



Document Type: Implementing Instrument – Emergency Rule

Document N° : 45-801

Subject: Resale of Securities

Amendments:

Published Date: September 29, 2004

Effective Date: September 29, 2004

The New Brunswick Securities Commission, being of the opinion that

- a) it is in the public interest to make the proposed rule without delay because there is an urgent need for the proposed rule, and
- b) without the proposed rule being made, there is a substantial risk of material harm to investors or to the integrity of the capital markets

resolves that Implementing Instrument 45-801 – *Resale of Securities* is adopted as an emergency rule.

DATED at Saint John, New Brunswick this 27th day of September, 2004.

Donne W. Smith
Chair

RULE 45-801

IMPLEMENTING MULTILATERAL INSTRUMENT 45-102, COMPANION POLICY 45-102CP, AND FORM 45-102F1

RESALE OF SECURITIES

Part 1 Definitions and Interpretation

1.1 Definitions and Interpretation

In this Rule,

“MI 45-102” means Multilateral Instrument 45-102, *Resale of Securities*
http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part4/rule_20040402_45-102-resale-sec.jsp that came into force March 30, 2004; (*MI 45-102*)

“private issuer” means a person that

(a) is not a reporting issuer or a mutual fund,

(b) is an issuer all of whose issued and outstanding shares

(i) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements among the issuer and the holders of its securities; and

(ii) are beneficially owned, directly or indirectly, by not more than 50 persons counting any two or more joint registered holders as one beneficial owner, exclusive of persons.

(A) that are employed by the issuer or an affiliated entity of the issuer, or

(B) that beneficially owned, directly or indirectly, shares of the issuer while employed by it or an affiliated entity of it and at all times since ceasing to be so employed have continued to beneficially own, directly or indirectly, at least one share of the issuer, and

(c) has not distributed any securities to the public. (*émetteur privé*)

PART 2 FIRST TRADE

2.1 Application

Except for sections 2.1 and 2.2, Multilateral Instrument 45-102 - *Resale of Securities*, as amended by this Instrument, applies to New Brunswick.

PART 3 Appendix A

PART 4 Appendix D

PART 5 Appendix E

PART 6 Appendix F

PART 7 Form 45-801F1

PART 8 Companion Policy 45-801CP

PART 9 Effective Date

9.1 This Instrument comes into effect on September 29, 2004.

PART 3

**APPENDIX A
TO**

**RULE 45-801 IMPLEMENTING MULTILATERAL INSTRUMENT 45-102, COMPANION
POLICY 45-102CP, AND FORM 45-102F1**

RESALE OF SECURITIES

CONTROL DISTRIBUTIONS

For the purposes of Appendix A, add the following to the list of securities legislation references to control distribution:

JURISDICTION

SECURITIES LEGISLATION REFERENCE

New Brunswick

Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the *Securities Act* (New Brunswick).

PART 4

**APPENDIX D
TO**

**RULE 45-801 IMPLEMENTING MULTILATERAL INSTRUMENT 45-102, COMPANION
POLICY 45-102CP, AND FORM 45-102F1**

RESALE OF SECURITIES

**RESTRICTED PERIOD TRADES
(Section 2.3)**

In New Brunswick, section 2.3 of Multilateral Instrument 45-102 – *Resale of Securities*, applies to the following subsections of Local Rule 45-501 - *Prospectus and Registration Exemptions*:

- Subsection 2.3(3) Accredited investor
- Subsection 2.5(2) Family, friends and business associates
- Subsection 2.6(2) Affiliates
- Subsection 2.7(2) Offering memorandum
- Subsection 2.8(2) Minimum amount investment
- Subsection 2.10(2) Asset acquisition
- Subsection 2.11(2) Mining claims and oil and gas rights
- Subsection 2.12(2) Securities for debt
- Subsection 2.17(2) Additional investment in investment funds
- Subsection 2.41(2) RRSP/RRIF (if the security acquired under section 2.4 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions in Local Rule 45-501 listed above, or
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of Multilateral Instrument 45-102 *Resale of Securities*)

