

6.1.4 Multilateral Instrument 45-102 Resale of Securities

**PROPOSED 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

"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;

"distribution date" means

- (a) in respect of a trade that is not a control distribution, the date the security that is the subject of the trade was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder,
- (b) in respect of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the selling security holder,
- (c) in respect of a trade of an underlying security that is not a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder, or
- (d) in respect of a trade of an underlying security that is a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was acquired by the selling security holder;

"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;

"former MI 45-102" means Multilateral Instrument 45-102 *Resale of Securities* that came into force on November 30, 2001;

"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;

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

"private issuer" has the meaning ascribed to that term in securities legislation except in Ontario where "private issuer" means a person that

- (a) is not a reporting issuer or a mutual fund,
- (b) is an issuer all of whose issued and outstanding shares
 - (i) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements among the issuer and the holders of its securities; and
 - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons or companies, counting any two or more joint registered holders as one beneficial owner, exclusive of persons
 - (A) that are employed by the issuer or an affiliated entity of the issuer, or
 - (B) that beneficially owned, directly or indirectly, shares of the issuer while employed by it or an affiliated entity of it and at all times since ceasing to be so employed have continued to beneficially own, directly or indirectly, at least one share of the issuer, and
- (c) has not distributed any securities to the public;

"SEDAR" has the meaning ascribed to that term in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR); 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 and the Yukon Territory.

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

2.3 Section 2.5 Applies - If a security was distributed under any of the provisions listed in Appendix D, the first trade of that security is subject to section 2.5.

2.4 Section 2.6 Applies - If a security was distributed under any of the provisions listed in Appendix E, the first trade of that security is subject to section 2.6.

2.5 Restricted Period

(1) Unless the conditions in subsection (2) are satisfied, a trade that is specified by section 2.3 or other securities legislation of a jurisdiction to be subject to this section is a distribution.

(2) The conditions are:

1. The issuer is and has been a reporting issuer in a jurisdiction for the four months immediately preceding the trade.
2. At least four months have elapsed from the distribution date.
3. If the distribution date is on or after [insert the effective date of this Instrument] and the security is subject to a restricted period in item (2)2., a certificate representing the securities was issued that carried a legend stating:

"Unless permitted under securities legislation, the holder of the securities shall not trade the securities before the date that is 4 months and a day after the later of (i) [insert the distribution date], and (ii) the date the issuer became a reporting issuer in any province or territory."

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.
7. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

2.6 Seasoning Period

(1) Unless the conditions in subsection (3) are satisfied, a trade that is specified by section 2.4 or other securities legislation of a jurisdiction to be subject to this section is a distribution.

(2) The first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection (3) are satisfied.

(3) The conditions are:

1. The issuer is and has been a reporting issuer in a jurisdiction for the four months immediately preceding the trade.
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 selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

2.7 Exemption for a Trade if the Issuer Becomes a Reporting Issuer After the Distribution Date

- (1) Despite item 2.5(2)1., if the issuer became a reporting issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and is a reporting issuer in a jurisdiction at the time of the trade, the condition in item 2.5(2)1. does not apply.
- (2) Despite item 2.6(3)1., if the issuer became a reporting issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and is a reporting issuer in a jurisdiction at the time of the trade, the condition in item 2.6(3)1. does not apply.
- (3) Despite item 2.8(2)1., if the issuer became a reporting issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and is a reporting issuer in a jurisdiction at the time of the trade, the condition in item 2.8(2)1. does not apply.

2.8 Exemption for a Trade by a Control Person

- (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 the security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution, if the conditions in subsection (2) are satisfied.
- (2) The conditions are:
 1. The issuer is and has been a reporting issuer in a jurisdiction for the four months immediately preceding the trade.
 2. The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, 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. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- (3) The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, under subsection (2) shall
 - (a) sign and file Form 45-102F1 at the times set out in subsections (4) and (5), and
 - (b) file, within three days after the completion of any trade, an insider report prepared in accordance with either Form 55-102F2 or Form 55-102F6 under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (SEDI).
- (4) A person or company required to file Form 45-102F1 shall sign the form no earlier than one business day before its filing.
- (5) Subject to subsection (6), a person or company required to file Form 45-102F1 shall file the form
 - (a) at least seven days and not more than 14 days before the first trade that forms part of the distribution,

