

CANADIAN SECURITIES ADMINISTRATORS PROPOSE NEW PROSPECTUS EXEMPTION FOR RESALE OF SECURITIES OF A FOREIGN ISSUER

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The Canadian Securities Administrators (the “**CSA**”) proposed amendments to National Instrument 45-102 *Resale of Securities* (“**NI 45-102**”) that create a new prospectus exemption for the resale of a foreign issuer’s securities. These proposed amendments are open for comment until September 27, 2017.

Currently, to be considered a foreign issuer, an entity would need to satisfy, among other requirements, two shareholder ownership tests outlined in section 2.14 of NI 45-102. These tests require that, at the distribution date, residents of Canada did not own 10% of the outstanding securities of the class or series of the distribution, and further did not represent more than 10% of the total number of owners of securities of that class or series.

The proposed amendments include a change to the definition of foreign issuer and a repeal of the dual 10% tests. To be considered a foreign issuer, the new requirement would be that the issuer is not incorporated or organized under the laws of Canada or any jurisdiction therein, the issuer cannot have its head office in Canada, the majority of executive officers or directors cannot ordinarily reside in Canada, and the majority of consolidated assets of the issuer cannot be located in Canada. The proposed exemption further attempts to reduce the links that the issuer has in Canada in order to qualify as a reporting issuer in several other ways. The exemption does not apply in cases where the issuer is a reporting issuer in any Canadian jurisdiction on the date of the distribution or on the date of the trade. The trade to be effected must also be on an exchange or market outside of Canada to a person who is also outside of Canada.

While it is uncertain whether these proposed amendments will ultimately be accepted, in part or in full, the changes to NI 45-102 could prove to be significant for persons engaging in the reselling of a foreign issuer’s securities.

by Sasa Pudar

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against



making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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