

6.1.2 Multilateral Instrument 45-102 Resale of Securities

NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 45-102, COMPANION POLICY 45-102CP, AND FORMS 45-102F1, 45-102F2 and 45-102F3

RESALE OF SECURITIES

This Notice is accompanied by proposed Multilateral Instrument 45-102 Resale of Securities (the "Instrument"), Forms 45-102F1, 45-102F2 and 45-102F3 (collectively, the "Forms"), and Companion Policy 45-102CP (the "Policy"), all of which are being published for comment.

Substance and Purpose of the Instrument, Forms and Policy

Introduction

The Instrument, Forms and Policy are initiatives of certain members of the Canadian Securities Administrators (the "CSA"). The Instrument and Forms are expected to be adopted as a rule in each of British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and Newfoundland, as a Commission regulation in Saskatchewan, as a policy in New Brunswick, Prince Edward Island and the Yukon Territory, and as a code in the Northwest Territories and Nunavut. It is expected that the Policy will be implemented as a policy in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut (the "adopting jurisdictions"). The Instrument, Forms and Policy will not be adopted in Quebec.

The purpose of the Instrument is to harmonize certain provincial and territorial resale restrictions imposed on subsequent trades of securities initially acquired under an exemption from the prospectus requirement. The Instrument also takes a harmonized approach to distributions from a control block and to trades in securities of a non-reporting issuer over a foreign exchange or market.

The approach taken in the Instrument is based on the System for Shorter Hold Periods for Issuers Filing an AIF (the "SHAIF System") adopted in each of British Columbia and Alberta in 1998. The SHAIF System provides for a reduced hold period for first trades of securities previously acquired under a prospectus exemption where the issuer has a current Annual Information Form ("AIF") and has satisfied certain other conditions. The general principle underlying both the SHAIF System and the Instrument is that where a reporting issuer provides the market with current information, securities distributed pursuant to an exemption from the prospectus requirement may be traded in the secondary market after a reduced hold period.

Summary of the Instrument

The Instrument has five parts.

Part 1 contains the definitions of terms and phrases used in the Instrument that are not defined in or interpreted under a national definition instrument in force in an adopting

jurisdiction. National Instrument 14-101 Definitions sets out definitions for commonly used terms and should be read together with the Instrument.

Part 2 addresses subsequent trades in securities:

- initially distributed under an exemption from the prospectus requirement and which must be resold pursuant to a prospectus, pursuant to a further exemption from the prospectus requirement or after the seller has held the securities for a specified period of time (a "private placement exemption");
- initially distributed under an exemption from the prospectus requirement and which must be resold pursuant to a prospectus, pursuant to a further exemption from the prospectus requirement or upon the issuer having been a reporting issuer for a specified period of time (a "seasoning exemption");
- from the holdings of any person or company or combination thereof holding a sufficient number of voting securities of that issuer to affect materially the control of the issuer (a "control distribution"); and
- of a non-reporting issuer over a foreign exchange or market.

Section 2.1 provides that the sections of Part 2 dealing with resale restrictions applicable to securities: (i) acquired pursuant to a private placement exemption or a seasoning exemption, (ii) acquired by an underwriter acting as purchaser, or (iii) of non-reporting issuers (if the subsequent trade is over a foreign exchange or market), do not apply in Manitoba, New Brunswick, Prince Edward Island or the Yukon Territory. Section 2.8, which deals with resale restrictions in connection with control distributions, applies in all of the adopting jurisdictions.

Section 2.2 removes the provisions currently set out in the securities legislation of British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia which impose resale restrictions on subsequent trades of securities initially acquired under an exemption from the prospectus requirement. Securities initially acquired under a private placement exemption are subject to section 2.5, and those acquired under a seasoning exemption are subject to section 2.6.

Subsection 2.5(2) provides a four-month hold period for securities acquired under a private placement exemption where the issuer is a qualifying issuer at the time of the initial distribution. A qualifying issuer is any issuer that is a reporting issuer (or equivalent) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia, is an electronic filer under SEDAR, has filed a current AIF, and either has a class of equity securities listed or quoted on certain specified exchanges or markets, or outstanding securities that have received an approved rating.

Subsection 2.5(3) provides for a 12-month hold period for securities acquired under a private placement exemption where the issuer is not a qualifying issuer.

Subsection 2.6(2) provides that the prospectus requirement does not apply to subsequent trades in securities acquired

under a seasoning exemption, including the first trade in previously issued securities of an issuer that has ceased to be a private company or private issuer, where the initial distribution was made by a qualifying issuer that has been a reporting issuer or the equivalent in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia for at least four months.

Subsection 2.6(3) provides for a 12-month seasoning period for securities of an issuer that is not a qualifying issuer.

Section 2.7 mandates the filing of a certificate stating that the issuer was a qualifying issuer at the time of the initial exempt trade referred to in subsections 2.5(2) and 2.6(2).

Subsection 2.8(2) provides an exemption from the prospectus requirement for control distributions as long as the seller, or the creditor, if the distribution is for the purposes of liquidating a debt made in good faith, has held the securities for at least four months and the issuer is a qualifying issuer which has been a reporting issuer or the equivalent in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia for at least four months.

Subsection 2.8(3) provides for a six or a 12-month hold period for securities of an issuer that is not a qualifying issuer and the securities are sold from a control block.

Section 2.11 provides relief from the prospectus requirement for a subsequent trade in securities initially acquired under a private placement exemption or seasoning exemption from an issuer that is not a reporting issuer in any Canadian jurisdiction. This relief is limited to situations where: (i) at the time of acquisition of the security, no more than 10 percent of the securities (by number of securities and number of holders) were held of record directly or indirectly by residents of Canada, and (ii) the first trade is executed through the facilities of an exchange or market outside Canada. As further clarified in the Policy, the number of securities and of holders held of record directly or indirectly should, to the extent reasonably possible, include beneficial holders.

Part 3 sets out the AIF requirements under the Instrument. It should be noted that a prospectus can qualify as an AIF for the purposes of the Instrument.

Part 4 provides for exemptions from the Instrument.

Summary of Forms

Form 45-102F1 - *Report Made Under Section 2.6 of Multilateral Instrument 45-102 Resale of Securities with respect to a Person or Company that has Ceased to be a Private Company or Private Issuer*

Form 45-102F1 provides notice to the market that a person or company has ceased to be a private issuer or private company.

