

**MULTILATERAL INSTRUMENT 45-105
TRADES TO EMPLOYEES, SENIOR OFFICERS,
DIRECTORS, AND CONSULTANTS**

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Part 1 Definitions and Interpretation

1.1 Definitions

In this Instrument:

“affiliated entity” means, for an issuer, a person or company that controls or is controlled by the issuer or that is controlled by the same person or company that controls the issuer;

“associate”, when used to indicate a relationship with a person or company, means

- (a) an issuer of which the person or company beneficially owns or controls, directly or indirectly, voting securities entitling the person or company to more than 10% of the voting rights attached to outstanding voting securities of the issuer,
- (b) any partner of the person or company,
- (c) any trust or estate in which the person or company has a substantial beneficial interest or in respect of which the person or company serves as trustee or in a similar capacity,
- (d) in the case of a person, a relative of that person, including
 - (i) a spouse of that person, or
 - (ii) a relative of that person’s spouseif the relative has the same home as that person;

“associated consultant” means, for an issuer, a consultant of the issuer or of an affiliated entity of the issuer if

- (a) the consultant is an associate of the issuer or of an affiliated entity of the issuer, or
- (b) the issuer or an affiliated entity of the issuer is an associate of the consultant;

“compensation” means an issuance or grant of securities in exchange for services provided or to be provided and includes an issuance or grant of securities for the purpose of providing an incentive;

“consultant” means, for an issuer, a person or company, other than an employee, senior officer, or director of the issuer, that

- (a) is engaged to provide services to the issuer or an affiliated entity of the issuer, other than services provided in relation to a distribution,
- (b) provides the services under a written contract with the issuer or an affiliated entity of the issuer, and
- (c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or an affiliated entity of the issuer

and includes, for an individual consultant, a company of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner;

“control person” means any person or company that holds or is one of a combination of persons or companies that holds

- (a) a sufficient number of any of the securities of an issuer so as to affect materially the control of that issuer, or
- (b) more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holding of those securities does not affect materially the control of that issuer;

“holding entity” means a person or company that is controlled by an individual;

“investor relations activities” means any activities or communications, by or on behalf of the issuer or a security holder of the issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
 - (i) to promote the sale of products or services of the issuer, or
 - (ii) to raise public awareness of the issuerthat cannot reasonably be considered to promote the purchase or sale of securities of the issuer, or
- (b) activities or communications necessary to comply with the requirements of
 - (i) securities legislation or securities directions of any jurisdiction of Canada or the securities laws of any foreign jurisdiction governing the issuer, or
 - (ii) any exchange or market on which the issuer’s securities trade;

“investor relations person” means a person or company that is a registrant or provides services that include investor relations activities;

“issuer bid requirements” means all of the requirements under securities legislation that apply to an issuer bid;

“listed issuer” means an issuer, any of the securities of which

- (a) trade on or are listed and not suspended, or the equivalent, from trading on
 - (i) TSX Inc.,
 - (ii) TSX Venture Exchange Inc.,
 - (iii) the American Stock Exchange LLC.,
 - (iv) The New York Stock Exchange, Inc.,
 - (v) the London Stock Exchange Limited, or
 - (vi) any successor to any of the entities listed in paragraphs (i) to (v), or
- (b) are quoted on the Nasdaq National Market or the Nasdaq SmallCap Market or any successor to either of those entities;

“MI 45-102” means Multilateral Instrument 45-102 *Resale of Securities*;

“plan” means a plan or program that provides for compensation;

“related person”, for an issuer, means

- (a) a director or senior officer of the issuer, or
- (b) an associate of a director or senior officer of the issuer;

“RRSP” means a registered retirement savings plan as defined in the *Income Tax Act* (Canada);

“RRIF” means a registered retirement income fund as defined in the *Income Tax Act* (Canada);

“shareholder approval”, for a grant or issuance of securities of an issuer as compensation or under a plan, means approval

- (a) given by a majority of the votes cast at a meeting of shareholders of the issuer other than votes attaching to securities beneficially owned by related persons to whom securities may be issued as compensation or under that plan, or
- (b) evidenced by a resolution signed by all the shareholders entitled to vote at a meeting, if the issuer is not required to hold a meeting;

“support agreement” includes an agreement to provide assistance in the maintenance or servicing of indebtedness of the borrower and an agreement to provide consideration for the purpose of maintaining or servicing indebtedness of the borrower;

“secondary market” means an exchange or market where securities are bought and sold after their original issue.

1.2 Interpretation

- (1) In this Instrument, a person or company is considered to control another person or company if the first person or company provides, directly or indirectly, the principal direction or influence over the business and affairs of the second person or company by virtue of
 - (a) Ownership or direction of voting securities in the second person or company,
 - (b) a written agreement or indenture,
 - (c) being or controlling the general partner of a limited partnership, or
 - (d) being a trustee of a trust.

