

This document is an unofficial consolidation of National Instrument 45-102 *Resale of Securities* (including Form 45-102F1) and its Companion Policy, current to November 1, 2018. The unofficial consolidation of the National Instrument, in addition to all Ontario amendments, incorporates minor local amendments from Alberta, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon as described in CSA Staff Notices 11-314, 11-320, 11-334 and 11-335. The unofficial consolidation of the Companion Policy incorporates a minor local change from Alberta as described in CSA Staff Notice 11-339.

The document is provided for reference purposes only and is not an official statement of law or policy.

National Instrument 45-102

Resale of Securities

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National 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;

“MI 45-102” means this Instrument prior to its amendment on September 14, 2005;

“MI 45-103” means Multilateral Instrument 45-103 *Capital Raising Exemptions* prior to its repeal on September 14, 2005;

“MI 45-105” means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* prior to its repeal on September 14, 2005;

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“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 45-106” means National Instrument 45-106 *Prospectus Exemptions*;

“private company” has the same meaning as in securities legislation;

“private issuer” means, as the context requires,

- (a) a private issuer as defined in securities legislation,
- (b) a private issuer as defined in NI 45-106, or
- (c) in Ontario, for purposes of the definition of a private issuer as it existed in 1998 OSC Rule 45-501 (as defined in the Ontario transitional provisions in Appendix D) prior to its repeal on November 30, 2001, a person that
 - (i) is not a reporting issuer or a mutual fund,
 - (ii) is an issuer all of whose issued and outstanding shares
 - (A) 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
 - (B) 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
 - (I) that are employed by the issuer or an affiliated entity of the issuer, or
 - (II) 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
 - (iii) has not distributed any securities to the public;

“SEDAR” has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“trade”, in Québec, has the same meaning as in NI 45-106; 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** - In Manitoba, sections 2.2 to 2.7 and 2.10 to 2.14 do not apply.
- 2.2 Removal of Resale Provisions** - In Newfoundland and Labrador and Ontario, the provisions in securities legislation listed in Appendix C, respectively, 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 to be subject to this section is a distribution.
- (2) Subject to subsection (3), for the purposes of subsection (1) the conditions are:
1. The issuer is and has been a reporting issuer in a jurisdiction of Canada 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 March 30, 2004, or, in Québec, on or after September 14, 2005, and either of the following apply:
 - (i) if the issuer was a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend stating:

Unless permitted under securities legislation, the holder of this security must not trade the security before [*insert the date that is 4 months and a day after the distribution date*];

- (ii) if the issuer was not a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend stating:

Unless permitted under securities legislation, the holder of this security must not trade the security 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.

- 3.1 If the security is entered into a direct registration or other electronic book-entry system, or if the purchaser did not directly receive a certificate representing the security, the purchaser received written notice containing the legend restriction notation set out in subparagraphs (i) or (ii) of item 3.
 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 security that is 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.
- (3) Items 3 and 3.1 of subsection (2) do not apply to a trade of an underlying security if the underlying security is issued at least four months after the later of
- (a) the distribution date, and
 - (b) the date the issuer became a reporting issuer in any jurisdiction of Canada.

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 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) For the purposes of subsections (1) and (2), the conditions are:
 1. The issuer is and has been a reporting issuer in a jurisdiction of Canada 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 security that is 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 – Item 1 of subsection 2.5 (2), 2.6 (3) or 2.8 (2) does not apply 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 of Canada at the time of the trade.

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) For the purposes of subsection (1), the conditions are:
 1. The issuer is and has been a reporting issuer in a jurisdiction of Canada 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 security that is 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) must
 - (a) complete and sign a Form 45-102F1 no earlier than one business day before the Form 45-102F1 is filed;
 - (b) file the completed and signed Form 45-102F1 on SEDAR at least seven days before the first trade of the securities that is part of the distribution; and

- (c) 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 Form 45-102F1 filed under subsection (3) expires on the earlier of
 - (a) thirty days after the date the Form 45-102F1 was filed, and
 - (b) the date the selling security holder, or the lender, pledgee, mortgagee or other encumbrancer, files the last of the insider reports reflecting the sale of all securities referred to in the Form 45-102F1.
- (5) A selling security holder, or the lender, pledgee, mortgagee or other encumbrancer must not file a new Form 45-102F1 in respect of a class of securities of a reporting issuer until the Form 45-102F1 in respect of that class of securities previously filed by that person or company has expired.

2.9 Determining Time Periods

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

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 of Canada at the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada 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 of Canada at the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada 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.
- (3) This section does not apply in Alberta and Ontario.

In Ontario, section 2.7 of Ontario Securities Commission Rule 72-503 Distributions Outside Canada provides a similar exemption to the exemption in section 2.14 of this Instrument. In Alberta, section 10 of Alberta Securities Commission Rule 72-501 Distributions to Purchasers Outside Alberta provides a similar exemption to the exemption in section 2.14 of this Instrument.