Form 45-102F2 - *Certificate Under Subsection 2.7 of Multilateral Instrument 45-102 Resale of Securities*

Form 45-102F2 is a certificate stating that an issuer was a qualifying issuer at the time of the initial exempt trade.

Form 45-102F3 - *Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities*

Form 45-102F3 provides notice to the market of an intention to sell securities from a control block.

Summary of the Policy

The purpose of the Policy is to provide information relating to the manner in which the provisions of the Instrument are intended to be interpreted or applied by the securities regulatory authorities of the adopting jurisdictions.

Section 1.1 states that the Instrument has been implemented in all jurisdictions except Quebec. Subsection 1.2(2) clarifies that the Instrument does not restrict the ability of a purchaser to resell securities during a hold period or seasoning period in reliance upon a prospectus or a further exemption from the prospectus requirement.

Section 1.3 reminds market participants that an issuer, or the seller in the case of a control distribution, may be subject to the prospectus requirement in a local jurisdiction even where there are no offerees or purchasers in the jurisdiction as a result of factors connecting the issuer to that jurisdiction. The connecting factors are set out in Companion Policy 72-101CP Distributions Outside of the Local Jurisdiction. This section also reminds market participants that a secondary market trade of securities may be a distribution in a jurisdiction if the initial distribution of the securities was not qualified by a prospectus in that jurisdiction. This may occur even if the securities are freely tradeable in the jurisdiction in which they were originally distributed.

Section 1.4 clarifies that because Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory ("the open system jurisdictions") do not impose resale restrictions on trades in securities distributed under a prospectus exemption, sections 2.5, 2.6 and 2.11 of the Instrument do not apply to trades in the open system jurisdictions. The section provides an illustrative example of the hold period applicable to securities which are traded into an open system jurisdiction from a jurisdiction other than an open system jurisdiction. The section explains that a four or 12-month period would be imposed on the resale of securities whether an issuer distributes securities pursuant to an exemption from the prospectus requirement referred to in the Instrument or pursuant to an exemption under Multilateral Instrument 72-101 Distributions outside of the Local Jurisdiction ("MI 72-101"). Finally, section 1.6 explains that the Instrument and MI 72-101 permit a "tacking" of the hold period under the Instrument and MI 72-101.

Section 1.9 clarifies that, for the purposes of section 2.11 of the Instrument, (i) the securities held of record by brokers, dealers, banks, trust companies or nominees for the accounts of their customers, and (ii) the securities beneficially owned by Canadian residents as reported on reports of beneficial ownership, are to be included in determining the number and holders of securities that are directly or indirectly held of record in Canada.

Part 2 clarifies the AIF requirements under the Instrument, including when AIFs may be filed, AIF form requirements, and review procedures.

Part 3 clarifies the application of fee requirements.

Authority for the Instrument - Ontario

In those adopting jurisdictions in which the Instrument and Forms are to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Instrument and Forms.

In Ontario, the following provisions of the Securities Act (Ontario) (the "Act") provide the Ontario Securities Commission (the "Ontario Commission") with authority to adopt the Instrument.

Paragraph 143(1)20 authorizes the Ontario Commission to make rules providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements.

Paragraph 143(1)22 authorizes the Ontario Commission to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of an annual information form.

Paragraph 143(1)48 authorizes the Ontario Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Paragraph 143(1)54 authorizes the Ontario Commission to make rules respecting exemptions from or varying the requirements of subsections 72(4), (5), (6) and (7) of the Act.

Alternatives Considered

The adopting jurisdictions considered maintaining the current system regulating resale restrictions for certain trades in securities. However, in light of the problems encountered by stakeholders in dealing with the differing requirements across Canada, they have determined it was advisable to develop a more harmonized approach to restrictions on resale. The adopting jurisdictions also note that the SHAIFF System was well received by market participants and that it has successfully implemented shortened hold periods for securities previously acquired under a prospectus exemption in British Columbia and Alberta.

Related Instruments

The Instrument, Forms, and Policy are related to each other. In Ontario, the Instrument is related to subsections 72(4), (5), (6) as it relates to clause 72(1)(r), and (7) of the Act and Rule 45-501 Exempt Distributions.

The CSA, other than the Commission des valeurs mobilières du Québec, will be simultaneously publishing for comment Multilateral Instrument 72-101 Distributions Outside of the

Local Jurisdiction ("MI 72-101"). MI 72-101 regulates the requirements governing the sale of securities outside of the local jurisdiction by providing exemptions from the registration and prospectus requirements and imposing certain resale restrictions.

Unpublished Materials

In proposing the Instrument and Policy, the adopting jurisdictions have not relied on any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The principal benefit of the Instrument and Forms will be to more effectively harmonize the approach of securities regulatory authorities in the adopting jurisdictions and provide for more regulatory certainty. In addition, because the hold periods commence once an issuer becomes a reporting issuer in one of the specified jurisdictions, most security holders will be subject to the same restrictions on resale, regardless of the reporting issuer status in the local jurisdiction.

The costs associated with the Instrument and Forms are the costs associated with filing AIFs and continuous disclosure materials in a jurisdiction. Issuers may also incur greater costs in the preparation of current AIFs.

In the view of the adopting jurisdictions, the benefits outweigh the costs.

Regulations to be Revoked or Amended

It is intended that the Instrument will replace the resale provisions of the various jurisdictions listed in Appendix C of the Instrument. The method of implementing this will vary in accordance with the requirements of the local jurisdiction.

In Ontario, the adoption of the Instrument requires subsection 69(1) and section 70 of Regulation 1015 (the "Regulation"), sections 26 and 27 of Schedule I and Forms 22 and 23 made under the Regulation to be revoked.

The Instrument also makes unavailable subsections 72(4), (5), (6) as it relates to clause 72(1)(r), and (7) of the Act.

Specific Request for Comment

In addition to welcoming submissions on any provision in the Instrument, Forms, and Policy, the adopting jurisdictions seek comment on the specific matters referred to below.

Requirement that a Legended Certificate Representing the Securities Distributed Under Section 2.5 be Provided to Investors

Part 2 of the Instrument provides that in order to reduce the hold period, if securities are distributed in reliance on a private placement exemption, the certificate representing the securities must carry a legend stating that, subject to securities legislation, the holder of the securities shall not trade the securities before the expiry of the appropriate hold period. In many jurisdictions, there is currently no requirement to legend certificates. Under the SHAIFF System, certificates must bear

a legend stating that the securities may not be traded during the hold period.

