

Citation: NI 45-106 Discretionary Relief, 2005 ABASC 914

Date: 20051118

ALBERTA SECURITIES COMMISSION

ORDER

Section 144(1) of the *Securities Act, R.S.A. 2000, c. S-4 (the Act)*

Background

- (a) The Commission and other members of the Canadian Securities Administrators (CSA) have implemented National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) effective September 14, 2005.
- (b) NI 45-106 consolidates, harmonizes, modernizes and replaces certain exemptions, previously set out in a variety of statutes and instruments, from the registration requirement and the prospectus requirement (together, the registration and prospectus requirements).
- (c) Section 2.2 of NI 45-106 provides an exemption from registration and prospectus requirements for trades by an issuer of securities of its own issue pursuant to a plan to security holders who apply cash dividends or distributions to the purchase of those securities.
- (d) Section 2.2 of NI 45-106 limits the security issued to a security holder to a “security of the same class or series as the securities to which the dividends or distributions out of earnings, surplus, capital or other sources is attributable”.
- (e) The exemption in section 2.2 of NI 45-106 has proved problematic for distribution reinvestment plans that issue securities of a different class or series from the class or series of securities to which the distribution is attributable.

Order

It is ordered under section 144(1) of the Act that :

1. Subject to paragraphs 3 and 5, the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:
 - 1.1. a trade in a security of the issuer’s own issue if dividends or distributions out of earnings, surplus, capital or other sources payable in respect of the issuer’s securities are applied to the purchase of the security, and

- 1.2 subject to paragraph 2, a trade in a security of the issuer's own issue if the security holder makes optional cash payments to purchase the security of the issuer that trades on a marketplace.
2. The aggregate number of securities issued under the optional cash payment referred to in subparagraph 1.2 must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.
3. A plan that permits the trades described in paragraph 1 must be available to every security holder in Canada to which the dividend or distribution is available.
4. Subject to paragraphs 3 and 5, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in paragraph 1 provided that the first trade of a security acquired under this exemption is subject to section 2.6 of National Instrument 45-102 *Resale of Securities*.
5. This exemption does not apply to a trade in a security of an investment fund.

“original signed by”

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

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Stephen R. Murison, Vice-Chair
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