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

- (1) In this section

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or a chief financial officer, or
- (c) in charge of a principal business unit, division or function including sales, finance or production and that fact is disclosed in any of the following documents:
 - (i) the issuer’s most recent disclosure document containing that information that is publicly available in a foreign jurisdiction where its securities are listed or quoted;
 - (ii) the offering document provided by the issuer in connection with the distribution of the security that is the subject of the trade;

“foreign issuer” means an issuer that is not incorporated or organized under the laws of Canada, or a jurisdiction of Canada, unless any of the following applies:

- (d) the issuer has its head office in Canada;
 - (e) the majority of the executive officers or directors of the issuer ordinarily reside in Canada.
- (2) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if all of the following apply:
 - (a) the issuer of the security was a foreign issuer on the distribution date;

- (b) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
- (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.
- (3) The prospectus requirement does not apply to the first trade of an underlying security if all of the following apply:
 - (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 was a foreign issuer on the distribution date;
 - (c) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of trade;
 - (d) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (4) This section does not apply in Alberta and Ontario.

In Ontario, section 2.8 of Ontario Securities Commission Rule 72-503 Distributions Outside Canada provides a similar exemption to the exemption in section 2.15 of this Instrument. In Alberta, section 11 of Alberta Securities Commission Rule 72-501 Distributions to Purchasers Outside Alberta provides a similar exemption to the exemption in section 2.15 of this Instrument.

PART 3 EXEMPTION

3.1 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 4 EFFECTIVE DATE

- 4.1 Effective Date** - This Instrument comes into force on March 30, 2004.

Appendix A
to
National 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)
New Brunswick	Definition of “control person” and clause (c) of the definition of “distribution” contained in subsection 1(1) of the <i>Securities Act</i> (New Brunswick)
Northwest Territories	Definition of “control person” in subsection 1(1) and paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the <i>Securities Act</i> (Northwest Territories)
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of “control person” in subsection 1.1 and paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the <i>Securities Act</i> (Nunavut)
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(e) and subclause 1(k)(iii) of the <i>Securities Act</i> (Prince Edward Island)
Québec	Paragraph 9 of the definition of “distribution” contained in section 5 of the <i>Securities Act</i> (Québec)

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Saskatchewan

Subclauses 2(1)(r)(iii), (iv) and (v) of *The Securities Act, 1988*
(Saskatchewan)

Yukon

Definition of “control person” in subsection 1(1) and paragraph (c)
of the definition of “distribution” contained in subsection 1(1) of
the *Securities Act* (Yukon)

Appendix B
to
National Instrument 45-102
Resale of Securities

Reporting Issuer Jurisdictions

Alberta

British Columbia

Manitoba

New Brunswick

Nova Scotia

Ontario

Québec

Saskatchewan

Appendix C
to
National Instrument 45-102
Resale of Securities

Non-Applicable Resale Provisions
(Section 2.2)

JURISDICTION

SECURITIES LEGISLATION REFERENCE

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 *Securities Act* (Newfoundland and Labrador)

Ontario

Subsections 72(4), 72(5), 72(6) as it relates to clause 72(1)(r), and 72(7) of the *Securities Act* (Ontario), in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force.

Appendix D
to
National Instrument 45-102
Resale of Securities

Restricted Period Trades
(Section 2.3)

1. Except in Manitoba, the following exemptions from the prospectus requirement in NI 45-106:
 - section 2.3 [*Accredited investor*] (except in Ontario);
 - section 2.5 [*Family, friends and business associates*];
 - section 2.8 [*Affiliates*];
 - section 2.9 [*Offering memorandum*];
 - section 2.10 [*Minimum amount investment*];
 - section 2.12 [*Asset acquisition*];
 - section 2.13 [*Petroleum, natural gas and mining properties*];
 - section 2.14 [*Securities for debt*];
 - section 2.19 [*Additional investment in investment funds*];
 - section 2.30 [*Isolated distribution by issuer*];
 - section 2.31 [*Dividends and distributions*], if the security was acquired in the circumstances referred to in subsection 2.31(2) and that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
 - section 2.40 [*RRSP/RRIF/TFSA*], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or a RRSP, RRIF, or TFSA established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;

- section 2.42 [*Conversion, exchange or exercise*], if the security acquired in the circumstances referred to in paragraph 2.42(1)(a) was acquired in accordance with the terms and conditions of a previously issued security and that previously issued security was distributed under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- section 5.2 [*TSX Venture exchange offering*], if the security acquired under section 5.2 was acquired by
 - (a) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, the issuer's underwriter, or a member of the underwriter's "professional group" (as defined in National Instrument 33-105 *Underwriting Conflicts*), or
 - (b) any other purchaser in excess of \$40,000 for the portion of the securities in excess of 40,000;

as well as the following local exemptions from the prospectus requirement:

- section 2.4 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*;
- section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*;
- clauses 77(1)(u) and (w) and subclauses 77(1)(ab)(ii) and (iii) of the *Securities Act* (Nova Scotia);
- section 73.3 of the *Securities Act* (Ontario) [*Accredited Investor*];
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.5 of NI 45-102.