The adopting jurisdictions believe that, while the legending requirement may represent a change in current commercial practice in some jurisdictions, it will ensure better regulation of the exempt market.

Provision for a Four-Month Hold Period for Investment Grade Securities

The Instrument provides for a four-month hold period for investment grade securities (i.e., debt, asset-backed securities, preferred shares) acquired under exemptions from the prospectus requirement. This goes beyond the SHAIIF System and moves away from the "legal for life" criteria of some jurisdictions.

Comments

Interested parties are invited to make written submissions with respect to the Instrument, Forms and Policy. Submissions received by December 8, 2000 will be considered.

Submissions should be sent to the securities regulatory authorities listed below in care of the Saskatchewan Securities Commission, in duplicate, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

c/o Dean Murrison, Committee Chair
Saskatchewan Securities Commission
800, 1920 Broad Street
Regina, Saskatchewan S4P 3V7
Telephone: 306-787-5879
E-mail: dmurrison@ssc.gov.sk.ca

A diskette containing the submission (in DOS or Windows format, preferably WordPerfect) should also be submitted to the Chair of the Committee.

Comment letters submitted in response to requests for comments are placed on the public file in certain jurisdictions and form part of the public record, unless confidentiality is requested. Comment letters will be circulated amongst the securities regulatory authorities, whether or not confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation in certain jurisdictions may require the securities regulatory authorities in those jurisdictions to make comment letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to the Chair and/or any of the following members of the Committee:

Margaret Sheehy or Brenda Leong
British Columbia Securities Commission
865 Hornby Street, 2nd Floor

Vancouver, British Columbia V6Z 2H4
Telephone: (604) 899-6650/(604) 899-6642 or
(800)373-6393 (in B.C.)
E-mail: msheehy@bcsc.bc.ca
bleong@bcsc.bc.ca

Marsha Manolescu
Alberta Securities Commission
20th Floor, 10025 Jasper Avenue
Edmonton Alberta T5J 3Z5
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Chris Besko
The Manitoba Securities Commission
1130 - 405 Broadway
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Telephone: (204) 945-2561
E-mail: cbesko@cca.gov.mb.ca

Margo Paul or Jean-Paul Bureaud
Ontario Securities Commission
20 Queen Street West, Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Telephone: (416) 593-8136/(416)593-8131
E-mail: mpaul@osc.gov.on.ca
jbureaud@osc.gov.on.ca

Shirley Lee
Nova Scotia Securities Commission
1690 Hollis Street
P.O. Box 458
Halifax, Nova Scotia B3J 3J9
Telephone: (902) 424-5441
E-mail: leespl@gov.ns.ca

Instrument and Policy

The text of the Instrument and Policy follow, together with footnotes that are not part of the Instrument or Policy, but have been included to provide background and explanation.

Dated: September 8, 2000

**MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

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**MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

PART 1 DEFINITIONS

1.1 Definitions - In this Instrument

"AIF" means

- (a) an annual information form of an issuer prepared in accordance with Form 44-101F¹, whether or not the issuer is permitted under NI 44-101 to file a short form prospectus, or
- (b) an alternative form of annual information form permitted under section 3.2;

"approved rating"² means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
CBRS Inc.	B++	A-2	P-3
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Duff & Phelps Credit Rating Co.	BBB-	D-3	BBB-
Fitch IBCA, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	baa
Standard & Poor's Corporation	BBB	A-3	BBB
Thomson BankWatch, Inc.	BBB	TBW-3	BBB

"approved rating organization"³ means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff &

¹ Proposed National Instrument 44-101 Short form Prospectus Distributions which is being adopted by all jurisdictions, will implement the short form prospectus system across Canada.

² National Instrument 14-101 Definitions may be amended to add the term "approved rating". If so amended, the "approved rating" definition would be deleted from this instrument.

³ National Instrument 14-101 Definitions may be amended to add the term "approved rating organization". If so amended, the "approved rating organization" definition would be deleted from this instrument.

Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson BankWatch, Inc., and any of their successors;

"control distribution" means a trade described in the provisions of securities legislation listed in Appendix A;

"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;⁴

"CPC" means a capital pool company as defined in a CPC instrument and, in Manitoba, a keystone company;

"CPC information circular" means an information circular filed by an issuer and accepted under a CPC instrument in connection with a qualifying transaction;

"CPC instrument" means a rule or regulation of a jurisdiction, or a rule, regulation or policy of an exchange in Canada, that applies only to CPCs;

"current AIF" means

- (a) an AIF that is a current AIF filed under NI 44-101, or
- (b) an AIF filed under section 3.1, if the AIF has been filed within the time periods prescribed by NI 44-101 for a current AIF;

"distribution date" means the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution;

"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;

"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;

"NI 13-101" means National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"NI 43-101" means National Instrument 43-101 Standards of Disclosure for Mineral Products;

"NI 44-101" means National Instrument 44-101 Short Form Prospectus Distributions;

"NPS 2-B" means National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators;

"private company" has the meaning ascribed to that term in securities legislation;

"private issuer" has the meaning ascribed to that term in securities legislation;

"qualifying issuer" means an issuer

- (a) that is a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B,
- (b) that is an electronic filer under NI 13-101,
- (c) that has a current AIF,
- (d) that either
 - (i) has a class of equity securities⁵ listed or quoted on a qualifying market, meets the requirements to maintain that listing or quotation and is not designated inactive, suspended or the equivalent, or
 - (ii) has a class of securities outstanding that has received an approved rating,
- (e) if it is not qualified to file a short form prospectus under NI 44-101, and has oil and gas operations or exploration, development or production activities on a mineral property, has filed with its current AIF, as if the AIF were a prospectus, technical reports in accordance with, as applicable, NI 43-101 or the successor instrument to NPS 2-B, once in force, and until that time, a technical report or certificate on each material property prepared in accordance with NPS 2-B,
- (f) that, if it has received a notice in writing from any regulator that its AIF, including any technical reports, does not comply with the instrument prescribing the content of the AIF,

⁴ National Instrument 14-101 Definitions may be amended to add the terms "convertible security", "exchangeable security", "multiple convertible security" and "underlying security". If so amended, these definitions would be deleted from this instrument.