- (b) on the 60th day after the date of filing under paragraph (a), and
 - (c) thereafter at the end of each 28 day period.
- (6) Subject to subsection (7), if a person or company has filed a Form 45-102F3 Notice of Intention to Distribute Securities under former MI 45-102 before the effective date of this Instrument, the person or company shall file Form 45-101F1
- (a) on the 60th day after the date of filing of the Form 45-102F3 and thereafter at the end of each 28 day period, or
 - (b) on the 28th day after the filing of the renewal Form 45-102F3, and thereafter at the end of each 28 day period, if a renewal form has been filed before the effective date of this Instrument.
- (7) A person or company is not required to file Form 45-102F1 under paragraph 5(b), 5(c), 6(a) or 6(b) if
- (a) all of the securities specified under the initial form have been sold, or
 - (b) a notice has been filed in the jurisdictions in which the initial Form 45-102F1 or equivalent form was filed, which states that the securities specified in the initial form, or the unsold securities, are no longer for sale.
- (8) The person or company required to file Form 45-102F1 under subsection (3) or (6), or the notice under paragraph 7 (b), shall file the form or the notice on SEDAR.

2.9 Determining Time Periods

- (1) If an issuer was a party to an amalgamation, merger, continuation or arrangement, it may include the period of time that one of the parties to the amalgamation, merger, continuation or arrangement was a reporting issuer immediately before the amalgamation, merger, continuation or arrangement to determine the period of time it has been a reporting issuer in a jurisdiction for the purposes of section 2.5, 2.6 or 2.8.
- (2) In determining the period of time that a selling security holder has held a security for the purposes of section 2.5 or 2.8, if the security was acquired by the selling security holder from an affiliate of the selling security holder, the period of time that the affiliate has held the security may be included.
- (3) In determining the period of time that a selling security holder has held an underlying security for the purposes of section 2.8, the period of time the selling security holder has held the convertible security, exchangeable security or multiple convertible security may be included.
- (4) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held a security under item 2.8(2)2., the period of time the debtor has held the security may be included.
- (5) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held an underlying security under item 2.8(2)2., the period of time the debtor has held the convertible security, exchangeable security or multiple convertible security may be included.

2.10 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Prospectus - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) a receipt was obtained for a prospectus qualifying the distribution of the convertible security, exchangeable security or multiple convertible security;
- (b) the trade is not a control distribution; and
- (c) the issuer of the underlying security is a reporting issuer at the time of the trade.

2.11 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid - Section 2.6 does not apply to a trade of a security of an offeror if

- (a) a securities exchange take-over bid circular or securities exchange issuer bid circular relating to the distribution of the security was filed by the offeror on SEDAR;

- (b) the trade is not a control distribution; and
- (c) the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid or issuer bid.

2.12 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Securities Exchange Take-over Bid Circular or Issuer Bid Circular - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) a securities exchange take-over bid circular or a securities exchange issuer bid circular relating to the distribution of the convertible security, exchangeable security or multiple convertible security was filed by the offeror on SEDAR;
- (b) the trade is not a control distribution;
- (c) the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid or issuer bid; and
- (d) the issuer of the underlying security is a reporting issuer at the time of the trade.

2.13 Trades by Underwriters - A trade by an underwriter of securities distributed under any of the provisions listed in Appendix F is a distribution.

2.14 First Trades in Securities of a Non-Reporting Issuer Distributed under a Prospectus Exemption

- (1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if
 - (a) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction at the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction at the date of the trade;
 - (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 own 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 owners directly or indirectly of securities of the class or series; and
 - (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (2) The prospectus requirement does not apply to the first trade of an underlying security if
 - (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction at the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction at the date of the trade;

- (c) 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; and
- (d) the condition in paragraph (1)(c) is satisfied.

PART 3 TRANSITIONAL PROVISION

- 3.1 Transitional Provision** - Securities distributed between November 30, 2001 and the effective date of this Instrument that were subject to a restricted period and legending requirement under section 2.5(2) or (3) of former MI 45-102 continue to be subject to that requirement unless a new certificate is issued that complies with item 2.5(2)3.