2. In Alberta, Ontario, Québec, New Brunswick and Nova Scotia, the exemption from the prospectus requirement in section 5 [*Crowdfunding prospectus exemption*] of Multilateral Instrument 45-108 *Crowdfunding*.

Transitional and Other Provisions

1 General - An exemption from the prospectus requirement listed in Appendix D of MI 45-102 in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102. The exemptions listed in Appendix D on March 30, 2004 were:

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- ◆ Sections 131(1)(b), (c), (l), and (m) of the *Securities Act* (**Alberta**)
- ◆ Section 122(d) and 122.2 of the Alberta Securities Commission Rules, section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*, subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ Section 131(1)(f)(iii) of the *Securities Act* (**Alberta**), if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Alberta), the Alberta Securities Commission Rules or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the *Securities Act* (**British Columbia**)
- ◆ Sections 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (**British Columbia**) and subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ Sections 74(2)(11)(ii), 74(2)(11)(iii) and 74(2)(13) of the *Securities Act* (**British Columbia**) if the security acquired by the selling security holder or the right to purchase, convert or exchange or otherwise acquire, was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or MI 45-103 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
- ◆ 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), the *Securities Rules* (British Columbia) or MI 45-103 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
- ◆ 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**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103, or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ 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 MI 45-103, 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) of Blanket Order No. 1 of the Registrar of Securities (**Northwest Territories**), subsections 3.1(2), 4.1(2), 4.1(4), 5.1(2)

of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

- ◆ 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 MI 45-103, 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**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ 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 MI 45-103, 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) of Blanket Order No.1 of the Registrar of Securities (**Nunavut**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ 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 MI 45-103, 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 13(1)(a), (b), (c), (g) and (i) of the *Securities Act* (**Prince Edward Island**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ 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 the above-listed exemptions under the *Securities Act* (Prince Edward Island) 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 81(1)(a), (b), (c), (d), (m), (n), (s), (t), (v), (w), (z), (bb) and (ee) of *The Securities Act, 1988* (**Saskatchewan**) and subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- ◆ 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) or MI 45-103 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

2 Québec Provisions

- ♦ Sections 43, 47, 48 and 51 of the *Securities Act* (Québec) as they read prior to their amendment or repeal by sections 7 and 8 of *An Act to amend the Securities Act and other legislative provisions*
- ♦ Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act* (Québec) before March 30, 2004 if the exemption included as a condition a restricted period of 12 months

3 Ontario Provisions

Definitions

In this Appendix

“**1998 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

“**2001 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

“**2004 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

“**2005 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on September 14, 2005;

“**2009 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on the later of (a) September 28, 2009 and (b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009* were proclaimed into force;

“**2005 NI 45-106**” means the National Instrument 45-106 *Prospectus and Registration Exemptions* that came into effect on September 14, 2005;

“**2009 NI 45-106**” means the National Instrument 45-106 *Prospectus and Registration Exemptions* that came into effect on September 28, 2009;

“**convertible security**” means, in Ontario, a security of an issuer that is convertible into, or carries the right of the holder to purchase, or of the issuer to cause the purchase of, a security of the same issuer;

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“**exchangeable security**” means, in Ontario, a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or the right of the issuer to cause the purchase of, a security of another issuer;

“**exchange issuer**” means, in Ontario, an issuer that distributes securities of a reporting issuer held by it in accordance with the terms of an exchangeable security of its own issue;

“**multiple convertible security**” means, in Ontario, a security of an issuer that is convertible into or exchangeable for, or carries the right of the holder to purchase, or of the issuer or exchange issuer to cause the purchase of, a convertible security, an exchangeable security or another multiple convertible security;

“**OSC Rule 45-502**” means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

“**Type 1 trade**” means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in any of the following:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario), in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force;
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501;
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501;
- (e) section 2.1 and section 2.2 of the 2009 OSC Rule 45-501, and

“**underlying security**” means, in Ontario, 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.

(a) Securities Act (Ontario)

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 the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario), in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force, or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

Section 73.5 of the *Securities Act* (Ontario) [*Government incentive security*]

(a.1) National Instrument 45-106

Section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions* prior to subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force.

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(a.2) 2005 NI 45-106 and 2009 NI 45-106

Section 2.7 of the 2005 NI 45-106 and the 2009 NI 45-106.

(b) 2005 OSC Rule 45-501 and 2009 OSC Rule 45-501

Section 2.1 of the 2005 OSC Rule 45-501 and sections 2.1 and 2.2 of the 2009 OSC Rule 45-501.

(c) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.3 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.5 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.12 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.13 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.14 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.16 of the 2004 OSC Rule 45-501.

(d) 1998 OSC Rule 45-501

Section 2.4 of the 1998 OSC Rule 45-501

Section 2.5 of the 1998 OSC Rule 45-501

Section 2.11 of the 1998 OSC Rule 45-501

(e) Other

Any provision under which an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade or in a trade under section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501.