⁵ The term "equity security" is defined in National Instrument 14-101 Definitions as having the meaning ascribed to that term in securities legislation.

has satisfied the regulator that its AIF is acceptable, and

- (g) that, if it is a CPC, has filed a CPC information circular that has been accepted under a CPC instrument;

"qualifying market" means any of

- (a) The Toronto Stock Exchange,
(b) Tier 1 or Tier 2 of the Canadian Venture Exchange,
(c) The Montreal Exchange,
(d) the American Stock Exchange,
(e) the Nasdaq National Market System,
(f) the Nasdaq Small Cap Market,
(g) the New York Stock Exchange,
(h) the London Stock Exchange Limited, and
(i) any successor to any of the exchanges or markets referred to in paragraphs (a) through (h);

"qualifying transaction" means a transaction that, if completed, would result in the issuer no longer being a CPC;

"reporting issuer equivalent" means an issuer that is subject to the continuous disclosure requirements of a jurisdiction listed in Appendix B under the heading "Reporting Issuer Equivalent";

"SEDAR" has the meaning ascribed to that term in NI 13-101; 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.

PART 2 FIRST TRADES

- 2.1 Application** - Except for sections 2.1, 2.8 and 2.9, this Part does not apply in Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.⁶

2.2 Removal of Resale Provisions - The provisions in securities legislation listed in Appendix C do not apply.⁷

2.3 Section 2.5 Applies - Any trade of securities initially distributed under an exemption from the prospectus requirement listed in Appendix D is subject to section 2.5.

2.4 Section 2.6 Applies - Any trade of securities initially distributed under an exemption from the prospectus requirement listed in Appendix E is subject to section 2.6.

2.5 Hold Period

(1) A trade that is specified by section 2.3 or other securities legislation⁸ to be subject to this section is a distribution unless the conditions in subsection (2) or (3) are satisfied.

(2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.

2. At least four months have elapsed from the distribution date.

3. The certificate representing the securities carries a legend stating:

"Subject to securities legislation, the holder of the securities shall not trade the securities before [insert the date that is four months and a day after the distribution date]."

4. The trade is not a control distribution.

5. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.

6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

⁶ These jurisdictions have never imposed resale restrictions on securities distributed under a prospectus exemption.

⁷ It is intended that this Instrument will replace the resale provisions of the various jurisdictions listed in Appendix C. The method of implementing this will vary in accordance with requirements of the local jurisdiction.

⁸ The implementation of this Instrument will require consequential amendments to local rules that contain exemptions that are subject to resale restrictions, for example, Ontario's Rule 45-501 Exempt Distributions.

7. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.
- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
1. The issuer is and has been a reporting issuer or a reporting issuer equivalent for the 12 months immediately preceding the trade either
 - (a) in a jurisdiction listed in Appendix B; or
 - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
 2. At least 12 months have elapsed from the distribution date.
 3. The issuer either
 - (a) is an electronic filer under NI 13-101; or
 - (b) is a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
 4. The certificate representing the securities carries a legend
 - (a) if the issuer is a reporting issuer or a reporting issuer equivalent at the distribution date in a jurisdiction listed in Appendix B, stating:

"Subject to securities legislation, the holder of the securities shall not trade the securities before [insert the date that is 12 months and a day after the distribution date]."; or
 - (b) if the issuer is not a reporting issuer or a reporting issuer equivalent at the distribution date in a jurisdiction listed in Appendix B, stating:

"Subject to securities legislation, the holder of the securities shall not trade the securities before the earlier of (i) the date that is 12 months and a day after the date the issuer first becomes a reporting issuer in Alberta, British Columbia, Nova Scotia, Ontario, Quebec or Saskatchewan or a reporting issuer equivalent in Manitoba; and (ii) the date that is 12 months and a day after the later of (A) the distribution date; and (B) the date the issuer became a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade.".
5. The trade is not a control distribution.
6. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
7. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
8. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.
- 2.6 Seasoning Period**
- (1) The following trades are distributions unless the conditions in subsections (2) or (3) are satisfied:
1. A trade that is specified by section 2.4 or other securities legislation⁹ to be subject to this section.
 2. The first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer.
- (2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:
1. The issuer is and has been a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.

⁹ The implementation of this Instrument will require consequential amendments to local rules that contain exemptions that are subject to resale restrictions, for example, Ontario's Rule 45-503 Trades to Employees, Executives and Consultants.

2. The trade is not a control distribution.
 3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
 4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 5. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.
 6. In the case of the first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer, the issuer has filed Form 45-102F1.
- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
1. The issuer is and has been a reporting issuer or a reporting issuer equivalent for the 12 months immediately preceding the trade either
 - (a) in a jurisdiction listed in Appendix B; or
 - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
 2. The issuer either
 - (a) is an electronic filer under NI 13-101; or
 - (b) is a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
 3. The trade is not a control distribution.
 4. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
 5. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 6. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that

the issuer is not in default of any requirement of securities legislation.

7. In the case of the first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer, the issuer has filed Form 45-102F1.

2.7 Qualifying Issuer Certificate - The issuer of the securities, or the seller of the securities in the case of a control distribution, shall file Form 45-102F2 on or before the tenth day after the distribution date of a trade of securities subject to subsection 2.5(2) and of a trade of securities subject to subsection 2.6(2).

2.8 Trades by Control Persons

- (1) The prospectus requirement does not apply to a control distribution, or a distribution by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a debt made in good faith by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt if such security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution, if the conditions in subsections (2) or (3) are satisfied.

- (2) If the issuer of the securities was a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer or a reporting issuer equivalent in a jurisdiction listed in Appendix B for the four months immediately preceding the trade.

2. The seller, or the creditor if the distribution is for the purpose of liquidating a debt made in good faith, has held the securities for at least four months.

3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.

4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

5. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.

- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer or a reporting issuer equivalent for the 12 months immediately preceding the trade either
 - (a) in a jurisdiction listed in Appendix B; or
 - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
 2. The issuer either
 - (a) is an electronic filer under NI 13-101, or
 - (b) is a reporting issuer or a reporting issuer equivalent in the local jurisdiction of the purchaser of the securities that are the subject of the trade.
 3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
 4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 5. If the seller of the securities is an insider or officer of the issuer, the seller has reasonable grounds to believe that the issuer is not in default of any requirement of securities legislation.
 6. The seller, or the creditor if the distribution is for the purpose of liquidating a debt made in good faith, has held the securities for
 - (a) at least 12 months, if the securities were distributed to the seller under an exemption listed in Appendix D, and
 - (b) in all other cases, at least six months.
- (4) The seller of the securities under subsection (2) or (3) shall
- (a) sign and file with each securities regulatory authority, other than the Commission des valeurs mobilières du Québec, and the exchange in Canada on which the securities that are the subject of the trade are listed Form 45-102F3 within the time periods set out in subsection (5), and
 - (b) file, within three days after the completion of any trade, a report of the

trade in the form required to be filed by a person or company in order to comply with the insider reporting requirements.

