

Request for Comment
Proposed Multilateral Instrument 45-105 *Trades to Employees,*
Senior Officers, Directors, and Consultants

Introduction

The securities regulatory authorities (the Commissions) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Yukon Territory and the Northwest Territories (the Jurisdictions) seek public comment on the making of proposed Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* (the Proposed Instrument).

The Commissions are publishing the text of the Proposed Instrument together with this Request for Comment.

Substance and Purpose

The securities legislation in each Jurisdiction currently contains exemptions from the registration requirement and the prospectus requirement for trades in securities of an issuer's own issue to the issuer's employees. Furthermore, certain Jurisdictions have additional instruments which modify and expand the statutory employee exemptions, including:

- ? Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants* (the OSC Rule)
- ? British Columbia Instrument 45-507 *Trades to Employees, Executives and Consultants* (the BC Instrument)
- ? Alberta Securities Commission Blanket Order 45-506 (the ASC Order)
- ? Nova Scotia Securities Commission Blanket Order No. 45-501 *Trades to Employees, Executives and Consultants* (the Nova Scotia Order)
- ? Saskatchewan Securities Commission General Ruling/Order 45-907 *Trades to Employees, Executives and Consultants* (the Saskatchewan Order)

The additional instruments listed above provide exemptions from the registration requirement and the prospectus requirement for trades to an issuer's non-employee directors and certain consultants, as well as other related relief. The Proposed Instrument consolidates and, as much as possible, harmonizes the requirements in each of the OSC Rule, the BC Instrument, the ASC Order, the Nova Scotia Order and the Saskatchewan Order.

Summary of the Proposed Instrument

The Proposed Instrument has six parts.

Part 1 contains the definitions of terms and phrases used in the Proposed Instrument that are not defined in or interpreted under a national definition instrument in force in a Jurisdiction. National Instrument 14-101 *Definitions* sets out definitions for commonly used terms and should be read together with the Proposed Instrument.

Part 2 provides exemptions from the dealer registration requirement and the prospectus requirement in each of the following circumstances:

1. **Basic Trades** – Section 2.1 contains basic dealer registration and prospectus exemptions for trades by an issuer in securities of the issuer’s own issue to
 - (a) an employee, senior officer, director, or consultant of the issuer or an affiliate of the issuer;
 - (b) a trustee, custodian, or administrator acting on behalf, or for the benefit of, a person or company referred to above; and
 - (c) an RRSP, RRIF, holding entity or spouse of an individual referred to in (a) or the RRSP or RRIF of that individual’s spouse.

Section 2.1 also provides dealer registration and prospectus exemptions for trades in securities of the issuer (or options to acquire securities of the issuer) by a control person to any of the parties identified in (a) to (c), above.

If an issuer is not a “listed issuer”, the exemptions in section 2.1 may not be available for a trade to certain investor relations persons, senior officers, directors or consultants (or their trustees, custodians, etc) unless prior shareholder approval has been obtained. As British Columbia's statutory exemption for trades to employees, senior officers and directors does not include this restriction, the restriction will not apply in British Columbia.

2. **Trades Among Employees, etc.** – Section 2.2 provides dealer registration and prospectus exemptions for trades from current or former employees, senior officers, directors, and consultants to current employees, senior officers, directors, and consultants. However, these exemptions are only available where:
 - (a) the issuer of the securities is not a reporting issuer in any jurisdiction,
 - (b) participation in the trade by the employee, senior officer, director, or consultant is voluntary, and
 - (c) the price of the security being traded is established by a generally applicable formula contained in a written agreement among some or all of the shareholders of the issuer to which the transferee is or will become a party.

3. **Conversions or Exchanges** – Section 2.3 provides dealer registration and prospectus exemptions for trades that are, or are incidental to, the issuance of securities upon the exercise of an exchange or conversion right that was originally distributed under the exemption in section 2.1.
4. **Trades Among Permitted Transferees** – Section 2.4 provides dealer registration and prospectus exemptions for trades in securities acquired under section 2.1, 2.2 or 2.3 between an employee, senior officer, director, or consultant and a trustee, custodian or administrator acting on their behalf, their holding entity, their RRSP or RRIF, their spouse or an RRSP or RRIF of their spouse.