4 New Brunswick Provisions

In this Appendix

“**2004 NB LR 45-501**” means the New Brunswick Securities Commission Local Rule 45-501 that came into force on September 29, 2004;

- A. Subsections 2.3(3), 2.5(2), 2.6(7), 2.7(2), 2.8(2), 2.10(2), 2.11(2), 2.12(2) and 2.17(2) of 2004 NB LR 45-501
- B. Subsection 2.41(2) of 2004 NB LR 45-501 (if the security acquired under section 2.4 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions in NB LR 45-501 listed in paragraph A, or

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- (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of Multilateral Instrument 45-102 *Resale of Securities*)
- C. Subsection 2.43(3) (if the security acquired under paragraph 2.43(1)(a) was acquired in accordance with the terms and conditions of a previously issued security under
 - (a) one of the exemptions in 2005 NB LR 45-501 listed in paragraph A, or
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of Multilateral Instrument 45-102 *Resale of Securities*)
- D. Section 5.2 of 2004 NB LR 45-501

Appendix E
to
National Instrument 45-102
Resale of Securities

Seasoning Period Trades
(Section 2.4)

Except in Manitoba, the following exemptions from the prospectus requirement in NI 45-106:

- section 2.1 [*Rights offering – reporting issuer*];
- section 2.1.1 [*Rights offering – stand-by commitment*];
- section 2.1.2 [*Rights offering – issuer with a minimal connection to Canada*];
- section 2.2 [*Reinvestment plan*];
- section 2.4 [*Private issuer*], except in Ontario;
- section 2.11 [*Business combination and reorganization*];
- section 2.16 [*Take-over bid and issuer bid*];
- section 2.17 [*Offer to acquire to security holder outside local jurisdiction*];
- section 2.18 [*Investment fund reinvestment*];
- section 2.20 [*Private investment club*];
- section 2.21 [*Private investment fund - loan and trust pools*];
- section 2.24 [*Employee, executive officer, director and consultant*];
- section 2.26 [*Distributions among current or former employees, executive officers, directors or consultants of non-reporting issuer*];
- section 2.27 [*Permitted transferees*];
- section 2.31 [*Dividends and distributions*], if the security was acquired in the circumstances referred to in subsection 2.31(2), that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.40 [*RRSP/RRIF/TFSA*], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or a RRSP, RRIF, or TFSA established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed in this Appendix,

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- (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
- (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.42 [*Conversion, exchange or exercise - security of own issue*], if the security acquired in the circumstances referred to in paragraph 2.42 (1)(a) was acquired in accordance with the terms and conditions of a previously issued security and that previously issued security was distributed under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.42 [*Conversion, exchange or exercise - security of a reporting issuer*] for a security being traded in the circumstances referred to in clause (b) of subsection 2.42 (1);

as well as the following local exemptions from the prospectus requirement:

- Alberta Securities Commission Rule 45-502 *Trade with RESP*, if not included in Appendix D;
- Nova Scotia Securities Commission Blanket Order No. 46;
- Section 73.4 of the *Securities Act* (Ontario)[*Private issuer*];
- Prince Edward Island Local Rule 45-510 - *Exempt Distributions - Exemptions for Trades Pursuant to Take-over Bids and Issuer Bids*;
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.6 of NI 45-102.

Transitional and Other Provisions

1 General:

An exemption from the prospectus requirement listed in Appendix E of MI 45-102 in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102. The exemptions listed in Appendix E of MI 45-102 on March 30, 2004 were:

- ♦ Section 131(1)(f) if not included in Appendix D of this Instrument, sections 131(h), (i), (j), (k), 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), subsection 2.1(2) of

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MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

- ◆ 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 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 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), the *Securities Rules* (British Columbia) or a multilateral instrument referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- ◆ 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**), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- ◆ 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, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- ◆ 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. 37, 38 if not included in Appendix F, 46 and 45-503 if not included in Appendix F, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- ◆ 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, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI

45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

- ◆ 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, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- ◆ 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)*, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

2 Québec Provisions

- ◆ Sections 50 and 52 of the *Securities Act (Québec)* as they read prior to their repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*;
- ◆ Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act (Québec)* before March 30, 2004 if the exemption included as a condition a seasoning period of 12 months.

3 Ontario provisions

Definitions

In this Appendix

“**1998 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

“**2001 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

“**2004 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

“**convertible security**” means, in Ontario, a security of an issuer that is convertible into, or carries the right of the holder to purchase, or of the issuer to cause the purchase of, a security of the same issuer;

“**exchangeable security**” means, in Ontario, a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or the right of the issuer to cause the purchase of, a security of another issuer;

“**exchange issuer**” means, in Ontario, an issuer that distributes securities of a reporting issuer held by it in accordance with the terms of an exchangeable security of its own issue;

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“**multiple convertible security**” means, in Ontario, a security of an issuer that is convertible into or exchangeable for, or carries the right of the holder to purchase, or of the issuer or exchange issuer to cause the purchase of, a convertible security, an exchangeable security or another multiple convertible security;

“**OSC Rule 45-502**” means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

“**OSC Rule 45-503**” means Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants*;

“**Type 1 trade**” means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario), in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force;
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

“**Type 2 trade**” means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(f) of the *Securities Act* (Ontario) in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force, other than a distribution to an associated consultant or investor consultant as defined in OSC Rule 45-503 or a distribution to an associated consultant or investor relations person as defined in MI 45-105;
- (b) clause 72(1)(h), (i), (j), (k) or (n) of the *Securities Act* (Ontario), in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force; or
- (c) section 2.5, 2.8 or 2.15 of the 2001 OSC Rule 45-501; or
- (d) section 2.5, 2.8 or 2.15 of the 2004 OSC Rule 45-501; and

“**underlying security**” means, in Ontario, 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.

