

BRITISH COLUMBIA SECURITIES COMMISSION

BC INSTRUMENT 45-507

Effective February 16, 2001, the British Columbia Securities Commission made BC Instrument 45-507 entitled "Trades to Employees, Executives and Consultants" (the original instrument).

The Commission, having considered that to do so would not be prejudicial to the public interest, orders that effective November 30, 2001:

1. the attached BC Instrument 45-507 entitled "Trades to Employees, Executives and Consultants" is made; and
2. the original instrument is revoked.

November 23, 2001

Douglas M. Hyndman
Chair

(This part for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and sections:- Securities Act, sections 48, 76 and 171

Other (specify):-

TRADES TO EMPLOYEES, EXECUTIVES AND CONSULTANTS

Order Under Sections 48 and 76 of the Securities Act

INTRODUCTION

The Commission has made this Instrument for the purpose of expanding the exemptions from the registration and prospectus requirements of the Act available for trades to employees, executives and consultants of an issuer. This Instrument has been based on and harmonized with Ontario Rule 45-503 – Trades to Employees, Executives and Consultants, except where necessary for legislative consistency and to reflect the unique circumstances of the junior market in British Columbia. In particular, the resale provisions and filing requirements set forth in the Ontario Rule have been revised in order to be consistent with the Act and, unlike the Ontario Rule, the Commission has not removed any exemptions already available to issuers under the Act. In responding to the needs of the British Columbia market, the Commission has departed in the Instrument from the exact terms of the Ontario Rule in order to restrict the ability to issue securities to consultants that provide investor relations services to the issuer, as any part of their services, to senior listed issuers only.

DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Instrument

"Act" means the *Securities Act* (British Columbia);

"administrator" means an employee administrator or an executive administrator;

"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;

"consultant" means, for an issuer, an individual, other than an employee or an executive of the issuer, that

- (a) is engaged to provide on a *bona fide* basis consulting, technical, management or other services to the issuer or to an affiliated entity of the issuer, other than services provided in relation to a distribution and, in the case of senior-listed issuers only, includes an investor consultant,
- (b) provides the services under a written contract between the issuer or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and
- (c) in the reasonable opinion of the issuer, 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;

"consultant company" means, for an individual consultant, a company of which the individual consultant is an employee or shareholder;

"consultant partnership" means, for an individual consultant, a partnership of which the individual consultant is an employee or partner;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;

"employee" means, for an issuer, an employee of the issuer or of an affiliated entity of the issuer, other than an executive of the issuer;

"employee administrator" means, for an issuer, a trustee, custodian or administrator acting on behalf or for the benefit of employees, consultants, employees and executives, employees and consultants, executives and consultants, or employees, executives and consultants, of the issuer;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;

"executive" means, for an issuer, a senior officer or a director of the issuer or an affiliated entity of the issuer;

"executive administrator" means, for an issuer, a trustee, custodian or administrator acting on behalf or for the benefit of executives, employees and executives, executives and consultants, or employees, executives and consultants, of the issuer;

"foreign-listed issuer" means an issuer any of the securities of which are listed and posted for trading, or traded, on the American Stock Exchange, the New York Stock Exchange or the London Stock Exchange Limited or quoted on the Nasdaq National Market or the Nasdaq Small Cap Market or a successor to any of those entities;

"incentive" means a compensation or incentive arrangement for an executive;

"incentive plan" means a plan providing for incentives;

"investor consultant" means, for an issuer, a consultant that is a registrant or provides to the issuer or an affiliated entity of the issuer services provided by a registrant or services that include investor relations activities;

"listed issuer" means an issuer any of the securities of which are listed and posted for trading, or traded, on The Toronto Stock Exchange, Bourse de Montréal Inc. or the Canadian Venture Exchange Inc. or a successor to any of those entities;

"MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;

"multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"non-transferable option" means an option the terms of which prohibit transfer except in the case of

- (a) the death of the individual option holder,
- (b) a transaction described in section 6.1 whether the transaction is a trade, or
- (c) a transfer to