PART 4 EXEMPTION

4.1 Exemption

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

PART 5 EFFECTIVE DATE

- 5.1 Repeal of Former Instrument** - Former MI 45-102 is repealed.
- 5.2 Effective Date of New Instrument** - This Instrument comes into force on [•].

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

CONTROL DISTRIBUTIONS

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Definition of "control person" in section 1(l) and subclause (iii) of the definition of "distribution" contained in section 1(p) 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 and Labrador	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
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)
Prince Edward Island	Clause (iii) of the definition of "distribution" in section 1 of the <i>Securities Act</i> (Prince Edward Island)
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***

REPORTING ISSUER JURISDICTIONS

Alberta

British Columbia

Manitoba

Nova Scotia

Ontario

Quebec

Saskatchewan

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

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

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Sections 131, 132, 133, 134, 135, 136, 137, 138, 139 with respect to underwriters and 140 of the <i>Securities Act</i> (Alberta)
Newfoundland and Labrador	Clause 54(5)(a), subsections 54(7), 54(9), 54(10), 73(4), 73(5), 73(6) as it relates to clause 72(1)(r), 73(7) but not as it relates to subsection 54(6) and 54(7), 73(12), 73(18), 73(19) and 73(24) of the <i>Securities Act</i> (Newfoundland and Labrador)
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)

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

**RESTRICTED PERIOD TRADES
(Section 2.3)**

Sections 131(1)(a), (b), (c), (d), (l), (m), (q), (r), (s), (t), (u) and (bb) of the *Securities Act* (Alberta), and section 131(1)(f)(iii) of the *Securities Act* (Alberta) if the right to purchase, convert or exchange was previously acquired under

- (i) one of the above-listed exemptions under the *Securities Act* (Alberta),
- (ii) section 122(b) or (d) of the Alberta Securities Commission Rules, or
- (iii) under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Sections 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (British Columbia)

Sections 74(2)(11)(ii) and 74(2)(13) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), or the *Securities Rules* (British Columbia) referred to in this Appendix

Section 74(2)(11)(iii) of the *Securities Act* (British Columbia) if the right to purchase, convert or exchange or otherwise acquire was originally acquired under sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the *Securities Act* (British Columbia), section 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (British Columbia), or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Section 74(2)(12) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia) or the *Securities Rules* (British Columbia) referred to in this Appendix

Clauses 54(3)(f) and (g) and 73(1)(a), (b), (c), (d), (h), (l), (m), (p) and (q) of the *Securities Act* (Newfoundland and Labrador) and subclause 73(1)(f)(iii) of the *Securities Act* (Newfoundland and Labrador) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Newfoundland and Labrador) or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z), and subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Clauses 77(1)(a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) and (ad) of the *Securities Act* (Nova Scotia), and subclause 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia) or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z), and subparagraph 3(e)(iii) of Blanket Order No.1 of the Registrar of Securities (Nunavut) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Nunavut) or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Clauses 72(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Ontario) and subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) if

- (A) the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario), or
- (B) the right to purchase, convert or exchange was previously acquired under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Request for Comments

Clauses 13(1)(a), (b), (c), (g) and (i) and subclause 13(1)(e)(iii) of the *Securities Act* (Prince Edward Island) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Prince Edward Island)

Clauses 81(1)(a), (b), (c), (d), (m), (n), (s), (t), (v), (w), (z), (bb) and (ee) of *The Securities Act, 1988* (Saskatchewan)

Subclauses 81(1)(f)(iii) and (iv) of *The Securities Act, 1988* (Saskatchewan) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Clause 81(1)(e) of *The Securities Act, 1988* (Saskatchewan) if the person or company from whom the securities were acquired obtained the securities under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix

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

**SEASONING PERIOD TRADES
(Section 2.4)**

Section 131(1)(f) if not included in Appendix D or F of this Instrument, sections 131(h), (i) if not included in Appendix F, (j), (k), (o) and (y) of the *Securities Act* (Alberta) and sections 107(1) (j.1) and (k.1) prior to their repeal by section 5 of the *Securities Amendment Act, 1989* (Alberta)

