

## Amendments to Securities Rules

### 1. *Section 1 is amended*

(a) *by repealing the definition of “MI 45-102”,*

(b) *by adding the following definition:*

“**NI 45-102**” means National Instrument 45-102 Resale of Securities,

(c) *in paragraph (b) of the definition of “initial distribution” by striking out “MI 45-102” and substituting “NI 45-102”.*

2. *Section 136 is amended by striking out “MI 45-102” and substituting “NI 45-102”.*

3. *The following Part is added:*

### PART 16.1

#### CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

##### Market capitalization calculation

185.1 In this Part,

“**equity security**” means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets;

185.2 For the purposes of Part 16.1 of the Act and this Part,

“**market capitalization**” means, in respect of an issuer, the amount determined as follows:

- (a) For each class of equity securities for which there is a published market, determine the sum of the number of outstanding securities of the class at the close of trading on each of the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
- (b) Divide the sum determined under paragraph (a) by 10.
- (c) Multiply the quotient determined under paragraph (b) for each class by the trading price of the securities of the class on the principal market for the securities for the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
- (d) Add the amounts determined under paragraph (c) for each class of equity securities for which there is a published market.

- (e) For each class of equity securities not traded on a published market, determine the fair market value of the outstanding securities of that class as of the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
- (f) Add the amounts determined under paragraph (e) for each class of equity securities not traded on a published market.
- (g) Add the amount determined under paragraph (d) to the amount determined under paragraph (f) to determine the “market capitalization” of the issuer.

“**principal market**” means, in respect of a class of securities of a responsible issuer,

- (a) the published market in Canada on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred, or
- (b) the published market on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred, if securities of that class are not traded during those 10 trading days on a published market in Canada.

“**trading price**” means, in respect of a security of a class of securities for which there is a published market, the amount determined as follows:

- (a) Subject to paragraphs (b) and (c), the trading price of the security is the volume weighted average price of securities of that class on the published market during the period for which the trading price is to be determined.
- (b) Subject to paragraph (c), if there was trading in the securities of that class on the published market on fewer than half of the trading days during the period for which the trading price of the securities is to be determined, the trading price of the security is determined as follows:
  - (i) Calculate the sum of the average of the highest bid and lowest ask prices for each trading day in the period on which there were no trades in securities of that class in the published market.
  - (ii) Divide the amount determined under subparagraph (i) by the number of trading days on which there were no trades in securities of that class in the published market.
  - (iii) Add to the amount determined under subparagraph (ii) the volume weighted average price of securities of that class on the published market for those trading days on which securities of that class were traded.
  - (iv) Divide by two the amount determined under subparagraph (iii).
- (c) If there were no trades of securities of that class in the published market during the period for which the trading price is to be determined, the trading price of the security is the fair market value of the security.

**Prescribed trades subject to civil liability remedy**

- 185.3 (1) Part 16.1 of the Act applies to an acquisition of an issuer's security pursuant to an exemption from section 61 of the Act that is set out in section 2.8 of NI 45-102 and, for greater certainty, the class of acquisitions described in this subsection is prescribed for the purposes of section 140.2(b) of the Act.
- (2) Part 16.1 of the Act applies to the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid that is exempt under section 4.1, 4.4 or 4.5 of Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids or an issuer bid that is exempt under section 4.8, 4.10 or 4.11 of Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids and, for greater certainty, the class of acquisitions and the class of dispositions described in this subsection are prescribed for the purposes of clause 140.2 (c) of the Act.