(a) *Securities Act* (Ontario)

Clauses 72(1)(f), (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Ontario) in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being

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proclaimed in force, except for a trade made under 72(1)(f)(iii) of the *Securities Act* (Ontario) prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force, that is:

- (i) included in Appendix D or F of this Instrument, or
- (ii) contemplated by section 6.5 of 2004 OSC Rule 45-501; and
- (iii) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

Clause 72(1)(h) of the *Securities Act* (Ontario) except for a distribution under clause 72(1)(h) of the *Securities Act* (Ontario) of an underlying security that was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade, in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force.

(a.1) National Instrument 45-106

Section 2.4 of National Instrument 45-106 *Prospectus and Registration Exemptions* prior to subsection 12(2) of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force.

(b) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.1 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.5 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.6 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.6 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.7 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.7 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;

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- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.8 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.6 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.15 of the 2004 OSC Rule 45-501.

(a) 1998 OSC Rule 45-501

Section 2.7 of the 1998 OSC Rule 45-501;

Section 2.8 of the 1998 OSC Rule 45-501;

Section 2.9 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.9 of the 1998 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade;

Section 2.10 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.10 of the 1998 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade;

Section 2.17 of the 1998 OSC Rule 45-501;

Subsection 2.18(1) of the 1998 OSC Rule 45-501 after the issuer had ceased to be a private issuer for the purposes of the *Securities Act* (British Columbia).

(b) Other

Sections 2.1 and 3.1 of Ontario Securities Commission Rule 45-502.

4 New Brunswick Provisions

In this Appendix

“**2004 NB LR 45-501**” means the New Brunswick Securities Commission Local Rule 45-501 that came into force on September 29, 2004;

- A. Subsections 2.1(2), 2.2(3), 2.4(2), 2.9(2), 2.14(2), 2.16(3), 2.18(2), 2.19(2), 2.22(4), 2.25(3), 2.26(4), 2.29(3), 2.30(2) and 2.31(3) of 2004 NB LR 45-501

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- B. Subsection 2.41(2) of 2004 NB LR 45-501 (if the security acquired under section 2.4 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
- (a) one of the exemptions in NB LR 45-501 listed in paragraph A, or
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of Multilateral Instrument 45-102 *Resale of Securities*)
- C. Subsection 2.43(3) (if the security acquired under paragraph 2.43(1)(a) was acquired in accordance with the terms and conditions of a previously issued security under
- (a) one of the exemptions in 2005 NB LR 45-501 listed in paragraph A, or
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of Multilateral Instrument, 45-102 *Resale of Securities*)

Appendix F
to
National Instrument 45-102
Resale of Securities

Underwriters
(Section 2.13)

Section 2.33 [*Acting as underwriter*] of NI 45-106 and section 2.11 [*Business combination and reorganization*] or subsection 2.42 (1) [*Conversion, exchange or exercise*] of NI 45-106, if the original security was acquired under section 2.33 of NI 45-106 or one of the underwriter exemptions in the transitional provisions listed below

Transitional Provisions:

Except in New Brunswick, an exemption from the prospectus requirement listed in Appendix F of MI 45-102 in effect on March 30, 2004. Except in New Brunswick, exemptions listed in Appendix F of MI 45-102 on March 30, 2004 were:

- ◆ 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) or Blanket Order No. 38 or 45-503 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)(f)(iii) of the *Securities Act* (Ontario) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario), in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force;
- ◆ Clause 72(1)(i) of the *Securities Act* (Ontario) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario), in each case prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force;

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- ◆ Clause 72(1)(r) of the *Securities Act* (Ontario), prior to section 11 of Schedule 26 of the *Budget Measures Act, 2009* being proclaimed in force;
- ◆ 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;
- ◆ Section 55 of the *Securities Act* (Québec) as it read prior to its repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*; and
- ◆ 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).

New Brunswick Provisions:

In New Brunswick, an exemption from the prospectus requirement listed in New Brunswick Securities Commission Local Rule 45-501 in effect on September 29, 2004 (2004 NB LR 45-501).

In New Brunswick, the exemptions listed in 2004 NB LR 45-501 were:

- ◆ Subsection 2.33(2); and
- ◆ Subsection 2.43(3) if the original security was acquired under section 2.09.