- (5) A person or company that files Form 45-102F3 shall sign the form no earlier than one business day before its filing and shall file the form at least seven days and not more than 14 days before the first trade that forms part of the distribution and shall again sign and file the form at the end of 60 days after the original date of filing, and thereafter at the end of each 28 day period, so long as any of the securities specified under the original form have not been sold or until a form has been filed which states that the securities so specified or any part thereof are no longer for sale.

2.9 Determining Time Periods

- (1) In determining the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent for the purposes of section 2.5, 2.6 or 2.8, in the case of securities distributed under the exemptions from the prospectus requirement listed in Appendix F, add the period of time that one of the amalgamating, merged or continuing corporations was a reporting issuer or a reporting issuer equivalent to the period of time that the issuer has been a reporting issuer or a reporting issuer equivalent.
- (2) In determining the period during which the seller has held a security for the purposes of sections 2.5 and 2.8,
 - (a) if the security was acquired by the seller from an affiliate of the seller, the period of time that the security had been held by the affiliate before the transfer to the seller shall be included; and
 - (b) if the security is an underlying security, the period of time shall run from the date that the convertible security, exchangeable security or multiple convertible security was first acquired.
- (3) In determining the period of time that a creditor has held a security under paragraph 2 of subsection (2) or paragraph 6 of subsection (3) of section 2.8, the period of time the security has been held by the pledgor, mortgagor or encumbrancer shall be included.

2.10 Trades by Underwriters - A trade by an underwriter of securities distributed under an exemption from the prospectus requirement listed in Appendix G is a distribution.

2.11 Trades in Securities of a Non-reporting Issuer Distributed under a Prospectus Exemption

- (1) The prospectus requirement does not apply to a trade of a security initially distributed under an exemption from the prospectus requirement if
 - (a) the issuer of the security was not a reporting issuer or a reporting issuer equivalent in any jurisdiction at the distribution date;
 - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
 - (i) did not hold of record directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
 - (ii) did not represent in number more than 10 percent of the total number of holders of record directly or indirectly of securities of the class or series; and
 - (c) the trade is executed through the facilities of an exchange or market outside Canada;
- (2) The prospectus requirement does not apply to a trade of an underlying security if the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was initially distributed under an exemption from the prospectus requirement if
 - (a) the issuer of the underlying security was not a reporting issuer or a reporting issuer equivalent in any jurisdiction at the distribution date;
 - (b) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security that entitled or required the holder to acquire the underlying security; and
 - (c) the condition in paragraph (1)(c) is satisfied.

PART 3 AIF FILING REQUIREMENTS

3.1 Current AIF

- (1) A qualifying issuer that has not filed an AIF under NI 44-101 may file an AIF at any time under this section in order to have a current AIF under this Instrument.
- (2) If an issuer uses an alternative form of AIF permitted under section 3.2, the issuer shall file a notice through SEDAR
 - (a) advising that it has filed an alternative form of AIF under this section, and
 - (b) identifying the SEDAR project number under which the alternative form of AIF was filed.

3.2 Alternative Form of AIF

- (1) An issuer that has obtained a receipt for a prospectus in any jurisdiction, other than a short form prospectus or a prospectus filed under the CPC instrument, may elect to use that prospectus as an alternative form of AIF for its most recently completed financial year if the prospectus includes audited financial statements for that financial year.
- (2) An issuer may elect to use a CPC information circular as an alternative form of AIF for its most recently completed financial year if the information circular includes audited financial statements for that financial year.
- (3) An issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under section 15(d) of the 1934 Act may file a current annual report on Form 10-K or Form 20-F under the 1934 Act as an alternative form of AIF.

PART 4 EXEMPTION

4.1 Exemption

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

PART 5 EFFECTIVE DATE

- 5.1 Effective Date** - This Multilateral Instrument comes into force on ! , 2000.

**APPENDIX A
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES
CONTROL DISTRIBUTIONS**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 1(c.2) and 1(f)(iii) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph (b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
Newfoundland	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Ontario	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Subclauses 2(1)(r)(iii), (iv) and (v) of <i>The Securities Act, 1988</i> (Saskatchewan)

**APPENDIX B
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

QUALIFYING ISSUER JURISDICTIONS

REPORTING ISSUER

Alberta

British Columbia

Nova Scotia

Ontario

Quebec

Saskatchewan

REPORTING ISSUER EQUIVALENT

Manitoba

**APPENDIX C
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**NON-APPLICABLE RESALE PROVISIONS
(Section 2.2)**

JURISDICTION

SECURITIES LEGISLATION REFERENCE

Alberta	Sections 109, 109.1, 110, 111 with respect to underwriters and 112 of the <i>Securities Act</i> (Alberta)
British Columbia	Sections 128(d), 140, 141, 142 and 143 of the <i>Securities Rules</i> (British Columbia)
Nova Scotia	Subsections 77(5), 77(6), 77(7), 77(7A), 77(7B), 77(8), 77(9), 77(10)(a) and 77(11) of the <i>Securities Act</i> (Nova Scotia)
Ontario	Subsections 72(4), 72(5), 72(6) as it relates to clause 72(1)(r), and 72(7) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Subsections 81(6), (7), (8), (8.1) and (10) of <i>The Securities Act, 1988</i> (Saskatchewan)

**APPENDIX D
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**HOLD PERIOD TRADES
(Section 2.3)**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 107(1)(a), (b), (c), (d), (f)(iii) as applicable, (l), (m), (p), (q), (t), (t.1), (u) and (z) of the <i>Securities Act</i> (Alberta)
British Columbia	Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the <i>Securities Act</i> (British Columbia) Sections 128(a), (b), (c), (e), (f) and (h) of the <i>Securities Rules</i> (British Columbia)
Newfoundland	Clause 73(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Paragraph 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) or (z), or clause 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities
Nova Scotia	Clause 77(1)(a), (b), (c), (d), (f)(iii) as applicable, (l), (m), (p), (q), (u), (w), (y), (ab), or (ad) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Paragraph 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) or (z), or clause 3(e)(iii) of Blanket Order No.1 of the Registrar of Securities
Ontario	Clauses 72(1)(a), (b), (c), (d), (f)(iii) as applicable, (l), (m), (p) and (q) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Clauses 81(1)(a), (b), (c), (d), (m), (n), (s), (t), (v), (w), (z), (bb), (ee) and subclauses 81(1)(f)(iii) and (iv) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the above listed exemptions of <i>The Securities Act, 1988</i> (Saskatchewan)

