

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

1.1 Application

- (1) National Instrument 45-102 (NI 45-102) has been implemented in all jurisdictions.
- (2) Except for sections 2.1, 2.8 and 2.9, Part 2 of NI 45-102 does not apply in Manitoba and Yukon.

1.2 Purpose

- (1) NI 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 NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.5 of NI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period and that a four month 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 NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.6 of NI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period. NI 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) Appendices D and E to NI 45-102 list the new harmonized exemptions in National Instrument 45-106 *Registration and Prospectus Exemptions* (NI 45-106) and local exemptions that are subject to the resale restrictions under section 2.5 or 2.6 of NI 45-102, while Appendix F lists the new harmonized exemptions in NI 45-106 applicable to underwriters. Each of these appendices also contains transitional provisions applicable to securities acquired under exemptions listed in the Appendices to MI 45-102 as Appendices D, E and F read on March 30, 2004. For all local exemptions that come into effect after September 14, 2005, you should look to the local instrument itself to see if it specifies that the securities acquired are subject to section 2.5 or 2.6 of NI 45-102 as well as to Appendix D and E to NI 45-102. You may also wish to consult the CSA Notice listing local registration and prospectus exemptions in place in each jurisdiction of Canada, which the CSA will update periodically.

- (3) Nothing in NI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period under a prospectus or an exemption from the prospectus requirement. This includes the further exemption found in section 2.14. 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 to resell the security.

1.3 Transition

- (1) When Multilateral Instrument 45-102 *Resale of Securities* (“former MI 45-102”) came into force on November 30, 2001, that instrument imposed harmonized resale restrictions on the first trade of securities made on or after that date, 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 November 30, 2001. These securities were subject to prescribed restricted periods and seasoning periods of either four or twelve months. When MI 45-102 was implemented on March 30, 2004, the securities of all reporting issuers became subject to four month restricted and seasoning periods under section 2.5 and 2.8 or four month seasoning periods under section 2.6 of MI 45-102. This meant that any existing restricted period or seasoning period imposed under Part 2 of former MI 45-102 that exceeded four months was reduced to four months under MI 45-102. Under NI 45-102, securities of all reporting issuers continue to be subject to a four month restricted period under subsection 2.5(2) or 2.8(2) of the Instrument.
- (2) Item 3. of subsection 2.5(2) of MI 45-102 required that the certificate or the ownership statement evidencing a security that is the subject of the first trade carry either a legend or a legend restriction notation disclosing the resale restrictions. This legend requirement applied only to securities distributed on or after MI 45-102 comes into effect on March 30, 2004 in all jurisdictions except Quebec. We have added language to Item 3. of subsection 2.5(2) of NI 45-102 to clarify that the legend requirement in NI 45-102 will only apply to securities distributed in Quebec on or after NI 45-102 comes into effect on September 14, 2005.
- (3) Issuers may continue to replace those certificates that are legended in accordance with former MI 45-102 with a certificate (or an acceptable electronic alternative) carrying the legend (or legend restriction notation) specified in item 3. of subsection 2.5(2) of NI 45-102. As was the case under former MI 45-102, certificates representing securities distributed prior to November 30, 2001 do not have to be legended.

- 1.4 Open System Jurisdictions** - Sections 2.5 and 2.6 of NI 45-102 do not apply in Manitoba, and Yukon 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 NI 45-102, section 2.3 of NI 45-102 applies and the first trade of the securities is subject to section 2.5 of NI 45-102. Section 2.5 provides that the first trade is a distribution unless, among other conditions, a four 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) of NI 45-102 are satisfied.
- 1.6 Reporting Issuer Status** - Reporting issuer status in any jurisdiction will satisfy the reporting issuer requirements in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102. See section 1.11 for guidance if an issuer becomes a reporting issuer by filing a prospectus after the distribution date.
- 1.7 Legending of Securities** – (1) Items 3 and 3.1 of subsection 2.5(2) of NI 45-102 impose legend or legend notation requirements for securities distributed under any of the provisions listed in Appendix D to NI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of NI 45-102. This requirement applies to securities transferred during the restricted period, whether to initial or subsequent transferees. However, because of the definition of “distribution date”, in the case of most resales, the subsequent purchaser’s restricted period will expire four months and a day after the original distribution date.
- (2) If the security is entered into a direct registration or other electronic book-entry system, or where a certificate representing the security is not issued directly to a beneficial security holder, the issuer must provide written notice of the legend restriction notation to the beneficial security holder. We would consider providing written notice of the legend restriction notation to the beneficial security holder in a subscription agreement or including the legend restriction notation in an ownership statement issued under a direct registration system or other electronic book-entry system delivered directly to the beneficial security holder to be ways of meeting the written notice requirement.
- (3) In addition to the written notice condition contemplated in item 3.1 of subsection 2.5(2), issuers may want to assist purchasers of restricted securities

with compliance with the resale restrictions in item 2 of subsection 2.5(2) through other means. For example, issuers can request that the direct registration or electronic book-entry system in which the security is entered apply any available procedures to restrict trading in the security, such as the assignment of a separate CUSIP number to the security for the duration of the restricted period. There may be alternative procedures available depending on the capabilities of the particular direct registration system or other electronic book-entry system.