- (i) a spouse of the option holder,
- (ii) a minor child of the option holder,
- (iii) a minor grandchild of the option holder, or
- (iv) a trust, of which at least one of the trustees is the option holder and the beneficiaries of which are one or more of the option holder and a person referred to in subparagraph (i), (ii) and (iii);

"outstanding issue" means

- (a) for the purposes of subparagraphs 3.2(a)(ii) and (iv), the number of shares of the applicable class outstanding immediately before the share issuance for which the determination is to be made, excluding shares issued as or under incentives during the preceding 12 month period, or
- (b) otherwise, the number of shares of the applicable class outstanding;

"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;

"RRIF" has the meaning ascribed to "registered retirement income fund" in the *Income Tax Act* (Canada);

"RRSP" has the meaning ascribed to "registered retirement savings plan" in the *Income Tax Act* (Canada);

"Rules" means the British Columbia *Securities Rules*;

"senior-listed issuer" means an issuer, any of the securities of which are listed and posted for trading, or traded, on The Toronto Stock Exchange, the American Stock Exchange, the New York Stock Exchange or the London Stock Exchange Limited, or quoted on the Nasdaq National Market or the Nasdaq Small Cap Market or a successor to any of those entities;

"shareholder approval" means, for an incentive, incentive plan, or amendment to an incentive or incentive plan, of an issuer, approval given by a majority of the votes cast at a meeting of the shareholders of the issuer other than votes attaching to securities beneficially owned by

- (a) related persons to whom securities may be issued under the incentive or incentive plan, and
- (b) associates of the persons referred in paragraph (a);

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

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security;

1.2 Interpretation

(1) Unless otherwise defined in this Instrument, terms used in this Instrument that are defined or interpreted in the Act or Rules should be read in accordance with the Act or Rules.

(2) In this Instrument, trades in a security of an issuer to or by

(a) a consultant, include trades made to or by the consultant's consultant company, the consultant's consultant partnership, or a RRSP or a RRIF established by or for the consultant or under which the consultant is the beneficiary;

(b) an employee, includes trades made to or by a subsidiary entity of the employee or a RRSP or a RRIF established by or for the employee or under which the employee is the beneficiary; and

(c) an executive, includes trades made to or by a subsidiary entity of the executive or a RRSP or a RRIF established by or for the executive or under which the executive is the beneficiary.

(3) In this Instrument, a person is considered to be an affiliated entity of another person if one is a subsidiary entity of the other or if both are subsidiary entities of the same person, or if each of them is controlled by the same person.

(4) In this Instrument, a person is considered to be controlled by a person if

(a) in the case of a person

(i) voting securities of the first-mentioned person carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person.

(5) In this Instrument, a person is considered to be a subsidiary entity of another person if

(a) it is controlled by

(i) that other, or

(ii) that other and one or more persons, each of which is controlled by that other, or

(iii) two or more persons, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person that is that other's subsidiary entity.

(6) In this Instrument, the participation of an employee, senior officer or consultant in a trade is considered voluntary if the employee, officer or consultant is not induced to purchase the security

(a) in the case of an employee, by expectation of the employee's employment or continued employment by the issuer or an affiliated entity of the issuer;

(b) in the case of a senior officer of the issuer or an affiliated entity of the issuer, by expectation of the senior officer's appointment or employment or continued appointment or employment as a senior officer of the issuer; and

(c) in the case of a consultant, by expectation of the individual consultant, the consultant's consultant company or the consultant's consultant partnership being engaged or continuing to be engaged by the issuer or an affiliated entity of the issuer as a consultant.

(7) In this Instrument, an issuer is considered to have a *de minimis* Canadian market with respect to a class or series of securities of the issuer if, at the relevant time, residents of Canada

(a) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and

(b) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series.

(8) In this Instrument, references to "current" and "former" refer to the status at the relevant time of the individual employee, the individual executive and, in the case of a consultant, the status of the individual consultant or the consultant's consultant company or consultant partnership, provided that, in the case of a former employee, former executive or former consultant, at the time of acquisition of the security, or, in the case of an underlying security, at the time of acquisition of the convertible security, exchangeable security or multiple convertible security of the issuer, the former employee, former executive or former consultant was an employee, executive or consultant of the issuer, as the case may be.