- (2) In this Instrument, participation in a trade is considered voluntary if
 - (a) in the case of an employee, the employee is not induced to participate in the trade by expectation of employment or continued employment with the issuer or an affiliated entity of the issuer,
 - (b) in the case of a senior officer, the senior officer is not induced to participate in the trade by expectation of appointment, employment, continued appointment or continued employment with the issuer or an affiliated entity of the issuer, and
 - (c) in the case of a consultant, the consultant is not induced to participate in the trade by expectation of engagement to provide services or continued engagement to provide services to the issuer or an affiliated entity of the issuer.

Part 2 Exemptions

2.1 Trades and Distributions to Employees, Senior Officers, Directors, and Consultants

- (1) Subject to subsection (3) and (4), the dealer registration requirement does not apply to a trade of a security of an issuer or an option to acquire a security of an issuer by a control person of the issuer, or a trade by an issuer in a security of its own issue, with
 - (a) an employee, senior officer, director, or consultant of the issuer or of an affiliated entity of the issuer,
 - (b) a trustee, custodian, or administrator acting on behalf, or for the benefit, of a person or company referred to in paragraph (a),
 - (c) a holding entity of an individual referred to in paragraph (a),
 - (d) an RRSP or RRIF of an individual referred to in paragraph (a),
 - (e) the spouse of an individual referred to in paragraph (a), or
 - (f) an RRSP or RRIF of the spouse of an individual referred to in paragraph (a)if participation in the trade by the employee, senior officer, or consultant referred to in paragraph (a) is voluntary.

- (2) The prospectus requirement does not apply to a distribution in the circumstances described in subsection (1).
- (3) Except in British Columbia, the exemptions in subsections (1) and (2) are not available for a trade to an investor relations person if the number of securities issued or the amount of other remuneration paid or payable directly or indirectly to the investor relations person by the issuer, an affiliated entity of the issuer, or a security holder of the issuer, is dependent in whole or in part on the trading price or trading volume of the issuer's securities.
- (4) Except in British Columbia, unless prior shareholder approval has been obtained for the issuance or grant of the security or the plan under which the issuance or grant is made, the exemptions in subsection (1) and (2) are not available for a trade of a security of an issuer that is not a listed issuer if the security is issued or granted as compensation to
 - (a) an employee or consultant that is an investor relations person,
 - (b) a consultant that is an associated consultant,
 - (c) a senior officer or director,
 - (d) a trustee, custodian, or administrator acting on behalf, or for the benefit, of a person or company referred to in paragraph (a), (b), or (c),
 - (e) the holding entity of an individual referred to in paragraph (a), (b), or (c),
 - (f) an RRSP or RRIF of an individual referred to in paragraph (a), (b), or (c),
 - (g) the spouse of an individual referred to in paragraph (a), (b), or (c), or
 - (h) an RRSP or RRIF of the spouse of an individual referred to in paragraph (a), (b), or (c)if the issuance or grant together with all of the issuer's previously issued or granted securities for compensation, could result, at any time, in
 - (i) the number of securities reserved for issuance under options to acquire the securities granted to related persons exceeding 10 percent of the outstanding issue,
 - (ii) the issuance to related persons, within a 12 month period, of a number of securities exceeding 10 percent of the outstanding issue,
 - (iii) the number of securities reserved for issuance under options to acquire the securities granted to any related person exceeding five percent of the outstanding issue, or
 - (iv) the issuance to any one related person and the related person's associates, within a 12 month period, of a number of securities exceeding five percent of the outstanding issue.

- (5) For the purpose of obtaining shareholder approval under subsection (4), the issuer must, prior to the meeting of shareholders being held to vote on the issue, or, if no meeting is being held, then concurrently with the delivery of the consent resolution, provide to shareholders information respecting the compensation or plan in sufficient detail to permit shareholders to form a reasoned judgment concerning the matter, including
 - (a) the eligibility of employees, senior officers, directors, and consultants to be issued or granted securities as compensation or under the plan,
 - (b) the maximum number of securities issuable, or in the case of options, the number of securities issuable on exercise of the options, as compensation or under the plan,
 - (c) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any affiliated entity of the issuer to facilitate the purchase of securities as compensation or under the plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis,
 - (d) in the case of options, the maximum term and the basis for the determination of the exercise price,
 - (e) particulars relating to the options or other entitlements to be granted as compensation or under the plan, including transferability, and
 - (f) if applicable, the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether shareholder approval has been obtained.
- (6) The dealer registration requirement does not apply to a trade by an affiliated entity of an issuer in furtherance of a trade under subsection (1).