Section 74(2)(11)(iii) if not included in Appendix D or F and sections 74(2)(7), (8) if not included in Appendix F, (9) to (11), (13), (22) and (24) of the *Securities Act* (British Columbia)

Section 128(g) of the *Securities Rules* (British Columbia)

Section 74(2)(12) of the *Securities Act* (British Columbia), if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia) or the *Securities Rules* (British Columbia) referred to in this Appendix

Clauses 54(3) and 73(1)(f) if not included in Appendix D or F of this Instrument, (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Newfoundland and Labrador)

Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument

Clause 77(1)(f) of the *Securities Act* (Nova Scotia) if not included in Appendix D or F of this Instrument, and clauses 77(1)(h), (i) if not included in Appendix F, (j), (k), (n), (v), (va), (ac), (ae) and (af) of the *Securities Act* (Nova Scotia), and clause 78(1)(a) of the *Securities Act* (Nova Scotia) as it relates to clause 41(2)(j) of the *Securities Act* (Nova Scotia) and Blanket Order No. 27(revised), 37, 38, 46 and 45-501

Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Nunavut), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument

Clauses 72(1)(f), (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Ontario), except for a trade made under 72(1)(f)(iii) of the *Securities Act* (Ontario) that is:

- (i) included in Appendix D or F of this Instrument; or
- (ii) to an associated consultant or investor consultant as defined in Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants*; or
- (iii) contemplated by section 6.5 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*

Clauses 13(1)(e) if not included in Appendix D or F of this Instrument, (f) if not included in Appendix F, (h) and (k) of the *Securities Act* (Prince Edward Island) or section 3.1 or 3.2 of Rule 45-501, section 1.1 of Prince Edward Island Rule 45-502, section 2.1 or 2.2 of Prince Edward Island Rule 45-506 or section 2.1 or 2.2 of Prince Edward Island Rule 45-510

Clauses 81(1)(a.1), (e) if not included in Appendix D of this Instrument, (f) if not included in Appendix D or F of this Instrument, (f.1), (g), (h), (i) if not included in Appendix F, (i.1), (j), (k), (o), (cc) and (dd) of *The Securities Act, 1988* (Saskatchewan)

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

**UNDERWRITERS
(Section 2.13)**

Section 131(1)(v) of the *Securities Act* (Alberta) and section 131(1)(i) or 131(1)(f)(iii) of the *Securities Act* (Alberta) if the original security was acquired under section 131(1)(v) of the *Securities Act* (Alberta)]

Section 74(2)(15) of the *Securities Act* (British Columbia) and section 74(2)(8) or 74(2)(11)(iii) of the *Securities Act* (British Columbia) if the original security was acquired under section 74(2)(15) of the *Securities Act* (British Columbia)

Clause 73(1)(r) of the *Securities Act* (Newfoundland and Labrador) and section 73(1)(i) or 73(1)(f)(iii) of the *Securities Act* (Newfoundland and Labrador) if the original security was acquired under section 73(1)(r) of the *Securities Act* (Newfoundland and Labrador)

Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)

Clause 77(1)(r) of the *Securities Act* (Nova Scotia) and clause 77(1)(i) or 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the original security was acquired under clause 77(1)(r) of the *Securities Act* (Nova Scotia)

Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)

Clause 72(1)(r) of the *Securities Act* (Ontario) and clause 72(1)(f)(iii) or 72(1)(i) if the original security was acquired under section 72(1)(r) of the *Securities Act* (Ontario)

Section 2.1 of Prince Edward Island Rule 45-509 and subclause 13(1)(e) (iii) or clause 13(1)(f) of the *Securities Act* (Prince Edward Island) or section 1.1 of Prince Edward Island Rule 45-502 if the original security was acquired under section 2.1 of Prince Edward Island Rule 45-509

Clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan) and clause 81(1)(i) or subclause 81(1)(f)(iii) of *The Securities Act, 1988* (Saskatchewan) if the original security was acquired under clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan)

FORM 45-102F1

**Notice of Intention to Distribute Securities under Section 2.8 of
MI 45-102 Resale of Securities**

Reporting issuer

1. Name of reporting issuer:

Selling security holder

2. Your name:
3. The offices or positions you hold in the issuer:
4. Are you selling securities as a lender, pledgee, mortgagee or other encumbrancer?
5. Number and class of securities of the reporting issuer you beneficially own:

Distribution

6. Number and class of securities you propose to sell:
7. Will you sell the securities privately or on an exchange or market? If on an exchange or market, provide the name.
8. When do you propose to sell, or start selling, these securities?

