

NOVA SCOTIA SECURITIES COMMISSION

Rule 45-102 (Amendment)

Resale of Securities

-and-

Amendments to National Instrument 45-102 *Resale of Securities*

-and-

Changes to Companion Policy 45-102 *Resale of Securities*

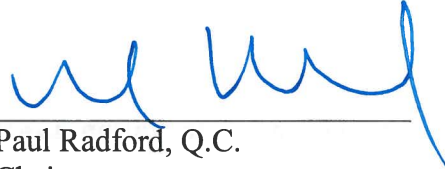
WHEREAS:

1. Pursuant to section 150 of the Securities Act, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to National Instrument 45-102 *Resale of Securities* (the Rule) and Changes to Companion Policy 45-102 to National Instrument 45-102 *Resale of Securities* (the Policy), have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

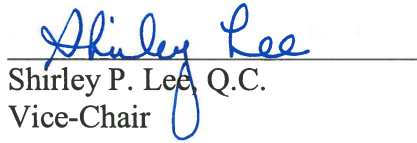
- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;
- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policy as a policy statement of the Commission; and
- (c) declares that the rule approved and made pursuant to clause (a) and the issuance of the policy statement pursuant to clause (b) shall both take effect on **June 12, 2018**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 29th day of March, 2018.



A handwritten signature in blue ink, appearing to be 'Paul Radford', written over a horizontal line.

Paul Radford, Q.C.
Chair



A handwritten signature in blue ink, appearing to be 'Shirley P. Lee', written over a horizontal line.

Shirley P. Lee, Q.C.
Vice-Chair

Attachments

**AMENDMENTS TO
NATIONAL INSTRUMENT 45-102 RESALE OF SECURITIES**

Text boxes in this Instrument located below sections 2.14 and 2.15 refer to local instruments in Alberta and Ontario. These text boxes do not form part of this Instrument.

1. National Instrument 45-102 Resale of Securities is amended by this Instrument.

2. Section 2.14 is amended by adding the following subsection:

(3) This section does not apply in Alberta and Ontario..

In Ontario, section 2.7 of Ontario Securities Commission Rule 72-503 Distributions Outside Canada provides a similar exemption to the exemption in section 2.14 of this Instrument. In Alberta, Alberta Securities Commission Blanket Order 45-519 Prospectus Exemptions for Resale Outside Canada provides a similar exemption to the exemption in section 2.14 of this Instrument.

3. The Instrument is amended by adding the following section:

2.15 First Trades in Securities of a Non-Reporting Foreign Issuer Distributed under a Prospectus Exemption

(1) In this section

"executive officer" means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or a chief financial officer, or
- (c) in charge of a principal business unit, division or function including sales, finance or production and that fact is disclosed in any of the following documents:
 - (i) the issuer's most recent disclosure document containing that information that is publicly available in a foreign jurisdiction where its securities are listed or quoted;
 - (ii) the offering document provided by the issuer in connection with the distribution of the security that is the subject of the trade;

"foreign issuer" means an issuer that is not incorporated or organized under the laws of Canada, or a jurisdiction of Canada, unless any of the following applies:

- (a) the issuer has its head office in Canada;
- (b) the majority of the executive officers or directors of the issuer ordinarily reside in Canada.

- (2) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if all of the following apply:
 - (a) the issuer of the security was a foreign issuer on the distribution date;
 - (b) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
 - (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (3) The prospectus requirement does not apply to the first trade of an underlying security if all of the following apply:
 - (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security was a foreign issuer on the distribution date;
 - (c) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of trade;
 - (d) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (4) This section does not apply in Alberta and Ontario..

In Ontario, section 2.8 of Ontario Securities Commission Rule 72-503 Distributions Outside Canada provides a similar exemption to the exemption in section 2.15 of this Instrument. In Alberta, Alberta Securities Commission Blanket Order 45-519 Prospectus Exemptions for Resale Outside Canada provides a similar exemption to the exemption in section 2.15 of this Instrument.