Form 45-102F1
Notice of Intention to Distribute Securities under Section 2.8 of
NI 45-102 Resale of Securities

Reporting issuer

PART 5 NAME OF REPORTING ISSUER:

Selling security holder

PART 6 YOUR NAME:

PART 7 THE OFFICES OR POSITIONS YOU HOLD IN THE REPORTING ISSUER:

**PART 8 ARE YOU SELLING SECURITIES AS A LENDER, PLEDGEE,
MORTGAGEE OR OTHER ENCUMBRANCER?**

**PART 9 NUMBER AND CLASS OF SECURITIES OF THE REPORTING ISSUER
YOU BENEFICIALLY OWN:**

Distribution

PART 10 NUMBER AND CLASS OF SECURITIES YOU PROPOSE TO SELL:

**PART 11 WILL YOU SELL THE SECURITIES PRIVATELY OR ON AN EXCHANGE
OR MARKET? IF ON AN EXCHANGE OR MARKET, PROVIDE THE NAME.**

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

11.1 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

11.2 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

Form 45-102F1

INSTRUCTION:

File this form electronically through SEDAR with the securities regulatory authority or regulator in each jurisdiction where you sell securities and with the Canadian exchange on which the securities are listed. If 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 or regulators to administer and enforce securities legislation in their jurisdictions. This form is publicly available by authority of National 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 or regulators listed below.

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Assistant Manager, Financial Reporting
Telephone: (604) 899-6805 or (800) 373-6393 (in B.C.)
Facsimile: (604) 899-6506

Alberta Securities Commission

Suite 600, 250 – 5th Street SW
Calgary, AB T2P 0R4
Attention: Information Officer
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

**Saskatchewan Financial Services Commission
Securities Division**

601 - 1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Legal/Registration
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

Ontario Securities Commission

20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593-8314

Form 45-102F1

Toll free in Canada: 1-877-785-1555

Facsimile: (416) 593-8122

Public official contact regarding collection of personal information:
Inquiries Officer

Autorité des marchés financiers

Tour de la Bourse

800 square Victoria

C.P. 246, 22e étage

Montréal, Québec H4Z 1G3

Attention: Responsable de l'accès à l'information

Telephone : (514) 395-0337

Toll Free : 1-877-525-0337

Facsimile: (514) 873-6155 (For filing purposes only)

Facsimile: (514) 864-6381 (For privacy requests only)

www.lautorite.qc.ca

New Brunswick Securities Commission

85 Charlotte Street, Suite 300

Saint John, New Brunswick E2L 2J2

Telephone: (506) 658-3060

Toll Free in New Brunswick 1-866-933-2222

Facsimile: (506) 658-3059

Nova Scotia Securities Commission

Suite 400, 5251 Duke Street

Halifax, Nova Scotia B3J 1P3

Attention: Corporate Finance

Telephone: (902) 424-7768

Facsimile: (902) 424-4625

Prince Edward Island Securities Office

95 Rochford Street, 4th Floor Shaw Building

P.O. Box 2000

Charlottetown, Prince Edward Island C1A 7N8

Telephone: (902) 368-4569

Facsimile: (902) 368-5283

Government of Newfoundland and Labrador

Financial Services Regulation Division

P.O. Box 8700

2nd Floor, West Block

Confederation Building

Prince Philip Drive

St. John's, NFLD A1B 4J6

Attention: Director of Securities

Telephone: (709) 729-4189

Form 45-102F1

Facsimile: (709) 729-6187

Government of Yukon

Office of the Yukon Superintendent of Securities
Government of Yukon Department of Community Services

307 Black Street, 1st Floor

PO Box 2703 (C-6)

Whitehorse, Yukon Y1A 2C6

Telephone: (867) 667-5466

Facsimile: (867) 393-6251

http://www.community.gov.yk.ca/corp/securities_about.html

Government of Northwest Territories

Department of Justice

Securities Registry

1st Floor, Stuart M. Hodgson Building

5009 – 49th Street

Yellowknife, Northwest Territories X1A 2L9

Telephone: (867) 920-3318

Facsimile: (867) 873-0243

Department of Justice, Nunavut

Legal Registries Division

P.O. Box 1000, Station 570

1st Floor, Brown Building

Iqaluit, NT X0A 0H0

Attention: Superintendent of Securities

Telephone: (867) 975-6590

Facsimile: (867) 975-6194

Companion Policy 45-102
Resale of Securities

1.1 Application

- (1) National Instrument 45-102 (NI 45-102) has been implemented in all jurisdictions.
- (2) Except for sections 2.1, 2.8, 2.9 and 2.15, Part 2 of NI 45-102 does not apply in Manitoba; and
- (3) Sections 2.14 and 2.15 do not apply in Alberta and Ontario. In Alberta and Ontario, local measures similar to sections 2.14 and 2.15 apply and are found in sections 10 and 11 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta* and in sections 2.7 and 2.8 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*.