(4) Issuers may add additional wording to that found in item 3 of subsection 2.5(2) of NI 45-102. If you supplement the specified text of the legend on the certificate or the legend notation on the written notice, that additional wording cannot alter the meaning of the specified wording. You should also look to section 1.10 for further guidance on the legending of convertible and underlying securities.

- 1.8 Calculation of Restricted and Seasoning Periods** - The restricted period in item 2 of subsection 2.5(2) of NI 45-102 is 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.
- 1.9 No Unusual Effort** - Persons interested in the meaning of the concept of “no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade” found in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102 should look to the case law, in particular the order of the Ontario Securities Commission dated April 24, 1985 in the matter of Daon Development Corporation and Daon Corporation as well as to the definition of unusual effort in section 4 of the Alberta Securities Commission Rules.
- 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. If the applicable restricted period or seasoning period expired prior to the conversion or exchange, subsection 2.5(3) provides that an issuer is not required to place a legend on the certificate representing the underlying securities or a legend restriction notation in the written notice.

- 1.11 Becoming a Reporting Issuer By Filing a Prospectus After the Distribution Date** - If an issuer is not a reporting issuer at the distribution date but subsequently becomes a reporting issuer after the distribution date by filing and obtaining a receipt for a prospectus in one of the jurisdictions listed in Appendix B, section 2.7 of NI 45-102 provides that the seasoning requirement in sections 2.5, 2.6 and 2.8 of NI 45-102 does not apply. This means that the securities issued prior to the prospectus being filed may then be resold, provided that the restricted period under section 2.5 or 2.8 of NI 45-102 has expired.
- 1.12 Realization of Pledged Securities** - The prospectus exemption in section 2.8 of NI 45-102 is available for realizations of pledged securities under either a power of sale or by way of foreclosure. This means that a pledgee, mortgagee or other encumbrancer can rely on the exemption in section 2.8 of NI 45-102 to immediately effect a resale of pledged securities under a power of sale or to foreclose and take the securities on its own books for subsequent resale.
- 1.13 Securities Exchange Take-over Bid or Issuer Bid** - Section 2.11 of NI 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 if 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. A bid circular may be filed for either a formal bid or an exempt bid. 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-level disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. 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 for the exemption in section 2.11 to be available.
- 1.14 Exemptions for Certain Trades in the Local Jurisdiction** - The exemption in section 2.10 of NI 45-102 is subject to a condition that the issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of NI 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 and, in the case of the exemption in section 2.12, an additional condition that issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. Issuers cannot rely on a prospectus filed in another jurisdiction nor can an offeror rely on a take-over bid circular or issuer bid circular filed in another jurisdiction to satisfy these conditions

1.15 Resales of Securities of a Non-Reporting Issuer

- (1) For the purposes of section 2.14 of NI 45-102, 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 under SEC Rule 14a-13 under the *1934 Act* or other securities law analogous to 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).

1.16 Filing of Form 45-102F1 - Section 2.8 of NI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in section 2.8 are met. Selling security holders are required to give advance notice of intention to resell their securities under subsection 2.8(3) of NI 45-102 by filing a completed and signed Form 45-102F1. Under subsection 2.8(4), the advance notice expires on the earlier of the date the selling security holder files the last of the insider reports reflecting the sale of all securities referred to in the Form and 30 days after the Form 45-102F1 is filed. A new Form 45-102F1 must be filed in accordance with subsection 2.8(3) if the selling security holder wishes to continue to resell securities from a control block. Form 45-102F1 should be filed on SEDAR under the issuer's profile under "*Continuous Disclosure – Resale of Securities* (NI 45-102) - Form 45-102F1" in the jurisdiction of the issuer's principal regulator under National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*. Consult National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) and the current CSA SEDAR Filer Manual (including code updates) for further information about filing documents electronically.

1.17 Application of section 2.10 – Section 2.10 of NI 45-102 applies when securities qualified by a prospectus are convertible into or exchangeable for securities of a reporting issuer other than the issuer of the convertible or exchangeable securities. Those securities would be converted or exchanged in reliance on the dealer registration exemption in paragraph 3.42(1)(b) of NI 45-106 and the prospectus exemption in subsection 2.42(1). As a result, those securities would be subject to a seasoning period requirement because distributions under subsection 2.42(1) of NI 45-106 for a security being distributed in the circumstances referred to in clause (b) of subsection 2.42(1) are listed in Appendix E of NI 45-102. Section 2.10 removes the seasoning period requirement for the underlying securities provided the requirements of that section are met.

[Amended •]