

May 1, 2003

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

Dear Ms. Manolescu:

**Re: Request for Comments
Proposed Multilateral Instrument 45-102 *Resale of Securities***

This is our firm's response to the request for comments regarding the proposed revisions to Multilateral Instrument 45-102 *Resale of Securities* (the "Proposed Revisions") made on January 31, 2003 by the securities regulatory authorities of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan.

General Comments

We strongly support the Proposed Revisions for two main reasons. First, the Proposed Revisions will simplify a very complex rule by removing the distinction between "qualifying issuers" and "non-qualifying issuers", and simplification of the closed system is an important step in the right direction. Second, the approach in proposed section 2.7 recognizes that, as a matter of policy, the seasoning periods can be eliminated if an IPO prospectus is filed after the distribution date, because accurate and complete disclosure is publicly made and the information is quickly absorbed by the market. This is a very welcomed step although, as discussed below, we think a bigger step could be taken.

Our comments are directed to the following two areas: (i) the necessity of preserving seasoning period requirements in light of the approach in section 2.7; and (ii) the use of “offeror” in the resale exemptions for securities exchange take-over bids and securities exchange issuer bids. We also suggest that clarification be given about hedging activities that involve restricted securities, although this may be beyond the scope of the current initiative.

Seasoning Periods

Under proposed section 2.7, the filing of an IPO prospectus dispenses with the four month seasoning period (in sections 2.5(2)1, 2.6(3)1 and 2.8(2)1) for securities distributed on an exempt basis before the prospectus is filed. As discussed above, this welcome change rightly recognizes that investors who bought securities before the filing of an IPO prospectus, as well as potential purchasers of the shares they hold, have access to current and accurate information contained in the prospectus, and so the rationale for a seasoning period likely disappears.

We do not understand, however, why the seasoning period should not also be dispensed with for exempt distributions done *after* the filing of an IPO prospectus, given the continuing obligation on reporting issuers to make timely disclosure of material changes. For example, if a person received shares in an exempt distribution one day before the filing of an IPO prospectus, those shares would become freely tradeable under section 2.7 immediately after a final receipt is issued for the IPO prospectus. But if the same person received shares from the same issuer the day after the final receipt of the IPO prospectus, the shares would be subject to a seasoning requirement under section 2.5(2)(1). There does not appear to us to be a policy justification for the different treatment.

We also note that section 2.7 is restricted to situations where a issuer becomes an issuer by virtue of a prospectus. Issuers may also become reporting issuers as a result of the filing of other public disclosure documents that carry an obligation to provide prospectus level disclosure, such as securities exchange take-over bid or securities exchange issuer bid circulars, or an information circular for a meeting to approve a plan of arrangement involving a predecessor reporting issuer under to which securities will be distributed. If the theory behind section 2.7 is the public availability of current and accurate information about the reporting issuer, each of those documents will suffice.

Use of “Offeror” in Sections 2.11 and 2.12

Proposed sections 2.11 and 2.12 exempt certain trades from the seasoning requirements, but only for securities issued by the an “offeror”. In many securities exchange bids, however, the entity that issues securities is not the offeror. For example, the offeror might be a special purpose acquisition vehicle in a transaction where the public parent company of the offeror issues its own securities to shareholders of the target company.

We suggest, therefore, that the exemption in sections 2.11 and 2.12 should include securities issued by an entity other than the offeror. This expansion would be consistent with the former treatment of securities exchange take-over bids under sections 72(1)(j) and 72(5) of the OSA, the definition of “reporting issuer” (which contemplates that in a securities exchange take-over bid, an entity other than the offeror might be issuing securities) and item 15(1) of Form 32

(which effectively requires prospectus-level disclosure for the issuer of securities in a securities exchange take-over bid, even if it is not the offeror). Finally, we note that Companion Policy 45-102CP acknowledges the distinction between the concepts of “offeror” and “issuer” in these circumstances: proposed section 1.11 of the Companion Policy states that the basis for the exemption in section 2.11 of the proposed rule is that the securities exchange take-over bid or securities exchange issuer bid circulars:

“.....contain prospectus disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer.”

Therefore, we suggest the term “offeror” be replaced with “issuer” in the following locations: (i) the lead-in sentence to section 2.11; (ii) section 2.11(c); and (iii) section 2.12(c).

We appreciate the opportunity to comment on the Proposed Revisions and would be pleased to discuss any aspect of this submission with you.

Yours very truly,

Philip de L. Panet

PdeLP/eg

c: Robert Karp – *Torys LLP*
Donald MacInnis – *Torys LLP*