1.2 Purpose

- (1) NI 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 NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.5 of NI 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 NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.6 of NI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period. NI 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) Appendices D and E to NI 45-102 list the harmonized exemptions in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) and local exemptions that are subject to the resale restrictions under section 2.5 or 2.6 of NI 45-102, while Appendix F lists the harmonized exemptions in NI 45-106 applicable to underwriters. Each of these appendices also contains transitional provisions applicable to securities acquired under exemptions listed in the Appendices to MI 45-102 as Appendices D, E and F read on March 30, 2004. For all local exemptions that remain in force, you should look to the local instrument itself to see if it specifies that the securities acquired are subject to section 2.5 or 2.6 of NI 45-102 as well as to Appendix D and E to NI 45-102. You may also wish to consult the CSA Staff Notice 45-304 listing local registration and prospectus exemptions in place in each jurisdiction of Canada, which the CSA will update periodically.
- (3) Nothing in NI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period under a prospectus or an exemption from the prospectus requirement. This includes the further exemptions found in sections 2.14 and 2.15, and the similar exemptions in Alberta and Ontario. For example, if a person or

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company obtains a discretionary exemption order or ruling that imposes any of the resale restrictions contained in section 2.5, 2.6 or 2.8 on a security that is the subject of the order or ruling, the person or company may rely on section 2.14 or 2.15, or the similar exemptions in Alberta and Ontario, to resell the security.

- 1.3 Open System Jurisdiction** - Sections 2.5 and 2.6 of NI 45-102 do not apply in Manitoba because Manitoba does 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.
- 1.4 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 NI 45-102, section 2.3 of NI 45-102 applies and the first trade of the securities is subject to section 2.5 of NI 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 subsection 2.5(2) of NI 45-102 are satisfied.
- 1.5 Reporting Issuer Status** - Reporting issuer status in any jurisdiction will satisfy the reporting issuer requirements in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102. See section 1.11 for guidance if an issuer becomes a reporting issuer by filing a prospectus after the distribution date.
- 1.6 Legending of Securities** – (1) Items 3 and 3.1 of subsection 2.5(2) of NI 45-102 impose legend or legend notation requirements for securities distributed under any of the provisions listed in Appendix D to NI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of NI 45-102. This requirement applies to securities transferred during the restricted period, whether to initial or subsequent transferees. However, because of the definition of “distribution date”, in the case of most resales, the subsequent purchaser’s restricted period will expire four months and a day after the original distribution date.
- (2) If the security is entered into a direct registration or other electronic book-entry system, or where a certificate representing the security is not issued directly to a purchaser, the issuer must provide written notice of the legend restriction notation to the purchaser. We would consider providing written notice of the legend restriction notation to the purchaser in a subscription agreement or including the legend restriction notation in an ownership statement issued under a direct registration system or other electronic book-entry system delivered directly to the purchaser to be ways of meeting the written notice requirement.
- (3) In addition to the written notice condition contemplated in item 3.1 of subsection 2.5(2), issuers may want to assist purchasers of restricted securities with compliance with the resale restrictions in item 2 of subsection 2.5(2) through other means. For example, issuers can request that the direct registration or electronic book-entry system in which the security is entered apply any available procedures to identify the restricted nature of the security, such as the assignment of a separate CUSIP or ISIN number to the security for the duration of the restricted period. There may be alternative procedures available depending on the capabilities of the particular direct registration system or other electronic book-entry system.

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(4) Issuers may add additional wording to that found in item 3 of subsection 2.5(2) of NI 45-102. If you supplement the specified text of the legend on the certificate or the legend notation on the written notice, that additional wording cannot alter the meaning of the specified wording. You should also look to section 1.10 for further guidance on the legending of convertible and underlying securities.

(5) A reference to a purchaser of a security in items 3 and 3.1 of subsection 2.5(2) of NI 45-102 means a person who makes the investment decision about the acquisition of a security. In most cases, the person making the investment decision will be the beneficial owner of the security. In some cases, however, the person making the investment decision will not be the beneficial owner. In the case of a fully managed account, the manager may be making the investment decision. In the case of a trust, the trustee may be making the investment decision. There may be other examples where the person making the investment decision is not the beneficial owner of the security.

- 1.7 Removal of Legend** - NI 45-102 does not preclude an issuer or its transfer agent from removing a legend once the requirements in subsection 2.5(2)3 have been satisfied. The parties involved in a transfer of securities would not be prevented from transferring those securities even if the legend on the certificate was stale-dated. The transferor should, however, verify exchange rules to determine if removal of the legend is necessary to effect “good delivery”.
- 1.8 Calculation of Restricted and Seasoning Periods** - The restricted period in item 2 of subsection 2.5(2) of NI 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.
- 1.9 No Unusual Effort** - Persons interested in the meaning of the concept of “no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade” found in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102 should look to the case law, in particular the order of the Ontario Securities Commission dated April 24, 1985 in the matter of Daon Development Corporation and Daon Corporation as well as to the definition of unusual effort in section 3.1 of Alberta Securities Commission Rule 45-511 *Local Prospectus Exemptions and Related Requirements*.
- 1.10 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, subsection 2.5(3) provides that an issuer is not required to place a legend on the certificate representing the underlying securities or a legend restriction notation in the written notice.
- 1.11 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 NI 45-102 provides that the four month seasoning requirement in sections 2.5, 2.6 and 2.8 of NI 45-102 does not apply. This means

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that the securities issued prior to the prospectus being filed may then be resold, provided however that the restricted period under section 2.5 or 2.8 of NI 45-102 has expired.