Past Filings

9. If this form is not your initial filing,
- (a) when did you file your initial Form 45-102F1?
 - (b) when did you file your most recent renewal of this form?
 - (c) how many securities did you propose to sell in your initial form?
 - (d) how many securities did you sell between your initial filing and this renewal filing?
 - (e) how many of the securities you proposed to sell in your initial filing are no longer available for sale?
 - (f) how many securities remain available for sale?

Warning

It is an offence to submit information that, in a material respect and in light of the circumstances in which it is submitted, is misleading or untrue.

Certificate

I certify that

- (1) I have no knowledge of a material fact or material change with respect to the issuer of the securities that has not been generally disclosed; and
- (2) the information given in this form is true and complete.

Date

.....
Your name (Selling security holder)

.....
Your signature (or if a company, the signature of your authorized signatory)

.....
Name of your authorized signatory

INSTRUCTION:

File this form with the securities regulatory authority in each jurisdiction where you sell securities and with the Canadian exchange on which the securities are listed. Where the securities are being sold on an exchange, the form should be filed in every jurisdiction across Canada.

Notice to selling security holders - collection and use of personal information

The personal information required in this form is collected for and used by the listed securities regulatory authorities to administer and enforce securities legislation in their jurisdictions. This form is publicly available by authority of Multilateral Instrument 45-102 and the securities legislation in each of the jurisdictions. The personal information collected will not be used or disclosed other than for the stated purposes without first obtaining your consent. Corporate filers should seek the consent of any individuals whose personal information appears in this form before filing this form.

If you have questions about the collection and use of your personal information, or the personal information of your authorized signatory, contact any of the securities regulatory authorities listed below.

Alberta Securities Commission - Alberta

4th Floor, 300 - 5th Avenue SW
Calgary, AB T2P 3C4
Attention: Information Officer
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

British Columbia Securities Commission - British Columbia

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, B.C. V7Y 1L2
Attention: Manager, Financial and Insider Reporting
Telephone: (604) 899-6730 or (800) 373-6393 (in B.C.)
Facsimile: (604) 899-6506

Securities Commission of Newfoundland and Labrador- Newfoundland and Labrador

P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's NFLD A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

**Department of Justice, Northwest Territories - Northwest Territories
Legal Registries**

P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Director, Legal Registries
Telephone: (867) 873-7490
Facsimile: (867) 873-0243

Nova Scotia Securities Commission - Nova Scotia

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Attention: Corporate Finance
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Department of Justice, Nunavut - Nunavut

Legal Registries Division

P.O. Box 1000 - Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Director, Legal Registries Division
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

Ontario Securities Commission - Ontario

Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8200
Facsimile: (416) 593-8177

Prince Edward Island Securities Office - Prince Edward Island

Consumer, Corporate and Insurance Services Division
Office of the Attorney General
P.O. Box 2000
Charlottetown, PE C1A 7N8
Attention: Registrar of Securities
Telephone: (902) 368-4550
Fax: (902) 368-5283

Saskatchewan Securities Commission - Saskatchewan

6th Floor, 1919 Saskatchewan Drive
Regina, SK S4P 3V7
Attention: Deputy Director, Legal
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

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

PART 1 APPLICATION

1.1 Application

- (1) Multilateral Instrument 45-102 ("MI 45-102") has been implemented in all jurisdictions except Québec.
- (2) Except for sections 2.1, 2.8 and 2.9, Part 2 of MI 45-102 does not apply in Manitoba, New Brunswick and the Yukon Territory.

