

CSA Notice of

Amendments to National Instrument 45-102 Resale of Securities

*Changes to Companion Policy 45-102CP to National Instrument
45-102 Resale of Securities*

*Consequential Amendments to National Instrument 31-103 Registration
Requirements, Exemptions and Ongoing Registrant Obligations*

and

*Consequential Changes to National Policy 11-206 Process for Cease
to be a Reporting Issuer Applications*

March 29, 2018

Introduction

The Canadian Securities Administrators (the CSA or we) are adopting amendments to National Instrument 45-102 *Resale of Securities* (NI 45-102) and changes to Companion Policy 45-102CP to National Instrument 45-102 *Resale of Securities* (45-102CP) (collectively, the amendments).

We are also adopting consequential amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and consequential changes to National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (NP 11-206).

Staff of the Alberta Securities Commission has not yet sought approval of the amendments or consequential amendments but intend to do so in April 2018.

Provided all necessary regulatory and ministerial approvals are obtained, these will come into force on June 12, 2018.

The text of the amendments and consequential amendments and changes is contained in Annexes C through F of this notice and will also be available on websites of CSA jurisdictions, including:

www.bsc.bc.ca

www.albertasecurities.com

www.fcaa.gov.sk.ca

www.mbsecurities.ca

www.osc.gov.on.ca

www.lautorite.qc.ca

www.fcnb.ca

nssc.novascotia.ca

Substance and Purpose

The amendments introduce a new prospectus exemption in section 2.15 of NI 45-102 (section 2.15) for the resale of securities (and underlying securities) of a foreign issuer that applies in all jurisdictions other than Alberta and Ontario if

- the issuer is not a reporting issuer in any jurisdiction of Canada, and
- the resale is on an exchange, or a market, outside of Canada or to a person or company outside of Canada.

A foreign issuer is an issuer that is not incorporated or organized under the laws in Canada unless certain circumstances suggest that the issuer has more than a minimal connection to Canada (i.e., the issuer has a head office in Canada or the majority of its directors or executive officers ordinarily reside in Canada).

Section 2.15 addresses feedback we received that the ownership conditions in section 2.14 of NI 45-102 (section 2.14) may have become an impediment to participation by certain market participants in prospectus-exempt offerings by foreign issuers.

We have prioritized the amendments in response to this feedback and in response to the number of applications for exemptive relief we received in connection with section 2.14. We are continuing our review of the resale regime in NI 45-102 in its entirety to determine whether the existing regime continues to be relevant in today's markets and to assess the impact of alternative regulatory approaches.

In Alberta and Ontario, the new exemption in section 2.15 and the existing exemption in section 2.14 will be located in the following local instruments:

- in Alberta, Alberta Securities Commission Blanket Order 45-519 *Prospectus Exemptions for Resale Outside Canada* (ASC Blanket Order 45-519);
- in Ontario, Ontario Securities Commission Rule 72-503 *Distributions Outside Canada* (OSC Rule 72-503).

In Ontario, this provides overall consistency to their approach to cross-border trading for both primary distributions outside Canada and the resale of securities outside Canada. In Alberta, this is a step towards providing overall consistency in their contemplated approach to cross-border trading for both primary distributions outside Canada and the resale of securities outside Canada.

For the purposes of this notice, discussions on sections 2.14 and 2.15 also apply to the similar exemptions in Alberta and Ontario, unless the context requires otherwise.

Background

Section 2.14 provides a prospectus exemption for the resale of securities (and underlying securities) where the issuer is not a reporting issuer in any jurisdiction of Canada provided that

- the resale is on an exchange, or a market, outside of Canada or to a person or company outside of Canada, and
- residents of Canada own not more than 10% of the outstanding securities of the issuer and represent not more than 10% of the total number of security holders (the ownership conditions).

The policy rationale for section 2.14 is that it is not necessary to restrict the resale of securities over a foreign market or to a person or company outside Canada if the issuer has a minimal connection to Canada and there is little or no likelihood of a market for the securities to develop in Canada. The purpose of the ownership conditions is to measure whether the issuer has a minimal connection to Canada.

Since the adoption of NI 45-102, there have been a number of changes to securities regulation and information accessibility, and a greater access to securities markets worldwide. Canadian investors, particularly institutional investors, are increasingly acquiring securities of foreign issuers to participate in global market growth by investing in a more diversified global portfolio. Foreign securities are acquired either through private placements or on foreign exchanges.