TRADES BY AN ISSUER, AN AFFILIATED ENTITY OR ADMINISTRATOR OF SECURITIES OF THE ISSUER'S OWN ISSUE TO EMPLOYEES, CONSULTANTS AND ADMINISTRATORS

2.1 Exemption for Trades by an Issuer or Administrator of Securities of the Issuer's Own Issue to Employees, Consultants and Administrators - Sections 34(1)(a) and 61 of the Act do not apply to a trade by an issuer or an employee administrator of an issuer in a security of the issuer's own issue to an employee of the issuer, a consultant of the issuer or an employee administrator of the issuer, if the participation of the employee or the consultant in the trade is voluntary.

2.2 *De Minimis* Registration Exemption for Trades by Current or Former Employees, Current or Former Consultants and Administrators - Section 34(1)(a) of the Act does not apply to a trade by a current or former employee of an issuer, a current or former consultant of an issuer, or an employee administrator of an issuer on behalf of a current or former employee or a current or former consultant of an issuer, in a security or underlying security of the issuer's own issue, if

(a) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security, at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;

- (b) at the time of the acquisition of the security, or in the case of an underlying security, at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security, the issuer had a *de minimis* Canadian market for the security; and
- (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person outside of Canada.

TRADES BY AN ISSUER, AN AFFILIATED ENTITY OR ADMINISTRATOR OF SECURITIES OF THE ISSUER'S OWN ISSUE TO EXECUTIVES AND ADMINISTRATORS

3.1 Exemption for Trades by a Listed Issuer or Administrator of Securities of the Issuer's Own Issue to Executives and Administrators - Sections 34(1)(a) and 61 of the Act do not apply to a trade by an issuer or an executive administrator of an issuer in a security of the issuer's own issue to an executive of the issuer or an executive administrator of the issuer, if

- (a) the issuer is a listed issuer; and
- (b) in the case of an executive that is a senior officer, the participation of the senior officer in the trade is voluntary.

3.2 Exemption for Trades by a Non-Listed Issuer or Administrator of Securities of the Issuer's Own Issue to Executives and Administrators - Sections 34(1)(a) and 61 of the Act do not apply to a trade by an issuer which is not a listed issuer or an executive administrator of the issuer in a security of the issuer's own issue to an executive of the issuer or an executive administrator of the issuer, if

- (a) in the case of the issue of a security as an incentive,
 - (i) prior shareholder approval has been obtained for the incentive or the incentive plan under which the incentive is being issued, if the incentive or incentive plan, in each case together with all of the issuer's other previously established or proposed incentives or incentive plans, could result, at any time, in
 - (A) the number of shares reserved for issuance under stock options granted to related persons exceeding 10 percent of the outstanding issue,
 - (B) the issuance to related persons, within a 12 month period, of a number of shares exceeding 10 percent of the outstanding issue,
 - (C) the number of shares reserved for issuance under stock options granted to any one related person and the related person's associates exceeding five percent of the outstanding issue, or
 - (D) the issuance to any one related person and the related person's associates, within a 12 month period, of a number of shares exceeding five percent of the outstanding issue; and
 - (ii) prior shareholder approval has been obtained for any amendments made to the incentive or the incentive plan under which the incentive is being issued, if the incentive or incentive plan, as amended, together with all of the issuer's other previously established or proposed incentives

or incentive plans, could result in the number of shares reserved for issuance, or issued within a 12 month period, exceeding the applicable percentage referred to in clause (i).

(b) in the case of the issue of a security as an incentive, the incentive or incentive plan specifies a maximum number of securities, or in the case of options, of underlying securities, issuable under it, and any approval obtained under paragraph (a) is for that maximum number;

(c) for a trade of a security that consists of the grant of an option, the option is a non-transferable option to purchase securities of the issuer; and

(d) in the case of an executive that is a senior officer, the participation of the senior officer in the trade is voluntary.

