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RESALE OF SECURITIES



SECURITIES LEGAL ALERT

DECEMBER, 2001

- NEW RULES PROVIDE FOR "RESTRICTED PERIODS" DURING WHICH PURCHASERS OF PROSPECTUS EXEMPT SECURITIES WILL BE RESTRICTED FROM RESELLING THE SECURITIES, WITHOUT A PROSPECTUS OR FURTHER EXEMPTION, FOR A PERIOD OF EITHER 4 MONTHS OR 12 MONTHS.
- NEW RULES PROVIDE FOR "SEASONING PERIODS" OF EITHER 4 OR 12 MONTHS DURING WHICH ISSUERS WILL BE REQUIRED TO BE REPORTING ISSUERS BEFORE THEIR PROSPECTUS EXEMPT SECURITIES BECOME FREELY TRADEABLE.

RESTRICTIONS:

- QUALIFYING ISSUER - 4 MONTHS
- REPORTING ISSUER - 12 MONTHS
- NON-REPORTING ISSUER - INDEFINITE

On November 30, 2001, Multilateral Instrument 45-102 Resale of Securities together with Companion Policy 45-102CP (the "Instrument") and a number of new forms came into effect in the Provinces of Ontario, Alberta, B.C., Saskatchewan, Nova Scotia, Newfoundland, Northwest Territories and Nunavut, with limited application in Manitoba, New Brunswick, Prince Edward Island and Yukon Territory. The Instrument will not be adopted in Québec.

KEY CONCEPTS:

- QUALIFYING ISSUER*
- CURRENT AIF
- RESTRICTED/SEASONING PERIODS
- DISTRIBUTION DATE (WHEN DOES THE CLOCK START TICKING?)

*A QUALIFYING ISSUER:

- IS A REPORTING ISSUER IN B.C., ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC OR NOVA SCOTIA
- IS AN ELECTRONIC SEDAR FILER
- HAS A CURRENT AIF FILED ON SEDAR
- HAS SECURITIES LISTED/QUOTED ON A QUALIFIED MARKET, OR RATED DEBT
- IF A NON-POP ISSUER, HAS A FILED MINING OR OIL AND GAS REPORT

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

The approach taken in the Instrument is based on the system for shorter hold periods for issuers filing an

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AIF (the “SHAIF System”) which has been adopted in Alberta and B.C. This system which, subject to certain transitional provisions, is being replaced, provides for a reduced hold period for first trades of securities previously acquired under a prospectus exemption where the issuer has a current annual information form and has satisfied certain other conditions. The principle underlying the Instrument and the SHAIF System is that where a reporting issuer provides the market with current information, securities distributed pursuant to an exemption from the prospectus requirement may be traded in the secondary market after a reduced hold period.

“CURRENT AIF” INCLUDES:

- CURRENT AIF FOR A POP ISSUER
- CURRENT SHAIF AIF
- CURRENT PROSPECTUS (OTHER THAN A SHORT FORM PROSPECTUS OR CAPITAL POOL COMPANY (CPC) PROSPECTUS)
- CPC INFORMATION CIRCULAR (IF SPECIFIED FINANCIAL STATEMENTS ARE INCLUDED)
- CURRENT ANNUAL REPORT ON FORM 10-K OR FORM 20-F

SUMMARY OF THE INSTRUMENT

The Instrument addresses subsequent trades and securities:

- (i) INITIALLY DISTRIBUTED UNDER AN EXEMPTION FROM THE PROSPECTUS REQUIREMENT AND WHICH MUST BE RESOLD PURSUANT TO A PROSPECTUS, PURSUANT TO A FURTHER EXEMPTION FROM THE PROSPECTUS REQUIREMENT OR AFTER THE SELLER HAS HELD THE SECURITIES FOR A SPECIFIED PERIOD OF TIME (A “PRIVATE PLACEMENT EXEMPTION”);
- (ii) INITIALLY DISTRIBUTED UNDER AN EXEMPTION FROM THE PROSPECTUS REQUIREMENT AND WHICH MUST BE RESOLD PURSUANT TO A PROSPECTUS, PURSUANT TO A FURTHER EXEMPTION FROM THE PROSPECTUS REQUIREMENT OR UPON THE ISSUER HAVING BEEN A REPORTING ISSUER FOR A SPECIFIED PERIOD OF TIME (A “SEASONING EXEMPTION”);
- (iii) FROM THE HOLDINGS OF ANY PERSON OR COMPANY OR COMBINATION THEREOF HOLDING A SUFFICIENT NUMBER OF VOTING SECURITIES OF THAT ISSUER TO AFFECT MATERIALLY THE CONTROL OF THAT ISSUER (A “CONTROL DISTRIBUTION”); AND
- (iv) OF A NON-REPORTING ISSUER OVER A FOREIGN EXCHANGE OR MARKET.

The Instrument removes provisions currently set out in the securities legislation of B.C., Alberta, Saskatchewan, Ontario and Nova Scotia which impose resale restrictions on subsequent trades of securities initially acquired under an exemption from the prospectus requirement. The relevant provisions in Alberta are sections 109, 109.1, 110, 110.1, 110.2, 111 with respect to underwriters and 112 of the *Securities Act* (Alberta) and section 126 of the Rules.

