting Issuer

(1) For the purposes of section 2.15 of MI 45-102, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly held by residents of Canada and the number of holders directly or indirectly in Canada

(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).

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

- (1) Subsection 2.6(2) of MI 45-102 provides that the first trade of previously issued securities of an issuer that has ceased to be a private company or a private issuer is a distribution unless the conditions in subsection (4) are satisfied. The conditions include that the issuer has filed Form 45-102F1. In order for the seasoning period to expire and the securities to be freely tradeable in each jurisdiction in which section 2.6 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan, Form 45-102F1 must be filed in each jurisdiction in which the issuer has ceased to be a private company or private issuer.
- (2) Section 2.8 of MI 45-102 provides that the issuer, or the selling security holder in the case of a control distribution, shall file Form 45-102F2 within ten days of the distribution date of a trade referred to in subsection 2.5(2) or 2.6(3) of MI 45-102, and for the purpose of a trade made under subsection 2.6(5) of MI 45-102 the issuer shall file Form 45-102F2 at the time the issuer becomes a qualifying issuer. Form 45-102F2 must be filed in the jurisdictions of the purchasers of the securities if any purchasers are in a jurisdiction in which 2.8 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.
- (3) Section 2.10 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 2.10 are met. Subsection 2.10(4) provides that the selling security holder of the securities must file Form 45-102F3 in the jurisdictions in which the securities are being distributed and with the exchange in Canada on which the securities that are the subject of the trade are listed.

1.12 Filings in the Local Jurisdiction - Sections 2.9, 2.12 and 2.13 of MI 45-102 grant an exemption from section 2.6 of MI 45-102 for a trade of a security issued in connection with a take-over bid or issuer bid, a trade in an underlying security if the right to purchase, convert or exchange is qualified by a prospectus and 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 issuer bid circular, respectively. Each of the exemptions from section 2.6 of MI 45-102 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 of MI 45-102. Similarly, the exemption in section 2.9 of MI 45-102 is subject to the condition that the offeror issuer was a reporting issuer or a reporting issuer equivalent in the local jurisdiction at the date of the take up and payment for securities of the offeree issuer under the take-over bid or issuer bid. The exemptions in sections 2.12 and 2.13 of MI 45-102 also require that the issuer of the underlying security be a reporting issuer or a reporting issuer equivalent in the local jurisdiction at the time of the trade.

PART 2 AIF REQUIREMENTS

- 2.1 Filing of Current AIF** - Issuers that want to allow their security holders to take advantage of a provision of MI 45-102 that requires an issuer to have a current AIF can 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 - MI 45-102" in SEDAR selecting the appropriate filing subtype/document type (i.e. either an AIF, amended AIF or notice). 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 140 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 Loss of Eligibility** - If the issuer does not have a current AIF, security holders of the issuer that acquire securities of the issuer will not be able to utilize the provisions of MI 45-102 that require that the issuer have a current AIF. However, securities that were distributed while the issuer had a current AIF and otherwise met the conditions in subsection 2.5(2), 2.6(3) or 2.6(5) of MI 45-102 may be sold in accordance with those provisions.
- 2.4 Review of AIF** - An issuer's AIF is subject to review in each jurisdiction, and, as a result of this review, changes may need to be made to the AIF. If an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, any of a wide range of compliance 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.

2.5 Review before Distribution - If the AIF is reviewed before a distribution of securities and an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, an issuer will not be a qualifying issuer until the issuer has made the necessary changes to the AIF. Security holders that acquire securities under the distribution will not be able to take advantage of subsection 2.5(2), 2.6(3), 2.6(5) or 2.10(2) of MI 45-102.

2.6 Review after Distribution - If the AIF is reviewed after a distribution of securities, and an issuer is advised by any regulator that its AIF does not comply with the applicable instrument, securities that were distributed while the issuer was a qualifying issuer may be sold in accordance with subsection 2.5(2), 2.6(3), 2.6(5) or 2.10(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.