3. Appendix D is amended by adding the following in section 1 after “as well as the following local exemptions from the prospectus requirement:”:

- section 2.4 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*;

4. This Instrument comes into force on June 12, 2018.

CHANGES TO
COMPANION POLICY 45-102 TO NATIONAL INSTRUMENT 45-102 RESALE OF
SECURITIES

1. Companion Policy 45-102CP to National Instrument 45-102 Resale of Securities is changed by this Document.

2. The title of the Companion Policy is simplified to read as follows:

COMPANION POLICY 45-102 RESALE OF SECURITIES

3. Section 1.1 is changed:

(a) by replacing subsection (2) with the following:

(2) Except for sections 2.1, 2.8, 2.9 and 2.15, Part 2 of NI 45-102 does not apply in Manitoba.; **and**

(b) by adding the following subsection:

(3) Sections 2.14 and 2.15 do not apply in Alberta and Ontario. In Alberta and Ontario, local measures similar to sections 2.14 and 2.15 apply and are found in Alberta Securities Commission Blanket Order 45-519 *Prospectus Exemptions for Resale Outside Canada* and in sections 2.7 and 2.8 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*..

4. Subsection 1.2(3) is changed by replacing the second and third sentences with the following:

This includes the further exemptions found in sections 2.14 and 2.15, and the similar exemptions in Alberta and Ontario. For example, if a person or company obtains a discretionary exemption order or ruling that imposes any of the resale restrictions contained in section 2.5, 2.6 or 2.8 on a security that is the subject of the order or ruling, the person or company may rely on section 2.14 or 2.15, or the similar exemptions in Alberta and Ontario, to resell the security..

5. Section 1.9 is changed by replacing the words “section 4 of the Alberta Securities Commission Rules” with the words “section 3.1 of the Alberta Securities Commission Rule 45-511 *Local Prospectus Exemptions and Related Requirements*”.

6. Section 1.15 is changed:

(a) by replacing, in the title, the words “of a Non-Reporting Issuer” with the words “under Section 2.14”; and

(b) by adding the following subsection:

(4) *Bona fide trades outside of Canada* – The exemptions in subsections 2.14(1) and 2.14(2) permit the resale of securities of an issuer in a bona fide trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In our view, selling security holders who wish to rely on the exemptions may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A selling security holder engaged in activities to sell or create a demand for the security in Canada would not be able to rely on the exemptions in section 2.14.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met..

7. The Companion Policy is changed by adding the following section after section 1.15:

1.15.1 Resale of Securities under Section 2.15

(1) *Directors and Executive Officers* – The definition of “foreign issuer” in section 2.15 of NI 45-102 uses the terms “directors” and “executive officers”. The term “director” is defined in provincial and territorial securities legislation in Canada and generally means a director of a company or an individual performing a similar function or acting in a similar capacity for any non-corporate issuer.

For a non-corporate issuer, an executive officer is a person who is acting in a capacity with the non-corporate issuer that is similar to that of an executive officer of a company.

(2) *Definition of foreign issuer* – In order to rely on section 2.15, a selling security holder will have to determine if the issuer is a foreign issuer on the distribution date. In some cases, the issuer will provide that information to investors at the time of the offering, perhaps in representations in subscription agreements or in offering materials. If the issuer doesn’t provide that information, we defined “foreign issuer” such that a security holder can determine whether an issuer is a foreign issuer by using the information disclosed in the issuer’s most recent disclosure document containing that information that is publicly available in a foreign jurisdiction or the offering document provided by the issuer in connection with the distribution of the security that is the subject of the resale. A security holder may rely on this information unless the security holder has reason to believe that it is not accurate.

The term “ordinarily reside” is used to clarify that when an executive officer or director has a temporary residence outside of Canada, such as a vacation home, the executive officer or director would not generally be considered to reside outside of Canada for the purposes of the definition of foreign issuer.

(3) There is no requirement to place a legend on the securities in order to rely on the exemptions in section 2.15 of NI 45-102.

(4) *Bona fide trades outside of Canada* – The exemptions in subsections 2.15(2) and 2.15(3) permit the resale of securities of an issuer in a bona fide trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In our view, selling security holders who wish to rely on the exemptions may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A selling security holder engaged in activities to sell or create a demand for the security in Canada would not be able to rely on the exemptions in section 2.15.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met..

8. **Section 1.16 is changed by deleting the words** “in the jurisdiction of the issuer’s principal regulator under National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*”.
9. These changes become effective on June 12, 2018.

