

## REGULATION TO AMEND REGULATION 45-102 RESPECTING RESALE OF SECURITIES

### Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (1), (2), (3), (4), (8), (11), (14) and (34); 2007, c. 15)

#### 1. Section 1.1 of Regulation 45-102 respecting Resale of Securities is amended:

(1) in the English text of subparagraph (B) of subparagraph (ii) of paragraph (c) of the definition of “private issuer”, by deleting the words “or company”;

(2) in the English text of the definition of “trade”, by deleting “,” after “trade”.

#### 2. Section 2.5 of the Regulation is amended:

(1) in paragraph (2):

(i) by replacing subparagraph 3 with the following:

“3. If the distribution date is on or after March 30, 2004, or, in Québec, on or after September 14, 2005, and

(i) if the issuer is 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*]”;

or

(ii) if the issuer is 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 beneficial security holder did not otherwise directly receive a certificate representing the security, written notice containing the legend restriction notation set out in paragraphs (i) or (ii) of item 3, as applicable, was delivered to the beneficial security holder.”;

(ii) by deleting, in the English text of subparagraph 6, the words “or company”;

(2) by replacing paragraph (3) with the following:

“(3) Items 3 and 3.1 of subsection (2) do not apply to a trade of an underlying security if the certificate representing the underlying security is issued or the written notice is delivered at least four months after the distribution date.”.

#### 3. Section 2.8 of the Regulation is amended:

(1) by deleting, in the English text of subparagraph 4 of paragraph (2), the words “or company”;

(2) by replacing paragraphs (3) and (4) with the following:

“(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)*, adopted by the *Commission des valeurs mobilières du Québec* pursuant to decision no. 2003-C-0069 dated March 3, 2003.

“(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 has expired.”.

4. Paragraph (1) of section 2.9 of the Regulation is amended by replacing “continuation” with “reorganization”.

5. Appendix B of the Regulation is amended by adding “New Brunswick” below “Manitoba”.

6. Appendix D of the Regulation is amended:

(1) by replacing the text before the heading “Transitional Provisions” with the following:

“Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in Regulation 45-106 respecting Prospectus and Registration Exemptions:

- section 2.3 [*Accredited investor*];
- section 2.5 [*Family, friends and business associates*] (except in Ontario);
- section 2.7 [*Founder, control person and family*] (Ontario);
- section 2.8 [*Affiliates*];
- section 2.9 [*Offering memorandum*] (in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan);
- 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 Regulation, 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 Multilateral Instrument 45-102, Resale of Securities in effect on March 30, 2004, hereafter referred to as “MI 45-102”;
- section 2.40 [*RRSP/RRIF*], if the security acquired under section 2.40 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 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 Regulation, 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 clause (a) of subsection 2.42(1) 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 Regulation, 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 Regulation 33-105 respecting Underwriting Conflicts approved by Ministerial Order no. 2005-14 dated August 2, 2005), 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 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);
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.5 of this Regulation.”;

(2) in Part 3, under the heading “Transitional Provisions”:

(a) by adding, under “Definitions”, the following definition after the definition of « (2005) OSC Rule 45-501”:

““[2008] OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions that came into force on ●;”

(b) in Part (b) :

(i) by replacing the heading with “(b) **2005 OSC Rule 45-501 and [2008] OSC Rule 45-501**”;

(ii) by adding “and [2008] OSC Rule 45-501” after “2005 OSC Rule 45-501”, wherever they appear;

(3) by deleting, in the English text of the seventh, eighth, and twenty first paragraphs of Part 1 under the heading “Transitional Provisions”, the words “or company”.

7. Appendix E of the Regulation is amended:

(1) by replacing the text before the heading “Transitional Provisions” with the following:

“Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in Regulation 45-106 respecting Prospectus and Registration Exemptions:

- section 2.1 [*Rights offering*];
- section 2.2 [*Reinvestment plan*];
- section 2.4 [*Private issuer*];
- 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 Regulation, 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 Multilateral Instrument 45-102, Resale of Securities in effect on March 30, 2004, hereafter referred to as “MI 45-102”;
  - section 2.40 [*RRSP/RRIF*], if the security acquired under section 2.40 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 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 Regulation, 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 clause (a) of subsection 2.42(1) 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 Regulation, 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;
  - 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 this Regulation.”;

(2) in Part 3, under the heading “Transitional Provisions” :

(a) by deleting, under “Definitions”, the definition of “2005 OSC Rule 45-501”;

(b) by replacing, in paragraph ii of Part (a), “Ontario Securities Commission Rule 45-501 Exempt Distributions” with “2004 OSC Rule 45-501”;

(3) by deleting, in the English text of the fifth paragraph of Part 1 under the heading “Transitional Provisions”, the words “or company”.

**8.** Appendix F of the Regulation is amended by replacing the introductory paragraph with the following:

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

**9.** Form 45-102F1 of the Regulation is amended by replacing the list of securities regulatory authorities with the following:

**“Autorité des marchés financiers**

Tour de la Bourse  
800, square Victoria  
C.P. 246, 22<sup>e</sup> étage  
Montréal, Québec H4Z 1G3  
Attention: Responsable de l'accès à l'information

**Alberta Securities Commission**

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

**British Columbia Securities Commission**

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

**Securities Commission of Newfoundland and Labrador**

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

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

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

**Nova Scotia Securities Commission**

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

**Department of Justice, Nunavut  
Legal Registries Division**

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

**Ontario Securities Commission**

Suite 1903, Box 55  
20 Queen Street West  
Toronto, ON M5H 3S8  
Attention: Administrative Assistant to the Director of Corporate Finance  
Telephone: 416-593-8314  
Toll free in Canada: 1-877-785-1555  
Facsimile: 416-593-8122

**Prince Edward Island Securities Office**

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

**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

**10.** The Regulation is amended by deleting the words “or company” , wherever they appear in the English text, and replacing the words “de la société visée” by “de l’émetteur visé”, wherever they appear in the French text.

**11.** This Regulation comes into force on •.