3.3 Exemption for Securities of Foreign-Listed Issuers and *De Minimis* Exemption for Trades by an Issuer or Administrator of Securities of the Issuer's Own Issue to Executives and Administrators - Sections 34(1)(a) and 61 of the Act do not apply to a trade by an issuer that is not a listed issuer or an executive administrator of the issuer in a security of the issuer's own issue to an executive of the issuer or an executive administrator of the issuer

(a) if the issuer is not a reporting issuer;

(b) if

(i) the issuer is a foreign-listed issuer, or

(ii) at the time of the trade, the issuer has a *de minimis* Canadian market for the security; and

(c) in the case of an executive that is a senior officer, if the participation of the senior officer in the trade is voluntary.

3.4 *De Minimis* Registration Exemption for Trades by Current or Former Executives and Administrators - Section 34(1)(a) of the Act does not apply to a trade by a current or former executive of an issuer, or an executive administrator of an issuer on behalf of a current or former executive of the issuer, in a security or underlying security of the issuer's own issue, if

(a) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security, at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;

(b) at the time of the acquisition of the security, or in the case of an underlying security, at the time of the acquisition of the convertible security, exchangeable security or multiple convertible security, the issuer had a *de minimis* Canadian market for the security; and

(c) the trade is made

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person outside of Canada.

REQUIRED INFORMATION FOR SHAREHOLDER APPROVAL

4.1 Required Information for Shareholder Approval - In addition to any other requirements of British Columbia securities law, if an issuer presents to its shareholders an

incentive, incentive plan, or amendment to an incentive or incentive plan for approval as contemplated by section 3.2, in order to rely on the exemption available in section 3.2 the issuer shall disclose in the information circular for the meeting information respecting the incentive, incentive plan or the amendment to the incentive or incentive 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 securities under the incentive or incentive plan or amendments;
- (b) the maximum number of securities, or in the case of options, of underlying securities, issuable under the incentive or incentive 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 shares under the incentive or incentive 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 under the incentive or incentive plan; and
- (f) 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 purposes of determining whether shareholder approval has been obtained.

CONTROL PERSON DISTRIBUTIONS TO EMPLOYEES, EXECUTIVES, CONSULTANTS AND ADMINISTRATORS

5.1 Exemption for Control Person Distributions to Employees, Executives, Consultants and Administrators - Sections 34(1)(a) and 61 of the Act do not apply to a control person distribution of a security of an issuer or an option of which the underlying security is a security of an issuer to an employee of the issuer, an executive of the issuer, a consultant of the issuer or an administrator of the issuer or by the administrator of that security to an employee of the issuer, an executive of the issuer or a consultant of the issuer, if

- (a) for a trade that consists of the grant of an option, the option is a non-transferable option to purchase securities of the issuer;
- (b) the participation of the employee, the consultant, or in the case of an executive that is a senior officer, the senior officer, in the trade is voluntary; and
- (c) the control person files a notice and declaration in the form contemplated in section 136 of the Rules and otherwise complies with the requirements of section 136 of the Rules.

PERSONAL TRANSFERS

6.1 Personal Transfers - Section 34(1)(a) of the Act does not apply to a trade in a security of an issuer

- (a) between any of an employee of the issuer, a subsidiary entity of that employee, a RRSP established by or for that employee or under which that employee is the beneficiary and a RRIF established by or for that employee or under which that employee is the beneficiary; or

(b) between any of an executive of the issuer, a subsidiary entity of that executive, a RRSP established by or for that executive or under which that executive is the beneficiary and a RRIF established by or for that executive or under which that executive is the beneficiary.

6.2 Personal Transfers By Consultants - Sections 34(1)(a) and 61 of the Act do not apply to a trade in a security of an issuer between any of an individual who is a consultant of the issuer, that individual's consultant company, that individual's consultant partnership, a RRSP established by or for that individual or under which that individual is the beneficiary and a RRIF established by or for that individual or under which that individual is the beneficiary.