For example, if, on September 28, 2009, an issuer that is not a reporting issuer in any jurisdiction issues securities which are subject to section 2.5 to purchasers under a private placement and the issuer subsequently receives a receipt for its initial public offering prospectus on October 28, 2009, then those purchasers can resell the securities acquired under the private placement on January 29, 2010, being the date that is four months and a day from the original distribution date, provided that the conditions in subsection 2.5(2) are satisfied.

- 1.12 Realization of Pledged Securities** - The prospectus exemption in section 2.8 of NI 45-102 is available for realizations of pledged securities under either a power of sale or by way of foreclosure. This means that a pledgee, mortgagee or other encumbrancer can rely on the exemption in section 2.8 of NI 45-102 to immediately effect a resale of pledged securities under a power of sale or to foreclose and take the securities on its own books for subsequent resale.
- 1.13 Securities Exchange Take-over Bid or Issuer Bid** - Section 2.11 of NI 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-level 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 for the exemption in section 2.11 to be available.
- 1.14 Exemptions for Certain Trades in the Local Jurisdiction** - The exemption in section 2.10 of NI 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 NI 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.
- 1.15 Resales of Securities under Section 2.14**
- (1) For the purposes of section 2.14 of NI 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;

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- (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 under 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).
 - (3) There is no requirement to place a legend on the securities in order to rely on the exemption in section 2.14 of NI 45-102.
 - (4) *Bona fide trades outside of Canada* – The exemptions in subsections 2.14(1) and 2.14(2) permit the resale of securities of an issuer in a bona fide trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In our view, selling security holders who wish to rely on the exemptions may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A selling security holder engaged in activities to sell or create a demand for the security in Canada would not be able to rely on the exemptions in section 2.14.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met.

1.15.1 Resale of Securities under Section 2.15

- (1) *Directors and Executive Officers* – The definition of “foreign issuer” in section 2.15 of NI 45-102 uses the terms “directors” and “executive officers”. The term “director” is defined in provincial and territorial securities legislation in Canada and generally means a director of a company or an individual performing a similar function or acting in a similar capacity for any non-corporate issuer.

For a non-corporate issuer, an executive officer is a person who is acting in a capacity with the non-corporate issuer that is similar to that of an executive officer of a company.

- (2) *Definition of foreign issuer* – In order to rely on section 2.15, a selling security holder will have to determine if the issuer is a foreign issuer on the distribution date. In some cases, the issuer will provide that information to investors at the time of the offering, perhaps in representations in subscription agreements or in offering materials. If the issuer doesn’t provide that information, we defined “foreign issuer” such that a security holder can determine whether an issuer is a foreign issuer by using the information disclosed in the issuer’s most recent disclosure document containing that information that is publicly available in a foreign jurisdiction or the offering document provided by

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the issuer in connection with the distribution of the security that is the subject of the resale. A security holder may rely on this information unless the security holder has reason to believe that it is not accurate.

The term “ordinarily reside” is used to clarify that when an executive officer or director has a temporary residence outside of Canada, such as a vacation home, the executive officer or director would not generally be considered to reside outside of Canada for the purposes of the definition of foreign issuer

- (3) There is no requirement to place a legend on the securities in order to rely on the exemption in section 2.15 of NI 45-102.
- (4) *Bona fide trades outside of Canada* – The exemptions in subsections 2.15(2) and 2.15(3) permit the resale of securities of an issuer in a bona fide trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In our view, selling security holders who wish to rely on the exemptions may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A selling security holder engaged in activities to sell or create a demand for the security in Canada would not be able to rely on the exemptions in section 2.15.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met.

1.16 Filing of Form 45-102F1 - Section 2.8 of NI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in section 2.8 are met. Selling security holders are required to give advance notice of intention to resell their securities under subsection 2.8(3) of NI 45-102 by filing a completed and signed Form 45-102F1. Under subsection 2.8(4), the advance notice expires on the earlier of the date the selling security holder files the last of the insider reports reflecting the sale of all securities referred to in the Form and 30 days after the Form 45-102F1 is filed. A new Form 45-102F1 must be filed in accordance with subsection 2.8(3) if the selling security holder wishes to continue to resell securities from a control block. Form 45-102F1 should be filed through SEDAR under the issuer’s profile under “*Continuous Disclosure – Resale of Securities (NI 45-102) - Form 45-102F1*”. 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.

1.17 Application of section 2.10 – Section 2.10 of NI 45-102 applies when securities qualified by a prospectus are convertible into or exchangeable for securities of a reporting issuer other than the issuer of the convertible or exchangeable securities. Those securities would be converted or exchanged in reliance on the prospectus exemption in paragraph 2.42(1)(b) of NI 45-106. As a result, those securities would be subject to a seasoning period requirement because distributions under subsection 2.42(1) of NI 45-106 for a security being distributed in the circumstances referred to in clause (b) of subsection 2.42(1) are listed in Appendix E of NI 45-102. Section 2.10 removes the seasoning period requirement for the underlying securities provided the requirements of that section are met.