

**NATIONAL INSTRUMENT 62-101  
CONTROL BLOCK DISTRIBUTION ISSUES**

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**NATIONAL INSTRUMENT 62-101<sup>1</sup>**  
**CONTROL BLOCK DISTRIBUTION ISSUES**

**PART 1      DEFINITIONS<sup>2</sup>**

**1.1            Definitions** - In this Instrument "control distribution" means a trade to which the provisions of securities legislation listed in Appendix A apply.

**1.2            Interpretation** - Terms defined or interpreted in National Instrument 62-103 The Early Warning System and Related Take-over Bid and Insider Reporting Issues and used in this Instrument have the respective meanings ascribed to them in National Instrument 62-103.

**PART 2      PROSPECTUS EXEMPTION**

**2.1            Prospectus Exemption**

(1)    The prospectus requirement<sup>3</sup> does not apply to a control distribution made by an eligible institutional investor if

(a)    the eligible institutional investor

(i)    has issued and filed the news releases and filed reports under the early warning requirements or Part 4 of National Instrument 62-103 for the

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<sup>1</sup>        This National Instrument is expected to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario and Nova Scotia, as a Commission regulation in Saskatchewan, and as a policy in all other jurisdictions represented by the Canadian Securities Administrators.

<sup>2</sup>        A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision of a national instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

<sup>3</sup>        The term "prospectus requirement" is proposed to be defined in National Instrument 14-101 Definitions. The proposed definition is "the requirement in securities legislation that prohibits a person or company from distributing a security unless a preliminary prospectus and prospectus for the security have been filed and receipts obtained for them".

reporting issuer reflecting the current securityholding percentage of the eligible institutional investor in classes of voting and equity securities of the reporting issuer,

- (ii) does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed,
  - (iii) does not receive in the ordinary course of its business and investment activities information of any material fact or material change with respect to the reporting issuer that has not been generally disclosed, and
  - (iv) either alone or together with any joint actors, does not possess effective control of the issuer of the securities;
- (b) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor;
  - (c) the control distribution is made in the ordinary course of business or investment activity of the eligible institutional investor;
  - (d) if the trade was not a control distribution, the securities would not be subject to any requirements of securities legislation<sup>4</sup> requiring them to be held for a specified period of time; and
  - (e) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary

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<sup>4</sup> The term "securities legislation" is defined in National Instrument 14-101 Definitions as meaning the particular statute and legislative instruments of the local jurisdiction set out in an appendix to that instrument and will generally include the statute, regulations and, in some cases, the rules, forms, rulings and orders relating to securities in the local jurisdiction.

commission or consideration is paid in respect of the control distribution.

- (2) An eligible institutional investor that makes a distribution in reliance on subsection (1) shall file a letter within 10 days after the distribution that describes the date and size of the distribution, the market on which it was made and the price at which the securities being distributed were sold.

## **2.2 Pledgeses**

- (1) For purposes of a distribution of securities by a pledgee, the period of time referred to in the provision of securities legislation set out in Appendix B<sup>5</sup> is considered to commence on the date that the pledgor acquired the securities being distributed.<sup>6</sup>
- (2) If a pledgee is distributing securities, then for the purposes of the provisions of securities legislation set out in Appendix C
  - (a) a reference to a “seller” or “vendor” shall be construed as a reference to the pledgee; and
  - (b) the pledgee shall be considered to have held the securities being distributed for the applicable time period provided for in that provision.

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<sup>5</sup> The provisions listed in Appendix B are the provisions that would restrict the availability of an exemption from the prospectus requirement for a distribution by a pledgee unless the pledgee has held the securities to be distributed for a specified length of time; these provisions are the equivalent of subsection 25(1) of the Regulation to the *Securities Act* (Ontario) which will be replaced by section 3.11 of Ontario Rule 45-501 Exempt Distributions.

<sup>6</sup> This provision permits the aggregation of the time that the securities in question were held by the pledgee and the pledgor, for purposes of calculating the hold period contained in the referenced provision of securities legislation.

## **PART 3      EXEMPTION**

### **3.1          Exemption**

- (1)      The regulator<sup>7</sup> or the securities regulatory authority may grant an exemption to this 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.

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<sup>7</sup>      The term "regulator" is defined in National Instrument 14-101 Definitions as meaning, in a local jurisdiction, the person set out in an appendix to that instrument opposite the name of the local jurisdiction. The term "local jurisdiction" is defined in National Instrument 14-101 Definitions as "in a national instrument adopted or made by a Canadian securities regulatory authority, the jurisdiction in which the Canadian securities regulatory authority is situate". The term "Canadian securities regulatory authorities" is defined in National Instrument 14-101 Definitions as meaning the securities commissions or similar regulatory authorities set out in an appendix to that instrument.

**NATIONAL INSTRUMENT 62-101**  
**APPENDIX A**  
**CONTROL BLOCK DISTRIBUTIONS**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
ALBERTA	Clause 1(f)(iii) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (British Columbia)
MANITOBA	Paragraph 1(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)
NOVA SCOTIA	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Clause 1(b.1) of the <i>Securities Act</i> (Prince Edward Island)
SASKATCHEWAN	Subclause 2(1)(r)(iii) of <i>The Securities Act, 1988</i> (Saskatchewan)

**NATIONAL INSTRUMENT 62-101  
APPENDIX B**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
ALBERTA	Subparagraph 112(1)(d)(iii) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Subparagraph 128(d)(iii) of the <i>Securities Rules</i> (British Columbia)
NEWFOUNDLAND	Subsection 73(18) of the <i>Securities Act</i> (Newfoundland)
ONTARIO	Subsection 3.11(1) of Rule 45-501 Exempt Distributions
SASKATCHEWAN	Subclause 81(10)(b)(iii) of <i>The Securities Act, 1988</i> (Saskatchewan)

**NATIONAL INSTRUMENT 62-101  
APPENDIX C**

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
NEWFOUNDLAND	Subsection 73(19) of the <i>Securities Act</i> (Newfoundland)
ONTARIO	Subsection 3.11(2) of Rule 45-501 Exempt Distributions
SASKATCHEWAN	Subclause 81(10)(b)(iv) of <i>The Securities Act, 1988</i> (Saskatchewan)