TRADES MADE BY CURRENT OR FORMER EMPLOYEES, EXECUTIVES OR CONSULTANTS, OR ADMINISTRATORS OF SECURITIES OF CERTAIN NON-REPORTING ISSUERS

7.1 Exemption for Trades Made by Current or Former Employees, Executives or Consultants, or Administrators of Securities of Certain Non-Reporting Issuers. Sections 34(1)(a) and 61 of the Act do not apply to a trade by a current or former employee of an issuer, a current or former executive of an issuer, a current or former consultant of an issuer or an administrator of an issuer in a security of the issuer to an employee of the issuer, an executive of the issuer, a consultant of the issuer or an administrator of the issuer, if

(a) the participation in the trade of the employee, the consultant, or in the case of an executive that is a senior officer, the senior officer, to whom the trade is made is voluntary;

(b) the issuer is not a reporting issuer; and

(c) the price of the security being traded is established by a generally applicable formula or similar provisions contained in a written agreement among some or all of the shareholders of the issuer to which the transferee is, or upon becoming a transferee, will be required to be, a party.

RESTRICTIONS ON FIRST TRADES IN SECURITIES ACQUIRED UNDER EXEMPTIONS IN INSTRUMENT

8.1 Restrictions on First Trades in Securities Acquired Under Exemptions in Instrument

(1) If a security was distributed to a person, other than an associated consultant or an investor consultant of the issuer of the security, under the exemption from the requirement of section 61 of the Act in sections 2.1, 3.1, 3.2, 3.3, 5.1 or 7.1, the first trade of that security is subject to section 2.6 of MI 45-102.

(2) If a security was distributed to an associated consultant or an investor consultant of the issuer of the security under the exemption from the requirement of section 61 of the Act in sections 2.1, 5.1 or 7.1, the first trade of that security is subject to section 2.5 of MI 45-102.

(3) If a convertible security, exchangeable security or multiple convertible security was distributed to an associated consultant or investor consultant of the issuer of the underlying security under the exemption from the requirement of section 61 of the Act in sections 2.1, 5.1 or 7.1, the first trade of the underlying security is subject to section 2.5 of MI 45-102.

ISSUER BID EXEMPTIONS

9.1 Issuer Bid Exemptions for Cashless Exercise of Options – Sections 105, 106, 107, 108 and 110 of the Act and section 162(2) of the Rules do not apply to the acquisition by an issuer of securities of the issuer from a current or former employee, current or former executive or current or former consultant of the issuer, or an administrator of the issuer on behalf of a current or former employee, current or former executive, or current or former consultant to fulfill withholding tax obligations in respect of the current or former employee, current or former executive or current or former consultant, or as payment of the exercise price of a stock option by the current or former employee, current or former executive or current or former consultant, or an administrator of the issuer on behalf of the current or former employee, current or former executive or current or former consultant, if

(a) in the case of an acquisition from a former employee, former executive, former consultant or an administrator of the issuer on behalf of a former employee, former executive or former consultant, the security, or in the case of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former employee, former executive, former consultant or an administrator of the issuer under an exemption from the requirement of section 61 of the Act in sections 2.1, 3.1, 3.2, 3.3, 5.1 or 7.1 of this Instrument or section 74(2)(9) of the Act;

(b) the acquisition is made in accordance with the terms of a service provider plan that specifies how the value of the securities acquired by the issuer will 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, or, in the case of debt securities that are convertible securities, exchangeable securities or multiple exchangeable securities, the aggregate principal amount, 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.

DISCLOSURE OF EXEMPT TRADES

10.1 Disclosure – Subject to section 10.2, if a security is distributed under the exemptions contained in sections 2.1, 3.1 and 3.2, the issuer must file a report of the trade in the form required under section 139 of the Rules on or before the 10th day after the distribution.

10.2 Annual Disclosure – An issuer that distributes a security through a purchase plan or purchase arrangement under the exemptions contained in sections 2.1, 3.1 or 3.2 must file the report required under section 10.1 at the time the plan or arrangement begins and at least once a year after that and, in addition, if the number of securities distributed in one month exceeds 1% of the securities of the same class outstanding at the beginning of the month, the issuer must file, in respect of the securities distributed in that month, the report required under section 9.1 on or before the 10th day after the end of the month.