2.2 Trades and Distributions by Current or Former Employees, Senior Officers, Directors, or Consultants to Employees, Senior Officers, Directors, and Consultants of a Non-Reporting Issuer

- (1) The dealer registration requirement does not apply to a trade of a security of an issuer by a
 - (a) current or former employee, senior officer, director, or consultant of the issuer or affiliated entity of the issuer, or
 - (b) trustee, custodian, or administrator acting on behalf, or for the benefit, of a current or former employee, senior officer, director, or consultant of the issuer or affiliated entity of the issuer

to an employee, senior officer, director, or consultant of the issuer or an affiliated entity of the issuer, or to a trustee, custodian, or administrator acting on behalf of an employee, senior officer, director, or consultant of the issuer or affiliated entity of the issuer.

- (2) The prospectus requirement does not apply to a distribution in the circumstances described in subsection (1).
- (3) The exemptions in subsection (1) and (2) are only available if
 - (a) the participation in the trade of the employee, the consultant, or the senior officer to whom the trade is made is voluntary,
 - (b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and
 - (c) the price of the security being traded is established by a generally applicable formula contained in a written agreement among some or all of the shareholders of the issuer to which the transferee is or will become a party.

2.3 Trades and Distributions for Conversion or Exchange

- (1) The dealer registration requirement does not apply to a trade that is, or is incidental to, the issuance or transfer by an issuer of a security to the holder of a previously-issued security of the issuer that was originally distributed under section 2.1, if the new security is acquired in accordance with the terms and conditions of the previously-issued security
 - (a) through the exercise of a right
 - (i) of the holder to purchase, convert, or exchange, or otherwise acquire, or
 - (ii) of the issuer to require the holder to purchase, convert or exchange, or
 - (b) by way of an automatic conversion or exchange.
- (2) The prospectus requirement does not apply to a distribution in the circumstances described in subsection (1).

2.4 Trades and Distributions Among Permitted Transferees

- (1) The dealer registration requirement does not apply to a trade of a security of an issuer acquired by a person or company under section 2.1, 2.2, or 2.3 provided that the trade is:
 - (a) between any of:
 - (i) an employee of the issuer or an affiliated entity of the issuer;
 - (ii) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the employee;

- (iii) a holding entity of the employee;
 - (iv) an RRSP or RRIF of the employee;
 - (v) a spouse of the employee; or
 - (vi) an RRSP or RRIF of the spouse of the employee;
- (b) between any of:
- (i) a senior officer of the issuer or an affiliated entity of the issuer;
 - (ii) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the senior officer;
 - (iii) a holding entity of the senior officer;
 - (iv) an RRSP or RRIF of the senior officer;
 - (v) a spouse of the senior officer; or
 - (vi) an RRSP or RRIF of the spouse of the senior officer;
- (c) between any of:
- (i) a director of the issuer or an affiliated entity of the issuer;
 - (ii) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the director;
 - (iii) a holding entity of the director;
 - (iv) an RRSP or RRIF of the director;
 - (v) a spouse of the director; or
 - (vi) an RRSP or RRIF of the spouse of the director;
- (d) between any of:
- (i) a consultant of the issuer or an affiliated entity of the issuer;
 - (ii) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the consultant;
 - (iii) a holding entity of the consultant;
 - (iv) an RRSP or RRIF of the consultant;
 - (v) a spouse of the consultant;
 - (vi) an RRSP or RRIF of the spouse of the consultant;
 - (vii) a company of which the consultant is an employee or shareholder; or
 - (viii) a partnership of which the consultant is an employee or partner.

- (2) The prospectus requirement does not apply to a distribution in the circumstances described in subsection (1).
- (3) For the purposes of the exemption in subsection (1) and (2) all references to employee, senior officer, director, or consultant include a former employee, senior officer, director, or consultant.

Part 3 Resale Restrictions

3.1 First Trades

Except in Manitoba, the first trade of a security acquired under Part 2 is subject to section 2.6 of MI 45-102.

3.2 First Trades in Securities of Non-Reporting Issuer

Except in Manitoba, the dealer registration requirement does not apply to the first trade of a security acquired under Part 2, or in the secondary market under a plan, if the conditions in section 2.14 of MI 45-102 are satisfied.

Part 4 Issuer Bid Exemption

4.1 Issuer Bid Exemption

The issuer bid requirements do not apply to the acquisition by an issuer of securities of the issuer acquired under Part 2, or in the secondary market under a plan, if

- (a) the purpose of the acquisition by the issuer is to
 - (i) fulfill withholding tax obligations, or
 - (ii) provide payment of the exercise price of a stock option,
- (b) the acquisition by the issuer is made in accordance with the terms of a plan that specifies how the value of the securities acquired by the issuer shall be determined,
- (c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder, and
- (d) the aggregate number of securities acquired by the issuer within a 12 month period under this section does not exceed five percent of the outstanding securities of the class or series at the beginning of the period.

Part 5 Exemption

5.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) In Ontario, only the regulator may grant an exemption under subsection (1).

Part 6 Effective Date

6.1 Effective Date

This Instrument comes into force in • on •.