**APPENDIX E
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**SEASONING PERIOD TRADES
(Section 2.4)**

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 107(1)(f), as applicable, (i), (j), (j.1), (k), (k.1), and (n) of the <i>Securities Act</i> (Alberta)
British Columbia	Sections 74(2)(7) to (10), (13), (22) and (24) of the <i>Securities Act</i> (British Columbia) Section 128(g) of the <i>Securities Rules</i> (British Columbia) Section 74(2)(11) of the <i>Securities Act</i> (British Columbia) other than a security acquired by the seller under section 74(11)(iii) in accordance with the terms and conditions of a previously issued security if that previously issued security was distributed under a prospectus or an exchange offering prospectus Section 74(2)(12) of the <i>Securities Act</i> (British Columbia), if the security acquired by the seller under the realization on collateral was initially acquired by a person or company under any of the sections of the <i>Securities Act</i> (British Columbia) or the <i>Securities Rules</i> (British Columbia) referred to in this Appendix
Newfoundland	Clause 73(1)(f), (i), (j), (k), or (n) of the <i>Securities Act</i> (Newfoundland)
Northwest Territories	Clause 3(e)(i) or (ii) or paragraph 3(f), (g), (h), (i), (n), (x), (y) or (mm) of Blanket Order No. 1 of the Registrar of Securities
Nova Scotia	Clauses 77(1)(f), as applicable, (h), (i), (j), (k), (n), (v), (va), (ac), (ae), (af) or 78(1)(a) as it relates to 41(2)(j) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Clause 3(e)(i) or (ii) or paragraph 3(f), (g), (h), (i), (n), (x), (y) or (mm) of Blanket Order No. 1 of the Registrar of Securities
Ontario	Clauses 72(1)(f), (i), (j) and (k) of the <i>Securities Act</i> (Ontario)
Saskatchewan	Clauses 81(1)(a.1), (f) if not included in Appendix D, (f.1), (g), (h), (i), (i.1) (j), (k), (o), (cc), (dd) of <i>The Securities Act, 1988</i> (Saskatchewan)

**APPENDIX F
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**AMALGAMATIONS OR MERGERS
(Section 2.9)**

JURISDICTION

PROSPECTUS EXEMPTION

Alberta

Section 107(1)(i) of the *Securities Act* (Alberta)

British Columbia

Section 74(2)(8) of the *Securities Act* (British Columbia)

Manitoba

Clause 58(1)(b) of the *Securities Act* (Manitoba)

Newfoundland

Clause 73(1)(i) of the *Securities Act* (Newfoundland)

Northwest Territories

Paragraph 3(g) of Blanket Order No.1 of the Registrar of Securities

Nova Scotia

Clause 77(1)(i) of the *Securities Act* (Nova Scotia)

Nunavut

Paragraph 3(g) of Blanket Order No. 1 of the Registrar of Securities

Ontario

Clause 72(1)(i) of the *Securities Act* (Ontario); section 2.8 of Rule 45-501 Exempt Distributions

Prince Edward Island

Clause 2(3)(k) of the *Securities Act* (Prince Edward Island)

Saskatchewan

Clause 81(1)(i) of *The Securities Act, 1988* (Saskatchewan)

**APPENDIX G
TO
MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**UNDERWRITERS
(Section 2.10)**

JURISDICTION

Alberta

British Columbia

Newfoundland

Northwest Territories

Nova Scotia

Nunavut

Ontario

Prince Edward Island

Saskatchewan

PROSPECTUS EXEMPTION

Sections 107(u.1) of the *Securities Act* (Alberta)

Section 74(2)(15) of the *Securities Act* (British Columbia)

Clause 73(1)(r) of the *Securities Act* (Newfoundland)

Paragraph 3(v) of Blanket Order No.1 of the Registrar of Securities

Clause 77(1)(r) of the *Securities Act* (Nova Scotia)

Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities

Clause 72(1)(r) of the *Securities Act* (Ontario)

Clause 2(3)(g) of the *Securities Act* (Prince Edward Island)

Clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan) (Under *The Securities Act, 1988* (Saskatchewan) a trade by an underwriter is included in the definition of distribution.)

FORM 45-102F1

Report Made Under Section 2.6 of Multilateral Instrument 45-102 Resale of Securities with respect to a Person or Company that has Ceased to Be a Private Company or Private Issuer

1. Name and address of person or company that has ceased to be a private company or a private issuer
2. Date when the person or company ceased to be a private company or a private issuer
3. Jurisdiction of incorporation or continuation of the company
4. List as of the time immediately before the company or issuer ceased to be a private company or a private issuer, the number or amount and designation of the authorized and outstanding securities of each class of securities of the company or issuer.
5. List the name, address and the number or amount and designation of securities of the company or issuer held by each person or company who was a beneficial or a registered owner of securities of the company or issuer immediately before the company or issuer ceased to be a private company or a private issuer and where it is not possible to identify the beneficial owner, explain why.

(Make certain the totals as to beneficial and as to registered owners given in this item reconcile, in each case, with the totals given in item 4.)

6. Certifies that the information given in this report is true and complete in every respect.

Date

.....
(name of company or issuer that has ceased to be a private company or a private issuer)

By:.....
(signature)

.....
(official capacity)

.....
(name of individual whose signature appears above)

FORM 45-102F2

**Certificate Under Subsection 2.7 of
Multilateral Instrument 45-102 Resale of Securities**

[Name of Person or Company] hereby certifies that in respect of a trade on [date] of [amount or number and type of securities] of [Name of Issuer],[Name of Issuer] was a qualifying issuer within the meaning of Multilateral Instrument 45-102 Resale of Securities at the time of the trade.

DATED at _____ this ____ day of _____, 20__.

[Name of Person or Company]

By: _____
[type name]
[title]

INSTRUCTION:

1. File this form with the securities regulatory authority in Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan within ten days of the distribution date of a trade referred to subsection 2.5(2) and of a trade referred to in subsection 2.6(2) of Multilateral Instrument 45-102.

