

**CANADIAN SECURITIES ADMINISTRATORS
NOTICE****Amendments to Multilateral Instrument 45-105 *Trades to Employees,
Senior Officers, Directors, and Consultants*****October 17, 2003**

On August 15, 2003, Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* (the "Instrument") came into force in every jurisdiction in Canada, other than Quebec (the "Jurisdictions"). The Jurisdictions are adopting amendments to the Instrument (the "Amendments"). The Amendments address certain technical limitations that have arisen with the Instrument but will not materially change the Instrument.

Where required, the Amendments have been approved by the commissions of all of the Jurisdictions. In Ontario, the Amendments were delivered to the Minister of Finance on September 3, 2003. If the Minister approves the Amendments, they will come into force in Ontario 15 days after the Amendments are approved. If the Minister does not approve or reject the Amendments by November 3, 2003, they will come into force in Ontario on November 18, 2003.

In Saskatchewan, the Amendments will be published for comment for a 60-day period. The Amendments should become effective in Saskatchewan in approximately mid January of 2004.

With the exception of Ontario (where the Amendments may come into force earlier) the Amendments will become effective in all Jurisdictions on or after **November 18, 2003**.

Background

The securities legislation in each Jurisdiction currently contains exemptions from the dealer registration requirement and the prospectus requirement for trades in securities of an issuer's own issue to the issuer's employees. In addition, prior to August 15, 2003, certain Jurisdictions had additional instruments that either modified, restricted or expanded the statutory employee exemptions, including:

- OSC Rule 45-503 *Trades to Employees, Executives and Consultants* (the OSC Rule 45-503)
- British Columbia Instrument 45-507 *Trades to Employees, Executives and Consultants* (the BC Instrument)
- Alberta Securities Commission Blanket Order 45-506 *Trades and Distributions to Employees, Senior Officers, Directors, and Consultants* (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)

These instruments provided exemptions from the dealer 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 Instrument consolidates and, as much as possible, harmonizes the requirements in each of OSC Rule 45-503, the BC Instrument, the ASC Order, the Nova Scotia Order and the Saskatchewan Order (collectively, the Former Instruments). Each of the Former Instruments was revoked when the Instrument came into force.

Purpose of the Amendments

The purpose of the Amendments is to address certain technical limitations of the Instrument.

Although the stated purpose of the Instrument was to consolidate and, as much as possible, harmonize the Former Instruments, we are now aware that certain exemptions from the dealer registration requirement and the prospectus requirement may not be available under the Instrument. In particular,

- an exemption from the dealer registration requirement and the prospectus requirement may not be available for a trade of an issuer's security to an employee, senior officer, director, or consultant by a trustee, custodian or administrator (a "plan administrator") acting on behalf of that employee, senior officer, director, or consultant if the plan administrator acquired the security on the secondary market;
- an exemption from the dealer registration requirement and the prospectus requirement may not be available for "crosstrades" by plan administrators.¹

In addition, the Amendments will also:

- provide an exemption from the dealer registration requirement for the first trade of an underlying security by a former employee, senior officer, director, or consultant where the convertible security was exercised after the party ceased to be an employee, senior officer, director, or consultant;
- provide an exemption from the dealer registration requirement and the prospectus requirement for a trade of a security of a non-reporting issuer by a permitted assign of a

¹ A "cross-trade" occurs when a plan administrator receives an order to buy securities from one participant and an order to sell securities from another participant. Instead of purchasing securities for the first participant on the secondary market, then selling securities for the second participant on the secondary market, the plan administrator can simply "cross" the trades, and provide the first participant with the securities supplied by the second participant.

current or former employee, senior officer, director, or consultant of the issuer to an employee, senior officer, director, or consultant of the issuer or their permitted assigns.

In our view, the Amendments do not constitute a material change to the Instrument.

Summary of the Amendments

Section 1.1 amends Part 2 of the Instrument:

- Paragraph 1.1(a) amends subsection 2.2(1) of the Instrument by replacing the words “trustee, custodian or administrator acting on behalf of an employee, senior officer, director, or consultant” with the words “permitted assign”, a defined term. This expands the exemption in subsection 2.2(1) to include trades to and by not only a trustee, custodian or administrator of the employee, senior officer, director, or consultant, but also to all other permitted assigns of the employee, senior officer, director, or consultant;
- Paragraph 1.1(b) inserts the words “on a secondary market in accordance with the plan or” in subsection 2.4(1) of the Instrument. This expands the exemption in subsection 2.4(1) to include trades by a plan administrator to plan participants where the securities in question are acquired by the plan administrator on the secondary market;
- Paragraph 1.1(c) deletes subsections 2.4(2) and (3) and replaces them with new subsections 2.4(2), (3) and (4). This permits a plan administrator to effect “cross-trades” on a registration and prospectus exempt basis.

Section 1.2 amends section 3.2 of the Instrument by inserting the words “under Part 2 or” immediately before the words “by a person or company described in subsection 2.1(1)”. This provides an exemption from the dealer registration requirement for the first trade of an underlying security by a former employee, senior officer, director, or consultant where the party acquired the underlying security upon the exercise of a convertible security after ceasing to be an employee, senior officer, director, or consultant.

Questions

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The text of the Amendments follows.

AMENDMENTS TO
MULTILATERAL INSTRUMENT 45-105
TRADES TO EMPLOYEES, SENIOR OFFICERS, DIRECTORS, AND CONSULTANTS

1.1 Amendments to Part 2 of the Instrument – Part 2 of the Instrument is amended by

- (a) in subsection 2.2(1), deleting paragraph (b) and substituting the following

“(b) permitted assign of a person or company referred to in paragraph (a)”

and by deleting the words “a trustee, custodian, or administrator acting on behalf of an employee, senior officer, director, or consultant of the issuer or affiliated entity of the issuer” as they appear at the end of that subsection and substituting the following

“ a permitted assign of the employee, senior officer, director, or consultant.”

- (b) in subsection 2.4(1), adding immediately after the words “trade of a security that was acquired” the following

“on the secondary market in accordance with a plan or”

- (c) in section 2.4, deleting subsections (2) and (3) and substituting the following:

“(2) The dealer registration requirement does not apply to a trade by a trustee, custodian, or administrator acting on behalf of, or for the benefit of, employees, senior officers, directors, or consultants of the issuer or an affiliated entity of the issuer, in a security of the issuer’s own issue, to

- (a) an employee, senior officer, director, or consultant of the issuer or an affiliated entity of the issuer, or
- (b) a permitted assign of a person or company referred to in paragraph (a),

if the security was acquired from

- (c) an employee, senior officer, director, or consultant of the issuer or an affiliated entity of the issuer, or
- (d) the permitted assign of a person referred to in paragraph (c).

(3) The prospectus requirement does not apply to a distribution in the circumstances described in subsections (1) and (2).

(4) For the purposes of the exemptions referred to in subsection (1), (2) and (3), all references to employee, senior officer, director, or consultant include a former employee, senior officer, director, or consultant.”

1.2 Amendment to Part 3 of the Instrument – Part 3 of the Instrument is amended by, in section 3.2, adding the words

“under Part 2 or” immediately before the words “by a person or company described in subsection 2.1(1)”.

Effective Date

These Amendments will come into force on November 18, 2003.