

Annex D

Changes to

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

1. *Companion Policy 45-102CP to National Instrument 45-102 Resale of Securities is changed by this Document.*

2. *The title of the Companion Policy is simplified to read as follows:*

COMPANION POLICY 45-102 RESALE OF SECURITIES

3. *Section 1.1 is changed:*

(a) *by replacing subsection (2) with the following:*

(2) Except for sections 2.1, 2.8, 2.9 and 2.15, Part 2 of NI 45-102 does not apply in Manitoba.; *and*

(b) *by adding the following subsection:*

(3) Sections 2.14 and 2.15 do not apply in Alberta and Ontario. In Alberta and Ontario, local measures similar to sections 2.14 and 2.15 apply and are found in Alberta Securities Commission Blanket Order 45-519 *Prospectus Exemptions for Resale Outside Canada* and in sections 2.7 and 2.8 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*..

4. *Subsection 1.2(3) is changed by replacing the second and third sentences with the following:*

This includes the further exemptions found in sections 2.14 and 2.15, and the similar exemptions in Alberta and Ontario. For example, if a person or company obtains a discretionary exemption order or ruling that imposes any of the resale restrictions contained in section 2.5, 2.6 or 2.8 on a security that is the subject of the order or ruling, the person or company may rely on section 2.14 or 2.15, or the similar exemptions in Alberta and Ontario, to resell the security..

5. *Section 1.9 is changed by replacing the words “section 4 of the Alberta Securities Commission Rules” with the words “section 3.1 of the Alberta Securities Commission Rule 45-511 Local Prospectus Exemptions and Related Requirements”.*

6. *Section 1.15 is changed:*

(a) *by replacing, in the title, the words “of a Non-Reporting Issuer” with the words “under Section 2.14”; and*

(b) by adding the following subsection:

(4) *Bona fide trades outside of Canada* – The exemptions in subsections 2.14(1) and 2.14(2) permit the resale of securities of an issuer in a bona fide trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In our view, selling security holders who wish to rely on the exemptions may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A 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 section 2.14.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met..

7. The Companion Policy is changed by adding the following section after section 1.15:

1.15.1 Resale of Securities under Section 2.15

(1) *Directors and Executive Officers* – The definition of “foreign issuer” in section 2.15 of NI 45-102 uses the terms “directors” and “executive officers”. The term “director” is defined in provincial and territorial securities legislation in Canada and generally means a director of a company or an individual performing a similar function or acting in a similar capacity for any non-corporate issuer.

For a non-corporate issuer, an executive officer is a person who is acting in a capacity with the non-corporate issuer that is similar to that of an executive officer of a company.

(2) *Definition of foreign issuer* – In order to rely on section 2.15, a selling security holder will have to determine if the issuer is a foreign issuer on the distribution date. In some cases, the issuer will provide that information to investors at the time of the offering, perhaps in representations in subscription agreements or in offering materials. If the issuer doesn’t provide that information, we defined “foreign issuer” such that a security holder can determine whether an issuer is a foreign issuer by using the information disclosed in the issuer’s most recent disclosure document containing that information that is publicly available in a foreign jurisdiction or the offering document provided by the issuer in connection with the distribution of the security that is the subject of the resale. A security holder may rely on this information unless the security holder has reason to believe that it is not accurate.

The term “ordinarily reside” is used to clarify that when an executive officer or director has a temporary residence outside of Canada, such as a vacation home, the executive officer or director would not generally be considered to reside outside of Canada for the purposes of the definition of foreign issuer.

(3) There is no requirement to place a legend on the securities in order to rely on the exemptions in section 2.15 of NI 45-102.

(4) *Bona fide trades outside of Canada* – The exemptions in subsections 2.15(2) and 2.15(3) permit the resale of securities of an issuer in a bona fide trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In our view, selling security holders who wish to rely on the exemptions may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A 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 section 2.15.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met..

8. ***Section 1.16 is changed by deleting the words “in the jurisdiction of the issuer’s principal regulator under National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions”.***
9. These changes become effective on June 12, 2018.