Part 3 of the Proposed Instrument sets out resale restrictions for securities acquired under Part 2 of the Proposed Instrument.¹ Section 3.1 provides that the first trade of a security acquired under Part 2 must comply with section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”). Section 3.2 provides a dealer registration exemption for the resale of securities of a non-reporting issuer provided the conditions in section 2.14 of MI 45-102 are met. In each case, the resale provisions refer to the *first trade of a security acquired under an exemption in Part 2*. As a result, Part 3 will apply to the resale of securities by former employees, senior officers, directors, and consultants.

Part 4 of the Proposed Instrument provides an exemption from the issuer bid requirements that could otherwise apply to a trade by an employee, director, etc. to an issuer. However, the exemption will only apply if the trade is either to fulfil a withholding tax obligation or to provide payment of an exercise price of a stock option.

Part 5 provides for the granting of exemptions from the Proposed Instrument.

Part 6 establishes an effective date for the Proposed Instrument.

Authority for the Proposed National Instrument - Saskatchewan

The following provisions of *The Securities Act, 1988* (Saskatchewan) (the “Saskatchewan Act”) provide the Saskatchewan Securities Commission (“SSC”) with authority to make the Proposed Instrument:

- ? clause 154(1)(oo) authorizes the SSC to make regulations exempting any person, company, trade or security from all or any provisions of the Act or the regulations, including prescribing any terms or limitations on an exemption and requiring compliance with those terms or limitations
- ? clause 154(1)(z) authorizes the SSC to regulate issuer bids, including by providing for exemptions in addition to those set out in subsection 102(4) of the Saskatchewan Act; and
- ? clause 154(1)(u.2) authorizes the SSC to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

¹ The resale provisions in Part 3 will not apply in Manitoba.

Alternatives Considered

The Commissions considered maintaining the *status quo*, with each Jurisdiction preserving its existing registration and prospectus requirements. However, the Commissions determined that a harmonized instrument would better serve issuers, investors and other market participants. No other alternatives were considered.

Unpublished Materials

In developing the Proposed Instrument, the Commissions did not rely upon any significant unpublished study, report or other written materials.

Anticipated Costs and Benefits

The Proposed Instrument harmonizes the existing prospectus, registration and issuer bid requirements for trades to employees, senior officers, directors and consultants. The Commissions believe that harmonizing such requirements will ease the regulatory burden of issuers by reducing the sheer number of requirements that would otherwise require consideration. Because the Proposed Instrument does not incorporate the filing or disclosure requirements previously contained in the OSC Rule, the BC Instrument, the ASC Order or the Nova Scotia Order, we believe that the cost of complying with securities legislation will be lowered.

The Proposed Instrument will not result in any additional costs.

Related Amendments

Local Amendments

Each of the OSC Rule, BC Instrument, ASC Order, Nova Scotia Order and the Saskatchewan Order will be revoked upon the coming into force of the Proposed Instrument.

The Ontario Securities Commission (the OSC) is concurrently publishing a notice and request for comment for the making of proposed Commission Rule 45-801 *Implementing Multilateral Instrument 45-105 Trades to Employees, Senior Officers, Directors, and Consultants*. No Ontario regulations will be revoked or amended in connection with the making of the Proposed Instrument.

Request for Comments

We welcome your comments on proposed Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants*. In addition to any general comments you may have, the British Columbia Securities Commission invites you to comment specifically on whether it should impose the restriction in section 2.1 of the Proposed Instrument on non-listed issuers who do not obtain shareholder approval to be consistent with the other Jurisdictions, or if doing so would negatively affect issuers or their business.

Please submit your comments in writing on or before **January 30, 2003**. If you are not sending your comments by email, a diskette containing the submissions (in Windows format, Word) should also be forwarded.

Address your submission to all of the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
The Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Deliver your comments **only** to the address that follows. Your comments will be forwarded to the remaining CSA member jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Questions

Please refer your questions to any of:

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The text of the Proposed Instrument follows or can be found elsewhere on a CSA member website.

November 1, 2002