

Notice No. 45-702

**IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, C. 418, AS AMENDED**

- AND-

**IN THE MATTER OF
PROPOSED MULTILATERAL INSTRUMENT 45-105
TRADES TO EMPLOYEES, SENIOR OFFICERS,
DIRECTORS, AND CONSULTANTS**

NOTICE AND REQUEST FOR COMMENTS

Introduction

The securities regulatory authorities (the “Commissions”) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Yukon Territory and the Northwest Territories (the “Jurisdictions”) seek public comment on the making of proposed Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* (the “Proposed Instrument”).

The Commissions are publishing the text of the Proposed Instrument together with this Notice and Request for Comments.

Substance and Purpose

The securities legislation in each Jurisdiction currently contains exemptions from the registration requirement and the prospectus requirement for trades in securities of an issuer’s own issue to the issuer’s employees. Furthermore, certain Jurisdictions have additional instruments which modify and expand the statutory employee exemptions, including:

- ? Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants* (the “OSC Rule”)
- ? British Columbia Instrument 45-507 *Trades to Employees, Executives and Consultants* (the “BC Instrument”)
- ? Alberta Securities Commission Blanket Order 45-506 (the “ASC Order”)
- ? Nova Scotia Securities Commission Blanket Order No. 45-501 *Trades to Employees, Executives and Consultants* (the “Nova Scotia Order”)

- ? Saskatchewan Securities Commission General Ruling/Order 45-907 *Trades to Employees, Executives and Consultants* (the “Saskatchewan Order”)

The additional instruments listed above provide exemptions from the registration requirement and the prospectus requirement for trades to an issuer’s non-employee directors and certain consultants, as well as other related relief. The Proposed Instrument consolidates and, as much as possible, harmonizes the requirements in each of the OSC Rule, the BC Instrument, the ASC Order, the Nova Scotia Order and the Saskatchewan Order.

Summary of the Proposed Instrument

The Proposed Instrument has six parts.

Part 1 contains the definitions of terms and phrases used in the Proposed Instrument that are not defined in or interpreted under a national definition instrument in force in a Jurisdiction. National Instrument 14-101 *Definitions* sets out definitions for commonly used terms and should be read together with the Proposed Instrument.

Part 2 provides exemptions from the dealer registration requirement and the prospectus requirement in each of the following circumstances:

1. **Basic Trades** – Section 2.1 contains basic dealer registration and prospectus exemptions for trades by an issuer in securities of the issuer’s own issue to
 - (a) an employee, senior officer, director, or consultant of the issuer or an affiliate of the issuer;
 - (b) a trustee, custodian, or administrator acting on behalf, or for the benefit of, a person or company referred to above; and
 - (c) an RRSP, RRIF, holding entity or spouse of an individual referred to in (a) or the RRSP or RRIF of that individual’s spouse.

Section 2.1 also provides dealer registration and prospectus exemptions for trades in securities of the issuer (or options to acquire securities of the issuer) by a control person to any of the parties identified in (a) to (c), above.

If an issuer is not a “listed issuer”, the exemptions in section 2.1 may not be available for a trade to certain investor relations persons, senior officers, directors or consultants (or their trustees, custodians, etc) unless prior shareholder approval has been obtained. As British Columbia’s statutory exemption for trades to employees, senior officers and directors does not include this restriction, the restriction will not apply in British Columbia.

2. **Trades Among Employees, etc.** – Section 2.2 provides dealer registration and prospectus exemptions for trades from current or former employees, senior

officers, directors, and consultants to current employees, senior officers, directors, and consultants. However, these exemptions are only available where:

- (a) the issuer of the securities is not a reporting issuer in any jurisdiction,
- (b) participation in the trade by the employee, senior officer, director, or consultant is voluntary, and
- (c) the price of the security being traded is established by a generally applicable formula contained in a written agreement among some or all of the shareholders of the issuer to which the transferee is or will become a party.

3. Conversions or Exchanges – Section 2.3 provides dealer registration and prospectus exemptions for trades that are, or are incidental to, the issuance of securities upon the exercise of an exchange or conversion right that was originally distributed under the exemption in section 2.1.

4. Trades Among Permitted Transferees – Section 2.4 provides dealer registration and prospectus exemptions for trades in securities acquired under section 2.1, 2.2 or 2.3 between an employee, senior officer, director, or consultant and a trustee, custodian or administrator acting on their behalf, their holding entity, their RRSP or RRIF, their spouse or an RRSP or RRIF of their spouse.

Part 3 of the Proposed Instrument sets out resale restrictions for securities acquired under Part 2 of the Proposed Instrument.¹ Section 3.1 provides that the first trade of a security acquired under Part 2 must comply with section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”). Section 3.2 provides a dealer registration exemption for the resale of securities of a non-reporting issuer provided the conditions in section 2.14 of MI 45-102 are met. In each case, the resale provisions refer to the first trade of a security acquired under an exemption in Part 2. As a result, Part 3 will apply to the resale of securities by former employees, senior officers, directors, and consultants.

Part 4 of the Proposed Instrument provides an exemption from the issuer bid requirements that could otherwise apply to a trade by an employee, director, etc. to an issuer. However, the exemption will only apply if the trade is either to fulfil a withholding tax obligation or to provide payment of an exercise price of a stock option.

Part 5 provides for the granting of exemptions from the Proposed Instrument.

Part 6 establishes an effective date for the Proposed Instrument.

¹ The resale provisions in Part 3 will not apply in Manitoba.

Related Amendments

Each of the OSC Rule, BC Instrument, ASC Order, Nova Scotia Order and the Saskatchewan Order will be revoked upon the coming into force of the Proposed Instrument.

The Nova Scotia Securities Commission does not anticipate withdrawing any of the statutory exemptions at this time.

Request for Comments

We welcome your comments on the Proposed Instrument. In addition to any general comments you may have, the British Columbia Securities Commission invites you to comment specifically on whether it should impose the restriction in section 2.1 of the Proposed Instrument on non-listed issuers who do not obtain shareholder approval to be consistent with the other Jurisdictions, or if so would negatively affect issuers or their business.

Please submit your comments in writing on or before January 30, 2003. If you are not sending your comments by email, a diskette containing the submissions (in Windows format, Word) should also be forwarded.

Please address your submission to all of the CSA member Commissions, as follows:

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

Deliver your comments **only** to the address that follows. Your comments will be forwarded to the remaining CSA member jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain Jurisdictions requires publication of a summary of the written comments received during the comment period.

Questions

Please refer your questions to any of:

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The text of the Proposed Instrument follows and can be found elsewhere on a CSA member website.

Dated at Halifax, Nova Scotia, this 6th day of November, 2002.

Nova Scotia Securities Commission

“H. Leslie O’Brien”

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