

**ALBERTA SECURITIES COMMISSION
BLANKET ORDER 45-506**

**Order under subsection 144(2)
and section 213 of the *Securities Act* (Alberta)**

**Trades and Distributions to Employees, Senior
Officers, Directors and Consultants**

Background

The *Securities Act* (Alberta) currently contains registration and prospectus exemptions for employees under subsections 86(1)(u) and 131(1)(o). These exemptions allow issuers to issue securities to employees whose participation in the trade is voluntary. The policy rationale for these exemptions recognizes that employee ownership aligns the interests of employees with those of the issuer and public shareholders of the issuer, and enables the issuer to attract, retain and motivate loyal employees. Numerous applications for discretionary exemptions have shown that the current legislation does not deal adequately with current commercial practices. Many issuers now use consultants to perform roles analogous to those of employees. The current legislation defines affiliates narrowly, does not adequately address the roles of senior officers, directors, and investor relations persons, and does not recognize the widespread use of holding entities, RRSPs, or RRIFs by employees and others. The Commission considers it appropriate to address such matters in this Blanket Order.

Definitions and Interpretation

1.1 In this Blanket Order:

“Act” means the *Securities Act* (Alberta) R.S.A. 2000;

“affiliated entity” means, in relation to an issuer, a person or company that controls or is controlled by the issuer or that is controlled by the same person or company that controls the issuer;

“consultant” means, in relation to an issuer, a person or company, other than an employee, senior officer or director of the issuer, that

- (a) is engaged to provide services to the issuer or an affiliated entity of the issuer, other than services provided in relation to a distribution,
- (b) provides the services under a written contract, and
- (c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or an affiliated entity of the issuer;

“holding entity” means a person or company that is controlled by an individual;

“investor relations activities” means any activities or communications, by or on behalf of the issuer or a security holder of the issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
 - (i) to promote the sale of products or services of the issuer, or
 - (ii) to raise public awareness of the issuer
 that cannot reasonably be considered to promote the purchase or sale of securities of the issuer

or

- (b) activities or communications necessary to comply with the requirements of
 - (i) securities legislation or securities directions, or
 - (ii) any exchange or market on which the issuer’s securities trade;

“investor relations person” means a person or company that is a registrant or provides services that include investor relations activities;

“listed issuer” means an issuer, any of the securities of which

- (a) trade on or are listed and not suspended from trading on
 - (i) The Toronto Stock Exchange Inc.,
 - (ii) the Canadian Venture Exchange Inc.,
 - (iii) the American Stock Exchange,
 - (iv) the New York Stock Exchange,
 - (v) the London Stock Exchange Limited, or
 - (vi) any successor to any of the entities listed in paragraphs (i) to (v),

or

- (b) are quoted on the Nasdaq National Market or the Nasdaq Small Cap Market or any successor to either of those entities;

“MI 45-102” means Multilateral Instrument 45-102 *Resale of Securities*;

“RRSP” means a registered retirement savings plan as defined in the *Income Tax Act* (Canada);

“RRIF” means a registered retirement income fund as defined in the *Income Tax Act* (Canada);

“Rules” mean the Alberta Securities Commission Rules.

Interpretation

- 1.2 (1) Unless otherwise defined in this Blanket Order, terms used in this Blanket Order that are defined or interpreted in the Act or in National Instrument 14-101 *Definitions* have that meaning or interpretation in this Blanket Order.

- (2) In this Blanket Order, a person or company is considered to control another person or company if the first person or company provides, directly or indirectly, the principal direction or influence over the business and affairs of the second person or company by virtue of
- (a) ownership or direction of voting securities in the first person or company,
 - (b) a written agreement or indenture,
 - (c) being or controlling the general partner of a limited partnership, or
 - (d) being a trustee of a trust.
- (3) In this Blanket Order, participation in a trade is considered voluntary if
- (a) in the case of an employee, the employee is not induced to participate in the trade by expectation of employment or continued employment with the issuer or an affiliated entity of the issuer,
 - (b) in the case of a senior officer, the senior officer is not induced to participate in the trade by expectation of appointment, employment, continued appointment or continued employment with the issuer or an affiliated entity of the issuer, and
 - (c) in the case of a consultant, the consultant is not induced to participate in the trade by expectation of engagement to provide services or continued engagement to provide services to the issuer or an affiliated entity of the issuer.

Trades and Distributions to Employees, Senior Officers, Directors, Consultants and Related Persons and Entities

- 2.1 (1) Subject to subsection (2), the dealer registration requirement and the prospectus requirement do not apply to a trade by an issuer in a security of its own issue with
- (a) an employee, senior officer, director, or consultant of the issuer or of an affiliated entity of the issuer,
 - (b) a trustee, custodian, or administrator acting on behalf of a person or company referred to in paragraph (a),
 - (c) a holding entity of an individual referred to in paragraph (a),
 - (d) an RRSP or RRIF of an individual referred to in paragraph (a),
 - (e) the spouse of an individual referred to in paragraph (a), or
 - (f) an RRSP or RRIF of the spouse of an individual referred to in paragraph (a)
- if participation in the trade by the employee, senior officer, or consultant referred to in paragraph (a) is voluntary.
- (2) The exemptions in subsection (1) are not available for a trade to an investor relations person if the number of securities issued or the amount of other compensation paid or payable directly or indirectly by the issuer, an affiliated entity of the issuer, or a security holder of the issuer to the investor relations person is dependent in whole or in part on the trading price of the issuer's securities or the volume of the issuer's securities that are traded.