**THE APPROACH TAKEN
IN THE INSTRUMENT IS
BASED ON THE SYSTEM
FOR SHORTER HOLD
PERIODS FOR ISSUERS
FILING AN AIF (THE
“SHAIF SYSTEM”)
WHICH HAS BEEN
ADOPTED IN ALBERTA
AND BC.**

Hold periods are described in the Instrument as Restricted Periods. If securities are distributed under the exemption provisions listed, the first trade of that security is subject to a Restricted Period. In Alberta, this relates to securities distributions pursuant to sections 107(1)(a), (b), (c), (d), (l), (m), (p), (q), (t), (t.1), (u) and (z), as well as section 107(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. The Instrument provides for a four month Restricted Period for securities acquired under a private placement exemption where the issuer of the securities was a qualifying issuer at the distribution date and certain conditions are met. It provides for a twelve month Restricted Period for securities acquired under a private placement exemption where the issuer is not a qualifying issuer and certain conditions are met. **Securities issued with a four month Restricted Period or a twelve month Restricted Period are required to carry a legend on the certificate representing those securities.**

The Instrument also deals with Seasoning Periods for certain first trades. In Alberta, this applies to trades pursuant to section 107(1)(f) (excluding 107(1)(f)(iii)), 107(1)(i), (j), (j.1), (k), (k.1) prior to its repeal by section 5 of the *Securities Amendment Act*, 1989 (Alberta) and (n) of the *Securities Act* (Alberta). The prospectus requirement does not apply to subsequent trades in securities acquired under a seasoning exemption,

SECURITIES ISSUED TO EMPLOYEES OF AN ISSUER WILL BE SUBJECT TO THE SAME SEASONING PERIOD REQUIREMENTS REGARDLESS OF WHETHER THE EMPLOYEES ACQUIRED THE SECURITIES BEFORE OR AFTER THE ISSUER'S INITIAL PUBLIC OFFERING.

including the first trade in previously issued securities of an issuer that has ceased to be a private company or issuer, where the initial distribution was made by a qualifying issuer that has been a reporting issuer or the equivalent in any of B.C., Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia for at least four months. There is a twelve month Seasoning Period for securities of an issuer that is not a Qualifying Issuer. There is a four month Seasoning Period preceding the date of the trade for securities issued to employees of an issuer or its affiliate, so long as, among other conditions, the issuer became a Qualifying Issuer after the distribution date by filing a prospectus in a listed jurisdiction and listing or quoting a class of its equity securities on a qualified market. Securities issued to employees of an issuer will be subject to the same Seasoning Period requirements regardless of whether the employees acquired the securities before or after the issuer's initial public offering.

As a requirement for use of most of the common exemptions, the Instrument mandates filing of a certificate stating that the issuer was a Qualifying Issuer at the time of the initial exempt trade. It also requires the filing of a form where an issuer ceases to be a private company or private issuer.

The Instrument deals with exemptions for a trade by a control person. It provides an exemption from the prospectus requirement for control distributions as long as the seller or the creditor, if the distribution is for the purposes of liquidating a debt made in good faith, has held the securities for at least four months and the issuer is a Qualifying Issuer which has been a reporting issuer or the equivalent in any of B.C., Alberta, Saskatchewan, Manitoba, Ontario, Quebec or Nova Scotia for at least four months. Generally, there will be a twelve month hold and seasoning period for securities of an issuer that is not a Qualifying Issuer where the securities are sold from a control block.

The Instrument provides for an exemption for a trade in an underlying security if the convertible security, exchangeable security, or multiple convertible security is qualified by a prospectus.

There is provision for an exemption from resale restrictions for trades of securities issued in a securities exchange take-over bid or securities exchange issuer bid if a take-over bid circular or an issuer bid circular was filed on SEDAR. Note that the Canadian Securities Administrators have decided to retain the existing resale exemptions for securities distributed pursuant to take-over bid circulars and issuer bid circulars.

There is further provision for an 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 an issuer bid circular.

Securities regulatory authorities may grant an exemption from the Instrument, in whole or in part, subject to conditions and restrictions as may be imposed.

SUMMARY OF FORMS

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

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

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

IN THE CASE OF A
TRADE OF AN
UNDERLYING SECURITY,
THE SELLER MUST
DETERMINE WHETHER
THE ISSUER OF THE
UNDERLYING SECURITY
WAS A QUALIFYING
ISSUER AT 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.

The Companion Policy 45-102CP states that nothing in the Instrument is intended to restrict the ability of a purchaser to resell securities during a Restricted Period or Seasoning Period in reliance upon a prospectus or an exemption from the prospectus requirement.

The transition provisions state that the Instrument applies to first trades of securities made on or after the effective date of the Instrument, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to the effective date of the Instrument. As a result, in determining whether the Restricted Period in section 2.5 or 2.8 of the Instrument or the Seasoning Period in subsection 2.6(3) or (4) or subsection 2.8(2) or (3) of the Instrument has expired, a seller making a first trade must determine whether the issuer was a Qualifying Issuer at the date the security that is the subject of the trade was distributed or, in the case of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the control person selling the security. In the case of a trade of an underlying security, the seller must determine whether the issuer of the underlying security was a Qualifying Issuer at 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.

This summary is not a legal opinion and reliance should not be placed on it without consulting a lawyer for specific analysis and advice.