

CSA Staff Notice 45-303

Interpretation of the Amalgamation Exemption

August 8, 2003

The purpose of this notice is to provide guidance regarding the interpretation of the amalgamation exemption and is issued by staff in all CSA jurisdictions other than Ontario and Québec.

The Exemptions

The securities legislation (the “Legislation”) in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon (the “Jurisdictions”) provides exemptions from the registration and the prospectus requirements for trades in securities of an issuer in connection with, respecting, or pursuant to certain *business procedures including amalgamations, reorganizations, and arrangements* (the “Amalgamation Exemption”)¹.

Staff Interpretation

Staff of the local securities regulatory authority or regulator (the “Commissions”) in the Jurisdictions take the view that an issuer and its legal counsel are in the best position to, and must, determine whether an exemption from a requirement of the Legislation is available or can be relied on in a specific situation. Staff will provide guidance to help issuers and their legal counsel interpret exemptions, but will not recommend that exemptive relief be granted if, in their view, it is clear that an exemption is available.

It should also be noted that prior decisions of the Commissions are not binding on them and each application is reviewed on its individual merits.

The Amalgamation Exemption provides relief from the registration and prospectus requirement for trades in securities of an issuer *in connection with, respecting, or pursuant to* certain business procedures. Staff interprets this phrase broadly and is of the view that the exemptions can be used for all trades in securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the trades occur.

For example, under a plan of arrangement involving exchangeable shares, trades of securities issued in exchange for exchangeable shares may occur on a date later than the effective date of

¹ A table of relevant securities laws provisions is attached as Schedule 1.

the arrangement. Staff are of the view that the exemptions can be relied on for these trades given that the decision to invest is made at the time of the arrangement and no new investment decision will be made when the shares are issued in exchange for the exchangeable shares.

Schedule 1

JURISDICTION

SECURITIES LEGISLATION REFERENCE

British Columbia	<i>Securities Act</i> , RSBC 1996, c. 418, ss. 45(2)(9) and 74(2)(8)
Alberta	<i>Securities Act</i> , RSA 2000, c. S-4, ss. 86(1)(p) and 131(1)(i)
Saskatchewan	<i>The Securities Act</i> , 1988, c. S-42.2, Statutes of Saskatchewan, 1988-89, ss. 39(1)(p) and 81(1)(i)
Manitoba	<i>The Securities Act</i> , RSM 1988, c. S50, ss. 19(1)(j) and 58(1)(b)
New Brunswick	<i>Securities Act</i> , NB, c. S-6, ss. 7(h) and 13(12)(a)
Nova Scotia	<i>Securities Act</i> , RSNS 1989, c. 418, ss. 41(1)(p) and 77(1)(i) and Nova Scotia Securities Commission Blanket Order No. 45-503, In the Matter of an Exemption for a Trade on an Amalgamation, Arrangement or Specified Statutory Procedure
Prince Edward Island	<i>Securities Act</i> , RSPEI 1988, Cap. S-3, ss. 2(3)(k) and 13(1)(f) and PEI Local Rule 45-502, Exempt Distributions – Exemption for a Trade on an Amalgamation, Merger, Reorganization or Arrangement
Newfoundland and Labrador	<i>Securities Act</i> , RSNL 1990, c. S-13, ss. 36(1)(o) and 73(1)(i) and Securities Commission Blanket Order 48 – An Exemption for a Trade on An Amalgamation, Arrangement or Specified Statutory Procedure
Northwest Territories	NWT Blanket Order No. 1 s. 3(g) and Blanket Order No. 2 s. 3(g)
Nunavut	Nunavut Blanket Order No. 1 s. 3(g) and Blanket Order No. 3 s. 3(g)
Yukon	<i>Securities Act</i> , RSY 2002, c. 201, s. 2(j) Registrar's Order dated March 1, 1980, s. 6