1.2 Purpose

- (1) MI 45-102 provides that first trades of securities distributed under certain exemptions from the prospectus requirement are distributions unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were distributed under any of the provisions listed in Appendix D to MI 45-102 or under other securities legislation of any jurisdiction which specifies that the first trade is subject to section 2.5 of MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period and that a four month restricted period has elapsed from the date of the initial distribution. If the securities were distributed under any of the provisions listed in Appendix E to MI 45-102 or under other securities legislation of any jurisdiction which specifies that the first trade is subject to section 2.6 of MI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period. 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 restricted period or seasoning period in reliance upon a prospectus or an exemption from the prospectus requirement.

1.3 Transition

- (1) When former MI 45-102 came into force on November 30, 2001, that instrument imposed harmonized resale restrictions on the first trade of securities made on or after that date, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to November 30, 2001. These securities were subject to prescribed restricted periods and seasoning periods of either four or twelve months under sections 2.5, 2.6 and 2.8 of former MI 45-102, depending on whether the issuer of the securities was a qualifying issuer. With the adoption of harmonized continuous disclosure requirements applicable to all reporting issuers, there is no need to continue to distinguish between qualifying issuers and other reporting issuers. As a result, the securities of all reporting issuers are now subject to four month restricted and seasoning periods under section 2.5 and 2.8 of MI 45-102 or four month seasoning periods under section 2.6 of MI 45-102. This means that any existing restricted period or seasoning period imposed under Part 2 of former MI 45-102 that exceeds four months will be reduced to four months under MI 45-102.
- (2) Securities that were subject to a 12 month restricted period under subsection 2.5(3) or 2.8(3) of former MI 45-102 will now be subject to a four month restricted period under section 2.5(2) or 2.8(2) of MI 45-102. Section 2.5(2)3. of MI 45-102 imposes a condition that if the security that is the subject of the trade was distributed on or after the effective date of MI 45-102, the certificate representing the securities must carry a legend disclosing the resale restriction. Certificates representing securities distributed prior to November 30, 2001, the effective date of former MI 45-102, do not have to be legended. Issuers that issued certificates with legends in accordance with former MI 45-102 may cancel those certificates and replace them with a certificate containing a legend disclosing the new resale restrictions under section 2.5 or 2.8 of MI 45-102.

1.4 Open System Jurisdictions - Sections 2.5 and 2.6 of MI 45-102 do not apply in Manitoba, New Brunswick and the Yukon Territory as those jurisdictions do not impose restrictions on first trades in securities distributed under an exemption from the prospectus requirement in those jurisdictions unless the trade is a control distribution.

1.5 Example of Application of Section 2.5 - If an issuer distributes securities to a purchaser in British Columbia, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of British Columbia. If the issuer relies upon a British Columbia prospectus exemption listed in Appendix D to MI 45-102, section 2.3 of MI 45-102 applies and the first trade of the securities is subject to section 2.5 of MI 45-102. Similarly, if the issuer relies on certain exemptions in Multilateral Instrument 45-103 *Capital Raising Exemptions*, that instrument specifies that the first trade of those securities are subject to section 2.5 of MI 45-102. Section 2.5 provides that the first trade is a

distribution unless, among other conditions, a four month restricted period has elapsed. If the British Columbia purchaser seeks to resell the securities into Ontario, a prospectus must be filed in Ontario or a prospectus exemption relied upon unless the conditions in section 2.5(2) of MI 45-102 are satisfied.

1.6 Reporting Issuer Status - Reporting issuer status in any jurisdiction will satisfy the reporting issuer requirements in sections 2.5(2), 2.6(3) and 2.8(2) of MI 45-102. See section 1.10 for guidance if an issuer becomes a reporting issuer by filing a prospectus after the distribution date.

1.7 Legending of Securities - Section 2.5(2)3. of MI 45-102 requires that, for securities distributed under any of the provisions listed in Appendix D to MI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of MI 45-102, if the distribution date is on or after the effective date of MI 45-102 a certificate representing the securities must have been issued that carried a legend stating that, unless permitted under securities legislation, the holder of the securities shall not trade the securities before the expiry of the restricted period. Placing a restricted period legend on a share certificate is the most practical manner of providing certainty as to the applicable restricted period and of ensuring more effective regulation of the exempt market in the closed system jurisdictions. See section 1.9 for further guidance regarding the legending of convertible and underlying securities.