Permitted Transfers

- 2.2 (1) A subsequent trade of a security previously acquired by a person or company under section 2.1 or 2.3 is a distribution unless the trade is under section 2.4 or 2.5 or
- (a) between any of: an employee; trustee, custodian, or administrator acting on behalf of the employee; holding entity of the employee; RRSP of the employee; RRIF of the employee; spouse of the employee; RRSP of the spouse of the employee; or RRIF of the spouse of the employee;
 - (b) between any of: a senior officer; trustee, custodian, or administrator acting on behalf of the senior officer; holding entity of the senior officer; RRSP of the senior officer; RRIF of the senior officer; spouse of the senior officer; RRSP of the spouse of the senior officer; or RRIF of the spouse of the senior officer;
 - (c) between any of: a director; trustee, custodian, or administrator acting on behalf of the director; holding entity of the director; RRSP of the director; RRIF of the director; spouse of the director; RRSP of the spouse of the director; or RRIF of the spouse of the director; or
 - (d) between any of: a consultant; trustee, custodian, or administrator acting on behalf of the consultant; holding entity of the consultant; RRSP of the consultant; RRIF of the consultant; spouse of the consultant; RRSP of the spouse of the consultant; or RRIF of the spouse of the consultant.
- (2) The dealer registration requirement does not apply to a trade under subsection (1).

Exercise of Right to Convert or Exchange

- 2.3 The dealer registration requirement and the prospectus requirement do not apply to a trade by an issuer in a security of its own issue with any person or company who previously acquired a security under section 2.1 or 2.2 if the person or company acquires the new security in accordance with the terms and conditions of the previously-issued security
- (a) through the exercise of a right
 - (i) of the holder to purchase, convert, or exchange, or otherwise acquire, or
 - (ii) of the issuer to require the holder to purchase, convert or exchange,
- or
- (b) by way of an automatic conversion or exchange.

First Trades by Employees, Consultants and Related Persons and Entities

- 2.4 Subject to section 2.5, the first trade, other than a trade under section 2.2, of a security previously acquired under section 2.1, 2.2, or 2.3 by
- (a) an employee or consultant,
 - (b) a trustee, custodian, or administrator acting on behalf of an employee or consultant,

- (c) the holding entity of an employee or of a consultant,
 - (d) an RRSP or RRIF of an employee or of a consultant,
 - (e) the spouse of an employee or of a consultant, or
 - (f) an RRSP or RRIF of the spouse of an employee or of a consultant
- is subject to section 2.6 of MI 45-102.

First Trades by Investor Relations Persons, Senior Officers and Directors

- 2.5 (1) This section applies to first trades, other than trades under section 2.2, of a security previously acquired under section 2.1, 2.2, or 2.3 by
- (a) an employee or consultant that is an investor relations person,
 - (b) a senior officer or director,
 - (c) a trustee, custodian, or administrator acting on behalf of a person or company referred to in paragraph (a) or (b),
 - (d) the holding entity of an individual referred to in paragraph (a) or (b),
 - (e) an RRSP or RRIF of an individual referred to in paragraph (a) or (b),
 - (f) the spouse of an individual referred to in paragraph (a) or (b), or
 - (g) an RRSP or RRIF of the spouse of an individual referred to in paragraph (a) or (b).
- (2) The first trade is subject to section 2.6 of MI 45-102, if
- (a) the issuer of the securities is a listed issuer, or
 - (b) if the security was issued or granted as compensation or as an incentive, and
 - (i) not more than 10% of the securities of the same class outstanding at the date of the issuance or grant have been, in the 12 months preceding the issuance or grant, issued to, or reserved for issuance under options granted to, directors, senior officers, or investor relations persons of the issuer or of an affiliated entity of the issuer as compensation or as an incentive,
 - (ii) the issuance or grant of the security was approved by a majority of the issuer's disinterested shareholders, or
 - (iii) the issuance or grant of the security was made under a plan or program that was approved by a majority of the issuer's disinterested shareholders.
- (3) The first trade, other than a trade referred to in subsection (2), is subject to section 2.5 of MI 45-102.

Exemption from Registration for First Trades in Securities of Non-Reporting Issuer

- 2.6 The dealer registration requirement does not apply to the first trade of a security acquired under section 2.1, 2.2, or 2.3 if the conditions set out in section 2.14 of MI 45-102 are satisfied.

Reporting Exempt Trades

- 3.1 (1) Subject to subsection (2), if a security is distributed under section 2.1, the issuer must file a report of the trade in the form required under section 129 of the Rules on or before the 10th day after each distribution.
- (2) An issuer that distributes a security under section 2.1 through a plan or program established for the benefit of employees, senior officers, directors, or consultants, or any combination of them, must
 - (a) file the report as required under subsection (1), or
 - (b) file
 - (i) a letter giving notice of the existence of the plan or program and the class and maximum number of securities issuable under the plan or program on or before the 10th day after the first distribution under the plan or program,
 - (ii) the report required under subsection (1) on or before the 10th day after the end of the month, in respect of the securities distributed in that month, if the number of securities distributed in that month exceeds 1% of the securities of the same class outstanding at the beginning of the month, and
 - (iii) the report required under subsection (1) on or before the 10th day after the anniversary of the first distribution of securities under the plan or program, and each year after that, in respect of securities distributed during the year and not reported under paragraph (ii).

Dated at the City of Calgary)	
)	
In the Province of Alberta)	<u>“original signed by”</u>
)	Glenda A. Campbell, Q.C., Vice-Chair
this 30th day of April, 2002)	
)	<u>“original signed by”</u>
)	Eric T. Spink, Vice-Chair