FORM 45-102F3

Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities

- 1. Name and address of reporting issuer or reporting issuer equivalent
- 2. Date and jurisdictions where issuer became a reporting issuer or reporting issuer equivalent

<u>Date</u>	<u>Jurisdiction</u>
...
...
- 3. Name and address of selling securityholder
- 4. State whether the selling securityholder is an insider or officer of the issuer. (if an officer state title).
- 5. Amount or number and designation of securities of the issuer beneficially owned, directly or indirectly, by the selling securityholder.
- 6. Amount or number and designation of securities of the issuer proposed to be sold by the selling securityholder.
- 7. State, to the extent known to the selling securityholder, the following particulars about the control position of the issuer: name(s), securities of the issuer held, offices or positions with the issuer or selling securityholder and any other material particular regarding such control position.
- 8. State whether the securities will be sold privately or on an exchange or market (state name of exchange or market).
- 9. Proposed date of sale or date of commencement of sale.
- 10. If the selling securityholder is a lender, pledgee, mortgagee or other encumbrancer selling securities distributed under an exemption in securities legislation from the prospectus requirement for a trade to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith, state the date and amount of the loan, pledge, mortgage or other encumbrance, reasons for liquidating the debt and the circumstances of default.
- 11. State the date that the selling shareholder acquired the securities and, in the case of a sale by a creditor, the date the creditor foreclosed on the securities or decided to sell the securities.
- 12. If this Form is not an initial filing, provide the following information:
 - (a) date of filing the original Form 45-102F3
 - (b) date of the most recently filed renewal Form 45-102F3
 - (c) number of securities proposed to be sold in the initial Form 45-102F3
 - (d) number of securities sold from the date of the initial Form 45-102F3 to the date of this renewal Form 45-102F3
 - (e) number of securities proposed to be sold in the initial Form 45-102F3 that are no longer for sale
 - (f) number of securities remaining for sale

Declaration, Certificate and Undertaking

The seller for whose account the securities to which this certificate relates are to be sold hereby:

- (1) represents that the seller has no knowledge of a material fact or material change with respect to the issuer of the securities that has not been generally disclosed;
- (2) represents that to the best of the seller's information and belief:
 - (a) no unusual effort has been and undertakes that no unusual effort will be made to prepare the market or to create a demand for the securities to be sold and no extraordinary commission or other consideration has been or had been agreed to be paid in respect of such trade,

Request for Comments

- (b) the transaction to which this notice of intention and declaration relate is an arm's length transaction made in good faith, and
- (c) the securities have been held for the period of time required under section 2.8 of Multilateral Instrument 45-102 Resale of Securities and the other conditions of the applicable subsection of that section have been met.
- (3) undertakes that this Form shall be renewed and filed at the end of 60 days after the original date of filing this Form and thereafter at the end of each 28 day period so long as any of the securities specified under this Form have not been sold or until notice has been filed that the securities so specified or any part thereof are no longer for sale; and
- (4) certifies that the information given in the answers to the questions in this Form are true.

Date

.....
(name of selling securityholder)

By:.....
(signature of selling securityholder, and if a company, signature of authorised signatory)

.....
(name and office of authorised signatory)

**COMPANION POLICY 45-102CP
TO MULTILATERAL INSTRUMENT 45-102
RESALE OF SECURITIES**

PART 1 APPLICATION

1.1 Application - Multilateral Instrument 45-102 ("MI 45-102") has been implemented in all jurisdictions except Quebec.

1.2 Purpose

- (1) MI 45-102 provides that a trade of securities initially distributed under an exemption from the prospectus requirement is a distribution unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were initially distributed under a private placement or other exemption listed in Appendix D to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a specified period and that a specified period of time has elapsed from the date of the initial distribution. If the securities were initially distributed under an exemption listed in Appendix E to MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a specified period. If the issuer is a qualifying issuer, MI 45-102 reduces the hold periods and seasoning periods. MI 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) Nothing in MI 45-102 is intended to restrict the ability of a purchaser to resell securities during the hold period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

1.3 Distribution

- (1) An issuer, or the seller in the case of a control distribution, distributing securities may be subject to a requirement to file a prospectus in a jurisdiction because either the securities are distributed to purchasers in the jurisdiction or, as a result of the factors connecting the issuer to the jurisdiction, the offering constitutes a distribution in the jurisdiction even though there are no offerees or purchasers in the jurisdiction. The connecting factors that may result in an issue or sale of securities to purchasers outside of a jurisdiction being subject to the securities legislation of the jurisdiction are set out in section 2.2 of Companion Policy 72-101CP Distributions Outside of the Local Jurisdiction.
- (2) The definition of "distribution" in securities legislation in effect in most jurisdictions includes any transaction or series of

transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution. A secondary market trade of securities into a jurisdiction may be a distribution if the securities have not been qualified by a prospectus in that jurisdiction by virtue of the definition of distribution even if the securities are freely tradeable in another jurisdiction in which they were distributed under a prospectus or a prospectus exemption.

1.4 Open System Jurisdictions

- (1) Sections 2.5 and 2.6 of MI 45-102, which provide that a trade of securities initially distributed under an exemption from the prospectus requirement is a distribution unless certain conditions are satisfied, and section 2.11 of MI 45-102, which provides an exemption from the prospectus requirement, do not apply to trades in the provinces of Manitoba, New Brunswick and Prince Edward Island and in the Yukon Territory as those jurisdictions do not impose resale restrictions on trades in securities distributed under an exemption from the prospectus requirement.
- (2) For example, if an issuer with its executive office in British Columbia distributes securities to a purchaser in Manitoba, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of Manitoba and British Columbia. If the issuer relies upon the British Columbia \$97,000 exemption, section 74(2)(4) of the *Securities Act* (British Columbia), subject to securities legislation, section 2.5 of MI 45-102 imposes a four or 12 month hold period on resale of the securities into each jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory. Alternatively, the issuer may rely in British Columbia upon an exemption from the prospectus requirement under section 2.4 of Multilateral Instrument 72-101 Distributions Outside of the Local Jurisdiction ("MI 72-101") for a distribution of securities to a purchaser in Manitoba, in which case section 2.6 of MI 72-101 would impose a four or 12 month restricted period on resales into each jurisdiction other than Manitoba, New Brunswick, Prince Edward Island and the Yukon Territory.

1.5 Qualifying Issuer - In order to be a qualifying issuer, among other conditions, an issuer must be a reporting issuer or a reporting issuer equivalent in one of the jurisdictions listed in Appendix B to MI 45-102. The reporting issuer jurisdictions are Alberta, British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan. The reporting issuer equivalent jurisdiction is Manitoba.