We recognize that many foreign issuers, without any other connection to Canada, are finding they have exceeded the ownership conditions, including through Canadians purchasing their securities on foreign markets. As a result, Canadian security holders of these foreign issuers would have to hold the securities for an indefinite period. In some cases, foreign issuers decide not to offer their securities in Canada to avoid the work necessary to determine if the ownership conditions will be met and thereby reduce opportunities for Canadian investors to participate in private placements with foreign issuers.

Consequently, we determined that an alternative to the ownership condition is warranted for assessing whether an issuer has a minimal connection to Canada.

Section 2.15 provides this alternative. A security holder is exempted from the prospectus requirement for the resale of securities acquired under a prospectus exemption if the resale is on an exchange, or a market, outside of Canada or to a person or company outside of Canada and if the issuer of the securities is a foreign issuer. A foreign issuer is an issuer that is not incorporated or organized under the laws of Canada, or a jurisdiction of Canada, unless one of the following applies:

- the issuer has its head office in Canada;
- the majority of the executive officers or directors of the issuer ordinarily reside in Canada.

The policy rationale for section 2.15 is consistent with the policy rationale for section 2.14 – to provide an exemption for resales outside of Canada for the securities of an issuer with a minimal connection to Canada.

Summary of Written Comments Received by the CSA

We published for comment the proposed amendments on June 29, 2017. During the comment period that expired on September 27, 2017, we received submissions from 8 commenters. We considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice and a summary of their comments, together with our responses, are contained in Annex B of this notice.

Summary of Changes

After considering the comments received, we made the following changes:

1. *Section 2.14*

We retained section 2.14. It continues to provide a limited exemption for those non-reporting Canadian issuers that have a minimal connection to Canada based on the ownership conditions.

To avoid confusion, we renumbered proposed section 2.14.1 to section 2.15.

2. *Definition of foreign issuer*

We made the following changes to the definition of foreign issuer:

- (a) We removed the consolidated asset component of the definition. We believe that the revised definition appropriately reflects whether an issuer has a minimal connection to Canada.
- (b) We added guidance in 45-102CP with respect to the interpretation of director and executive officer in the definition of foreign issuer. In particular, the guidance explains the meaning of director and executive officer in the context of non-corporate issuers including limited partnerships and clarifies what is meant by “ordinarily reside”.

3. *Definition of executive officer*

We revised the definition of executive officer to remove the reference to individuals who have a “policy-making function” because it may be difficult for security holders to determine which individuals perform that function. In line with our objective to simplify an investor’s possible determination of who the executive officers are, we also limited the definition to those individuals in charge of a principal business unit, division or function including sales, finance or production as disclosed in the issuer’s offering document or most recent public disclosure document containing that information.

Security holders can make the determination of whether the issuer is a foreign issuer by using the information available in the offering document or the most recent disclosure document containing that information unless the security holder has reason to believe that the information is not accurate.

4. *No unusual effort condition to the exemption*

We removed the “no unusual efforts” condition.

We are of the view that the condition is not necessary. A selling security holder who wishes to rely on the exemption must comply with the conditions of the exemption. One of the conditions is that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada. As a result, any selling security holder engaged in activities to sell or create a demand for the security in Canada would not be able to rely on the exemptions in sections 2.14 and 2.15.

Consequential Amendments

We are adopting a consequential amendment to section 8.16 of NI 31-103 and a consequential change to section 14 of NP 11-206 to include reference to both section 2.14 and new section 2.15 as well as ASC Blanket Order 45-519 and the similar sections of OSC Rule 72-503. We also made a further change to section 14 of NP 11-206 to remove the obligation to ascertain the number of Canadian security holders.

Local Matters

Annex G to this notice outlines the consequential amendments to local securities legislation and includes additional text, as required, to respond to local matters in a local jurisdiction. Each jurisdiction that is proposing local amendments will publish an Annex G.

The Alberta Securities Commission is adopting ASC Blanket Order 45-519 and the Ontario Securities Commission is adopting amendments to OSC Rule 72-503 and changes to Companion Policy 72-503 *Distributions Outside Canada* to introduce corresponding exemptions to those in sections 2.14 and 2.15.

Contents of Annexes

This notice contains the following annexes:

Annex A – List of Commenters

Annex B – Summary of Comments and CSA Responses

Annex C – Amendment to National Instrument 45-102 *Resale of Securities*

Annex D – Changes to Companion Policy 45-102 to National Instrument 45-102 *Resale of Securities*

Annex E – Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex F – Changes to National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*

Annex G – Local Matters

Questions

Please refer your questions to any of the following:

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