



Securities Transfer Association of Canada

Delivered by e-mail: marsha.manolescu@seccom.ab.ca

April 29th, 2003

To: Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Prince Edward Island Securities Office
Saskatchewan Securities Commission

c/o Ms. Marsha Manolescu
Senior Legal Counsel
Alberta Securities Commission
4th Floor, 300 - 5th Avenue S.W.
Calgary, Alberta
T2P 3C4

Re: Request for Comment on MI 45-102 - Resale of Securities – Legends

The Securities Transfer Association of Canada would like to propose changes to MI 45-102 that would permit the implementation of an alternative process for monitoring and controlling the resale of Securities. This alternative would be complementary to the use of certificates as the means to monitor and control Restricted Securities.

Background:

MI 45-102 as amended (November 30, 2001), clarified that the use of legends restricting the first sale of securities goes hand and hand with the issuance of certificates representing those securities. The use of certificates, however, may create problems for future Straight Through Processing (STP or T+1) initiatives.

Section 1-8 requires certificates to be issued and legends to be applied as the most practical manner of providing certainty as to the applicable restricted period and of ensuring more effective regulation of the exempt market in the closed system jurisdictions.

President: Terry Martinuk, Computershare Trust Company of Canada, 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1
Phone: (416) 263-9302 Fax: (416) 263-9261

Secretary/Treasurer: Richard M. Barnowski, Equity Transfer Services Inc., Suite 420, 120 Adelaide St. West, Toronto, Ont. M5H 4C3
Phone: (416) 361-0930 ext. 225 Fax: (416) 361-0470

Within the current registration system, where direct share ownership is evidenced by a share certificate, the restrictive legend prevents the investor from depositing the restricted securities into the depository or indirect registration system where securities are held in fungible form. It also puts prospective purchasers on notice that the securities are restricted and cannot be transferred should they wish to purchase the securities in street form. Despite this, interests in certificated securities can and are passed to others, without the registration/transfer which would require consideration of the restrictions. In the proposed Direct Registration System (DRS) under the Canadian Capital Markets Association (CCMA) White Paper on Dematerialization, investors may elect to hold their securities in certificated form with the appropriate legends applied or in book entry form and receive an Ownership Statement indicating the block of securities that have restrictions/legends. In a book entry environment, the underlying security cannot be moved or transferred until the restriction has been satisfied.

Certification we believe requires not only unwanted “paper”, but also imposes a complex and costly environment for custodians and financial intermediaries. In a STP environment, there are, we believe, better ways to achieve regulatory objectives.

Both the U.S. Securities Industry Association (SIA) and the CCMA Dematerialization Working Group support records of share positions on issuer’s registers rather than certificates as means to achieve regulatory goals. Both groups recommend:

- The use of a DRS, in addition to certificates, as the best method of book entry control over restricted securities.
- The enforcement and control over restricted securities be achieved through the deposit and withdrawal messaging system of their respective depositories to the transfer agent share register.

On December 8th 2000, Mr. Al Cooper, president of CDS and chair of the CCMA sent a letter to CSA Chairs re Resale Securities – Legends, which recommended that an amendment to MI 45-102 be made to provide also that the information that would otherwise be on a legend can be made available to purchasers and prospective purchasers in other ways that do not presume the existence of a physical certificate (letter attached as appendix A).

In the current certificate environment, the ultimate control over restricted securities lies in the issuer’s security register. However, securities represented by certificates can and do trade in street form. Leaving the securities in book form on the share register as proposed by DRS is the ultimate control, as the underlying security cannot be transferred, sold or disposed of until the restrictive conditions have been satisfied. The same register control as stated above for certificates is used in DRS; in DRS the owner is provided with a statement of ownership clearly indicating the restriction/legend, but that statement is non-negotiable and can’t be used to transfer any interest in the security.

The current National Policy for Escrow NP 46-201, another form of restricted security controlled on resale, has been amended (June 2002) to clarify that certification is not required to achieve its objectives. Today, almost all Escrow securities are kept in book-entry form on the share register until their release from Escrow and then moved into the indirect nominee system or certificated, if that is the wish of the investor.

The current trend world-wide in securities ownership is to dematerialize the certificate and provide a book entry alternative. The most common form of book entry until Direct Registration has been Depositories, which hold securities in nominee name, and do not provide the control at the security holder level. DRS does provide the control at the holder level to restrict movement in compliance with the regulatory requirement until the legend conditions have been met and the legend notation has been removed from the issuer's register.

In the U.S. a similar initiative addressing restricted securities in book entry form is being proposed by the SIA under the heading of "Network for Equities". Under NFE, legended and restricted securities are maintained and controlled in DRS on the share register in the same manner as proposed in Canada.

Recommendation:

Providing regulatory requirements can be met, and shareholders can receive certificates on request, the proposed DRS ensures Canada's financial systems operate in an efficient and internationally competitive manner.

