

Canadian Securities Administrators Staff Notice 45-302 Frequently asked questions regarding the resale rules

Background

On March 30, 2004, new Multilateral Instrument 45-102 *Resale of Securities* came into force (MI 45-102). MI 45-102 replaces the version of Multilateral Instrument 45-102 *Resale of Securities* that came into force on November 30, 2001 (the old Instrument). MI 45-102 has been adopted in each jurisdiction, except Québec. This staff notice replaces previous CSA Staff Notice 45-302 *Frequently asked questions regarding the new resale rules*, which is revoked.

Frequently asked questions on MI 45-102

To assist persons and companies using MI 45-102, we have compiled a list of frequently asked questions (FAQs). This list is not exhaustive, but does represent the types of inquiries we have received.

We have divided the FAQs into the following categories:

- A. Resale restrictions and legending of securities
- B. Transition from the old Instrument
- C. Form 45-102F1
- D. General

A. Resale restrictions and legending of securities

1. **Q:** Is it possible for the same distribution to have different resale restrictions in the different jurisdictions?

A: Yes, it is possible. Although the resale rules are harmonized under MI 45-102, the exemptions are not, so that the same distribution may have different resale restrictions applicable in different jurisdictions. One example is an exempt take over bid. Securities distributed to purchasers in BC will be subject to a restricted period and securities distributed to purchasers in Alberta and Ontario will only be subject to a seasoning period.

2. **Q:** I am not a reporting issuer in any jurisdiction. I issued securities that are subject to section 2.5 to purchasers under a private placement on March 1, 2004. If I then file an initial public offering prospectus on April 1, 2004, when can those purchasers sell their securities?

A: Under subsection 2.7(1), the four-month seasoning period in Item 1. of subsection 2.5(2) will no longer apply to the securities once you file your prospectus. However, the securities will still be subject to Item 2. of subsection 2.5(2), and so cannot be traded under section 2.5 until four months from the distribution date, that is, July 1, 2004.

3. **Q:** Do securities have to be legended for the exemption in section 2.14 to be available?

A: There is no requirement to legend securities to rely on this exemption.

B. Transition from the old Instrument

4. **Q:** If I issued securities before March 30, 2004 that were subject to a 12-month restricted period under the old Instrument, what is the restricted period now that new MI 45-102 is in force?

A: Securities that were subject to a 12-month restricted period under the old Instrument are now subject to a 4-month restricted period under section 2.5 of MI 45-102. The 4-month restricted period is still calculated from the distribution date of the securities. As a result, the securities will not be subject to any restricted period once four months have elapsed from the distribution date. Refer to section 1.3 of the Companion Policy to MI 45-102 for more information on transition.

5. **Q:** If I issued a certificate with the 12-month restricted period legend under the old Instrument, but the securities are now free-trading under new MI 45-102, do I have to re-legend the certificate so the holder can sell the securities?

A: The certificates do not have to be re-legended under MI 45-102. However, the certificate will have to be re-legended, or have the legend removed entirely if the 4-month restricted period has expired, for the holder to effect “good delivery” of the securities under most exchange rules.

6. **Q:** I do not issue certificates representing my securities. Instead, the issuance is reflected through a book entry system. How do I satisfy the legending requirement?

A: Section 2.5 of MI 45-102 provides for an electronic alternative to legending that is flexible enough to permit the alternative registration systems, such as the book entry system. Instead of legending certificates, the ownership statement that is issued under the alternative system must bear a legend restriction notation.

7. **Q:** I filed a Form 45-102F3 under the old Instrument. Under subsection 2.8(5) of MI 45-102, I am not subject to the requirement to sign and file a Form 45-102F1 until 30 days after the date I filed the Form 45-102F3.

(a) If my Form 45-102F3 was a renewal form and I filed it on March 15, 2004, when will I have to file a Form 45-102F1 to sell securities under section 2.8?

(b) If my Form 45-102F3 was an initial form and I filed it on March 1, 2004, when will I have to file a Form 45-102F1 to sell securities under section 2.8?

A: (a) You will have to file a Form 45-102F1 on April 14, 2004. You must then wait seven days before you may start selling under section 2.8. Although your renewal Form 45-102F3 would have expired on April 12, 2004 under the old Instrument, subsection 2.8(5) has the effect of extending your Form 45-102F3 for 30 days from the date of filing, that is, until April 14, 2004.

(b) You will have to file a Form 45-102F1 on March 30, 2004. You must then wait seven days before you may start selling under section 2.8. Although your initial Form 45-102F3 would have expired on April 30 under the old Instrument, subsection 2.8(5) has the effect of shortening your Form 45-102F3 to 30 days from the date of filing, that is, until March 30, 2004.

C. Form 45-102F1

8. **Q:** How do I file the F1?

A: You must file the F1 electronically on SEDAR under the issuer's profile under the heading "*Continuous Disclosure – Resale of Securities (MI 45-102) – Form 45-102F1*".

9. **Q:** Where do I have to file the F1?

A: You must file the F1 in each jurisdiction where the securities are being distributed. If you are selling the securities on an exchange, you must file the F1 in the jurisdiction where you are located, and the jurisdiction or jurisdictions where the exchange is located. You should also consider if the exchange requires you to file a copy of the F1 with it.

D. General

10. **Q:** For the purposes of section 2.14, are the NASDAQ Stock Market and the NASDAQ Canada Market markets outside of Canada?

A: Yes, both the NASDAQ Stock Market and the NASDAQ Canada Markets are markets outside of Canada for the purposes of the exemption in section 2.14.

11. **Q:** In what jurisdictions must an application for discretionary relief under Part 4 of MI 45-102 be filed?

A: An issuer must file an application for discretionary relief under MI 45-102 in at least each jurisdiction where the issuer is a reporting issuer. The application must also be filed in every other jurisdiction where the relief is required.

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