1.6 Tacking of Hold Period and Restricted Period - A purchaser of securities that were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102 and consequently are subject to a hold period under section 2.5 of MI 45-102 may resell those securities during the hold period outside the local jurisdiction under section 2.4 of MI 72-101. Section 2.6 of MI 72-101 imposes a restricted period on the resale of the securities that commences on the later of the date the issuer became a reporting issuer or a reporting issuer equivalent and the distribution date. The distribution date is the date the securities that are the subject of the trade were initially distributed in reliance on an exemption from the prospectus requirement by the issuer, or by the seller in the case of a control distribution. The restricted period begins on the date the securities were initially distributed under a prospectus exemption listed in Appendix D to MI 45-102. In effect, MI 45-102 and MI 72-101 permit a "tacking" of the hold period under MI 45-102 and the restricted period under MI 72-101.

1.7 Underlying Securities - The hold 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.

1.8 Pledges by Control Persons - In addition to the provisions of MI 45-102, in particular section 2.8, the provisions of National Instrument 62-101 Control Block Distribution Issues may also apply to a trade of securities upon the exercise of a pledge or other security interest in securities acquired in a control distribution.

1.9 Resales of Securities of a Non-Reporting Issuer

- (1) For the purposes of section 2.11 of MI 45-102, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly held of record by residents of Canada and the number of holders of record directly or indirectly in Canada
 - (a) include 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 pursuant to 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).

1.10 Filing of Form 45-102F1, Form 45-102F2 and Form 45-102F3

- (1) Paragraph 2.6(1)2. of MI 45-102 provides that the first trade of previously issued securities of a person or company that has ceased to be a private company or a private issuer is a distribution unless the conditions in subsections (2) or (3) are satisfied. The conditions include that the issuer has filed Form 45-102F1. In order for the seasoning period to expire and the securities to be freely tradeable in each jurisdiction in which Section 2.6 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan, Form 45-102F1 must be filed in each of those jurisdictions.
- (2) Section 2.7 of MI 45-102 provides that the issuer, or the seller in the case of a control distribution, shall file Form 45-102F2 within ten days of the distribution date of a trade referred to in subsection 2.5(2) and of a trade referred to in subsection 2.6(2) of MI 45-102. Form 45-102F2 must be filed in each jurisdiction in which 2.7 of MI 45-102 has been implemented, being Alberta, British Columbia, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario and Saskatchewan.
- (3) Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in subsection (2) or (3) of section 2.8 are met. Subsection 2.9(4) provides that the seller of the securities must file Form 45-102F3 with each securities regulatory authority, other than the Commission des valeurs mobilières du Québec, and the exchange in Canada on which the securities that are the subject of the trade are listed.

PART 2 AIF REQUIREMENTS

2.1 Filing of AIF - Issuers that want to allow their securityholders to take advantage of a provision of MI 45-102 that requires an issuer to have a current AIF can file an AIF at any time. An issuer filing an AIF for the purposes of MI 45-102 should file the AIF or notice under "Continuous Disclosure - MI 45-102" selecting the appropriate filing subtype/document type (i.e. either an AIF, amended AIF or notice). A filer that elects to use an alternative form of AIF that

has previously been filed on SEDAR is not required to refile the document for the purposes of MI 45-102.

2.2 Form of AIF - Issuers do not need to be qualified to file a short form prospectus under NI 44-101 in order to file an AIF under MI 45-102, even though the AIF filed under MI 45-102 is to be prepared in accordance with the requirements of Form 44-101FI.

2.3 Current AIF - Paragraph (b) of the definition of "current AIF" provides that an AIF filed under section 3.1 of MI 45-102 is a current AIF if filed within the time periods for an AIF to be a current AIF under NI 44-101. This paragraph only refers to time periods.

2.4 Most Recent Financial Year - The reference in section 2.3 of this Companion Policy to the time periods required for a current AIF under NI 44-101 includes the provisions of the definition of "current AIF" dealing with AIFs filed during the period of 140 days after the issuer's most recently completed financial year. Accordingly issuers wishing to file an alternative form of annual information form permitted by section 3.2 of MI 45-102 before they have filed their audited financial statements for the most recently completed financial year may include the audited financial statements for the financial year preceding the most recently completed financial year. For example, an issuer with a December 31 financial year end could continue to use an alternative form of AIF containing or incorporating by reference audited annual financial statements for the year ended December 31, 1999 during the first 140 days of 2001, until such time as annual audited financial statements for the year ended December 31, 2000 have been prepared and filed in accordance with securities legislation.

2.5 Loss of Eligibility - If an issuer does not file an AIF within the time periods specified under NI 44-101, the issuer will no longer have a current AIF until it again files an AIF. If the issuer does not have a current AIF, securityholders of the issuer that acquire securities of the issuer will not be able to utilize the provisions of MI 45-102 that require that the issuer have a current AIF. However, securities that were distributed while the issuer had a current AIF and otherwise met the conditions in subsections 2.5(2) or 2.6(2) of MI 45-102 may be sold in accordance with those provisions.

2.6 Review of AIF - An issuer's AIF is subject to review in each jurisdiction, and, as a result of this review, changes may need to be made to the AIF. If an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, any of a wide range of compliance action may be taken by the securities regulatory authorities, from requiring the next AIF to be filed correctly, or a clarifying press release to be issued, to more serious actions such as issuing a cease trade order against the issuer's securities, or initiating appropriate enforcement proceedings against the issuer or its directors and officers.

2.7 Review before Distribution - If the AIF is reviewed before a distribution of securities and an issuer is advised by any regulator that its AIF does not comply with the appropriate instrument, an issuer will not be a qualifying issuer until the issuer has made the necessary changes to the AIF. Securityholders that acquire securities under the distribution will not be able to take advantage of subsections 2.5(2), 2.6(2) and 2.8(2) of MI 45-102.

2.8 Review after Distribution - If the AIF is reviewed after a distribution of securities, and an issuer is advised by any regulator that its AIF does not comply with the applicable instrument, securities that were distributed while the issuer was a qualifying issuer may be sold in accordance with subsections 2.5(2), 2.6(2) and 2.8(2) of MI 45-102 if the other conditions in those subsections are met.

PART 3 FEES

3.1 Fees - An issuer filing an AIF under section 3.1 of MI 45-102 must pay the filing fees required by securities legislation, unless the AIF is in the form of a prospectus for which the regulator has issued a receipt, as permitted under subsection 3.2(1) of MI 45-102.