1.8 Calculation of Restricted and Seasoning Periods

(1) The restricted period in section 2.5(2)2. of MI 45-102 is calculated from the distribution date, that is, the date the securities were distributed in reliance on an exemption from the prospectus requirement by the issuer or a control person. For example, if an issuer or control person distributes securities under a private placement exemption to a purchaser in Saskatchewan and the private placee resells the securities during the restricted period to a purchaser in Alberta under a further private placement exemption, upon resale by the Alberta purchaser, that purchaser will determine whether the restricted period has expired by calculating the time period from the date the issuer or control person distributed the securities to the Saskatchewan purchaser.

(2) For the purposes of section 2.9(1) of MI 45-102, the reference to “amalgamation, merger, continuation or arrangement” includes demergers and other statutory procedures and, in Saskatchewan, reorganizations.

1.9 Underlying Securities - The restricted period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security. If the applicable restricted period or seasoning period expired prior to the conversion or exchange, an issuer is not required to place a legend on the certificate representing the underlying securities under section 2.5(2)3. of MI 45-102.

1.10 Becoming a Reporting Issuer By Filing a Prospectus After the Distribution Date - If an issuer is not a reporting issuer at the distribution date but subsequently becomes a reporting issuer after the distribution date by filing and obtaining a receipt for a prospectus in one of the jurisdictions listed in Appendix B, section 2.7 of MI 45-102 provides that the seasoning requirement in sections 2.5, 2.6 and 2.8 of MI 45-102 will no longer apply. This means that the securities issued prior to the prospectus being filed may then be resold, provided that the restricted period under section 2.5 or 2.8 of MI 45-102 has expired.

1.11 Securities Exchange Take-over Bid or Issuer Bid - Section 2.11 of MI 45-102 provides relief from the seasoning requirement for a trade of securities issued in connection with a securities exchange take-over bid or securities exchange issuer bid if a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror under securities legislation of the local jurisdiction. A bid circular may be filed for either a formal bid or an exempt bid. The basis for this exemption is that a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. If a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular must meet the disclosure standards in securities legislation relating to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid in order for the exemption in section 2.11 to be available.

1.12 Resales of Securities of a Non-Reporting Issuer

(1) For the purposes of section 2.14 of MI 45-102, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly owned by residents of Canada and the number of owners directly or indirectly that are residents of Canada, an issuer should use reasonable efforts to

(a) determine securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada;

- (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
 - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.
- (2) Lists of beneficial owners of securities maintained by intermediaries 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).

1.13 Filing of Form 45-102F1 - Section 2.8 of MI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in section 2.8 are met. Section 2.8(3) of MI 45-102 requires a person or company selling securities under section 2.8(2) of MI 45-102 to file Form 45-102F1. Form 45-102F1 must be filed whether the distribution date is before or after the effective date of MI 45-102. Form 45-102F1 should be filed on SEDAR under the issuer's profile under "*Continuous Disclosure – Resale of Securities (MI 45-102) – Form 45-102F1*" in the jurisdiction of the issuer's principal regulator under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and AIFs*. The notice required to be filed under section 2.8(7)(b) of MI 45-102 when these securities are no longer for sale should also be filed on SEDAR under the issuer's profile under "*Continuous Disclosure – Resale of Securities (MI 45-102) – Other*" in the jurisdiction of the issuer's principal regulator. Consult National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* and the current CSA SEDAR Filer Manual (including code updates) for further information about filing documents electronically.

1.14 Exemptions for Certain Trades in the Local Jurisdiction - The exemption in section 2.10 of MI 45-102 is subject to a condition that the issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of MI 45-102 are subject to a condition that the offeror was a reporting issuer in the local jurisdiction on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid and, in the case of the exemption in section 2.12, an additional condition that issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. Issuers cannot rely on a prospectus filed in another jurisdiction nor can an offeror rely on a take-over bid circular or issuer bid circular filed in another jurisdiction to satisfy these conditions.