The DRS is the existing share registry system with the option of issuing a certificate with a legend or an Ownership Statement with a legend notation. The DRS provides a book-entry alternative (in achieving regulatory objectives), to the issuing of a certificate with a legend.

- The investor is informed of the restriction/legend by a notation on the ownership statement.
- The ownership statement gives no power to transfer any interest in the security until the restriction/legend has been satisfied.
- Ownership rights remain on the share register, where control is exercised.

Effective identification of holders and restrictions through effective system parameters prevents prohibited transfers that could otherwise take place in a certificate environment by physical delivery of an endorsed certificate. Legends on paper certificates are not as effective as DRS in relation to meeting regulatory requirements. DRS offers more efficiencies and a better fit with current financial industry projects such as in helping custodians and other financial intermediaries (where legended securities are already immobilized) to efficiently and cost effectively discharge their responsibilities. At the same time, DRS can easily co-exist with paper, where wanted by investors, to which the current legending requirements would still apply.

April 29th, 2003

We recommend modifying MI 45-102 without further delay to allow for the controlled issuance of legended securities through certificates and/or a book-entry environment controlled on the issuer's register of holders.

Yours truly

SECURITIES TRANSFER ASSOCIATION OF CANADA

Per:

A handwritten signature in blue ink, appearing to be a stylized 'S' or 'B' with a flourish.

Appendix A

Allan R. Cooper
Chairman, Board of Directors

Tel: (416) 365-8537
Fax: (416) 365-1480
E-Mail: acooper@cds.ca

December 8, 2000

Mr. Dean Murrison
Committee Chair
Saskatchewan Securities Commission
800, 1920 Broad Street
Regina, Saskatchewan
S4P 3V7
Tel: (306) 787-5879
E-m: dmurrison@ssc.gov.sk.ca

Dear Mr. Murrison:

Re: Proposed Multilateral Instrument 45-102 - Resale of Securities

The Canadian Capital Markets Association is making this submission to propose an amendment to Multilateral Instrument 45-102 - Resale of Securities to more effectively address legending in an electronic securities clearing and settlement environment. Part 2 of the Instrument provides that, to reduce the hold period if securities are distributed in reliance on a private placement exemption, "... the certificate representing the securities must carry a legend stating that, subject to securities legislation, the holder shall not trade the securities before the expiry of the appropriate hold period."

The Canadian Capital Markets Association (CCMA)

The CCMA is a national, not-for-profit organization created in August 2000 (refer left margin for the organizations represented on our Board of Directors and Observers). Its purpose is to participate in and promote the development and implementation of government legislation, regulatory policies, and industry practices and standards to enhance the efficiency, competitiveness, integrity and stability of capital markets. Among its first priorities are:

- Raising awareness and co-ordinating industry readiness for the transition from settling securities from the current three days after trade date (T+3) to the day following a trade (T+1)
- Promoting implementation of straight-through processing throughout the industry
- Promoting the mandatory reporting of securities entitlements (e.g., stock splits, rights issues) to a centralized database accessible to all Canadian investors.

Moving to T+1

As you may be aware, the United States is scheduled to change the settlement period for securities from T+3 to T+1, likely in 2004. A November 2000 economic analysis, commissioned by the securities industry, shows that Canadian capital market activity would shift to the U.S. if Canada does not reduce its settlement period to one day in conjunction with the U.S.

To move to T+1 will require not just doing the same things faster, but fundamental changes to the settlement process and considerably greater automation to allow for straight-through processing (STP). STP is the process of seamlessly passing financial information to all parties to the transaction chain without manual handling or duplicate processing.

In response to this challenge, the CCMA has established a number of committees, including the Elimination of Certificates Working Group and Legal/Regulatory Working Group on which the OSC has an observer. These two committees are looking at what legislation, regulation and policies must change to promote greater electronic transfer of securities and alternative ways of achieving, for example, the intent of legending.

Analysis

We believe that the goal of legending is to inform securities purchasers of certain limitations that may impact their buying decision or ability to sell a security.

- As fewer people now see securities, legending is not an effective way of ensuring disclosure of material information on securities.
- As securities become increasingly issued, cleared and settled in electronic form, the Instrument should address the case of non-certificated securities.

Recommendation

As the CCMA committees looking at legending and other issues that will be problematic in a T+1 environment have not had an opportunity to fully develop alternatives, we believe that the Instrument should be amended to allow flexibility in communicating the hold period information.

Parts 2.5(2)3 and 2.5(3)4 state that "The certificate representing the securities carries a legend...." We recommend that you amend this to provide also that the information that would otherwise be on a legend can be made available to purchasers and prospective purchasers in other ways that do not presume the existence of a physical certificate.

As mentioned above, the CCMA's Elimination of Certificates Working Group is examining how to handle issues such as legends in a paperless environment. The Association and its working group would like to work with the Canadian Securities Administrators to determine practical alternatives. We would be pleased to discuss your goals, our concerns and mutually satisfactory solutions with you.

Yours truly,