- Subsection 2.43(3) Conversion, exchange, or exercise (if the security acquired under paragraph 2.43(1)(a) was acquired in accordance with the terms and conditions of a previously issued security under
(a) one of the exemptions in Local Rule 45-501 listed above, or
(b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of Multilateral Instrument, 45-102 *Resale of Securities*)
- Subsection 2.43(3) Conversion, exchange, or exercise (if the security acquired under paragraph 2.43(1)(b) was acquired under
(a) one of the exemptions in Local Rule 45-501 listed above, or
(b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of Multilateral Instrument 45-102 *Resale of Securities*)
- Subsection 5.2 TSX Venture exchange offering

PART 5

**APPENDIX E
TO**

**RULE 45-801 IMPLEMENTING MULTILATERAL INSTRUMENT 45-102, COMPANION
POLICY 45-102CP, AND FORM 45-102F1**

RESALE OF SECURITIES

**SEASONING PERIOD TRADES
(Section 2.4)**

In New Brunswick, section 2.4 of Multilateral Instrument 45-102 – *Resale of Securities*, applies to the following subsections of Local Rule 45-501 - *Prospectus and Registration Exemptions*:

- Subsection 2.1(2) Rights offering
- Subsection 2.2(3) Reinvestment Plan
- Subsection 2.4(2) Private issuer
- Subsection 2.9(2) Business combination and reorganization
- Subsection 2.14(2) Take-over bid and issuer bid
- Subsection 2.16(3) Investment fund reinvestment
- Subsection 2.18(2) Private investment fund
- Subsection 2.19(2) Private investment fund - loan and trust pools
- Subsection 2.22(4) Employees, executive officers, directors and consultants
- Subsection 2.25(3) Trades among current or former employees, executive officers directors or consultants of non-reporting issuers
- Subsection 2.26(4) Permitted transferees
- Subsection 2.29(3) Incorporation or organization
- Subsection 2.30(2) Isolated trade by an issuer
- Subsection 2.31(3) Dividends

Subsection 2.41(2) RRSP/RRIF (if the security acquired under section 2.41 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
(a) one of the exemptions in Local Rule 45-501 listed above, or
(b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of Multilateral Instrument 45-102 *Resale of Securities*.)

Subsection 2.43(3) Conversion, exchange or exercise (if the security acquired under paragraph 2.43(1)(a) was acquired in accordance with the terms and conditions of a previously issued security under
(a) one of the exemptions in Local Rule 45-501 listed above, or
(b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of Multilateral Instrument 45-102 *Resale of Securities*)

PART 6

**APPENDIX F
TO**

**RULE 45-801 IMPLEMENTING MULTILATERAL INSTRUMENT 45-102, COMPANION
POLICY 45-102CP AND FORM 45-102F1**

RESALE OF SECURITIES

**TRADES BY UNDERWRITERS
(Section 2.13)**

In New Brunswick, section 2.13, Trades by Underwriters, of Multilateral Instrument 45-102 – *Resale of Securities*, applies to the following subsections of Local Rule 45-501 - *Prospectus and Registration Exemptions*:

Subsection 2.33(2) Underwriter

Subsection 2.43(3) Conversion, exchange, or exercise, (if the original security was acquired under a reorganization pursuant to section 2.09 of Local Rule 45-501 – *Prospectus and Registration Exemptions*.).

PART 7

FORM 45-102F1

**Notice of Intention to Distribute Securities under Section 2.8 of
MI 45-102 *Resale of Securities***

For purposes of Form 45-102F1, New Brunswick is added to the list of securities regulatory authorities.

New Brunswick Securities Commission

133 Prince William Street, Suite 606

Saint John, NB

E2L-2B5

Attention: Director, Corporate Finance

Telephone (506)-658-3060 or (866)- 933-2222 (in NB only)

Fax: (506)-658-3059

PART 8

COMPANION POLICY 45-102 CP TO MULTILATERAL INSTRUMENT 45-102

RESALE OF SECURITIES

8.1 Application

In subsection (2) of section 1.1 Application, delete "New Brunswick".

8.2 Application

In section 1.1, Application, add the following:

(3) Except for sections 2.1 and 2.2, Multilateral Instrument 45-102 – *Resale of Securities*, as amended by this Instrument, applies to New Brunswick.

8.3 Open System Jurisdictions

In section 1.4, delete "New Brunswick".