



Market Regulation Services Inc.

Services de réglementation du
marché inc.

Noelle O. Wood
Senior Counsel
Market Surveillance

Direct Tel: 416.646.7275
Direct Fax: 416.646.7265
E-mail: noelle.wood@regulationservices.com

145 King St. West
Suite 900
P.O. Box 939
Toronto ON
Canada M5H 1J8

T 416.646.7200

May 2, 2003.

BY E-MAIL

Suite 2600
P.O. Box 11580
650 West Georgia St.
Vancouver, BC
Canada V6B 4N8

T 604.602.6962
F 604.682.8514

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 Sirs and Mesdames:

Re: Request for Comments – Proposed Repeal and Replacement of Multilateral Instrument 45-102 Resale of Securities, Form 45-102F1, F2 and F3 and Companion Policy 45-102CP Resale of Securities

Further to the Request for Comments on the Proposed Repeal and Replacement of Multilateral Instrument 45-102 Resale of Securities, Form 45-102F1, F2 and F3 and Companion Policy 45-102CP Resale of Securities published in the OSC Bulletin at (2003) 26 OSCB 991, Market Regulation Services Inc. ("RS") would like to comment on the proposal to add a new exemption under the resale restrictions of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102").

The proposed exemption in subsection 2.14(1) of MI 45-102 would exempt the first trade of a security distributed under an exemption from the prospectus requirement if:

- i) the issuer of a security that is not a reporting issuer in any jurisdiction at the distribution date but subsequently becomes a reporting issuer in a foreign jurisdiction with shares listed on a foreign exchange, and
- ii) at the distribution date, Canadian residents own directly or indirectly 10% or less of the outstanding securities of the class or series or do not represent in number more than 10% of the total number of owners directly or indirectly of securities of the class or series, and
- iii) the trade is made through a foreign exchange or market or to a person outside of Canada.

RS would note that this exemption directs order flow to foreign exchanges even though any order potentially may be traded on a recognized Alternative Trading System (“ATS”) in Canada. National Instrument 21-101 *Marketplace Operation* allows a recognized ATS to trade securities that are “foreign exchange-traded securities”. Consequently, should an issuer become a reporting issuer by listing on a foreign exchange subsequent to the distribution date, such shares would then be eligible to be traded on an ATS in Canada. Assuming the remaining conditions in subsection 2.14(1) are met, the first trade in securities of a non-reporting issuer that had been distributed in Canada under a prospectus exemption would have to be executed through a foreign exchange or market notwithstanding that such security may be trading on an ATS in Canada. RS would suggest that an additional provision be added to paragraph 2.14(1)(c) of MI 45-102 to permit such a trade to be made through the facilities of a recognized ATS.

If you have any questions regarding this matter, please do not hesitate to contact me at 416.646.7275.

Yours truly,

“Noelle Wood”

Noelle Wood
Senior Counsel

cc: Tom Atkinson, Market Regulation Services Inc.
Maureen Jensen, Market Regulation Services Inc.