

Multilateral Instrument 51-105
Issuers Quoted in the U.S. Over-the-Counter Markets

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PART 1 DEFINITIONS AND REPORTING ISSUER DESIGNATION AND DETERMINATION

1. Definitions

In this Instrument

“designated exchange” means any of NASDAQ OMX; Borsa Italiana, MTA Tier; London Stock Exchange, except AIM; Hong Kong Stock Exchange; Deutsche Börse, except the First Quotation Board and the Entry Standard tier; Xetra, Prime Standard and General Standard tiers; SIX Swiss Exchange; Bourse de Luxembourg, except Euro MTF; Tokyo Stock Exchange, 1st Section and 2nd Section; Shanghai Stock Exchange; The Stock Exchange of Thailand, except The Market for Alternative Investment (mai); National Stock Exchange of India; Bombay Stock Exchange; Osaka Stock Exchange; Korea Exchange; and Singapore Exchange;

“OTC issuer” means an issuer

- (a) that has issued a class of securities that are OTC-quoted securities, and
- (b) that has not issued any class of securities that are listed or quoted on one or more of the following:
 - (i) TSX Venture Exchange Inc.;
 - (ii) TSX Inc.;
 - (iii) Canadian National Stock Exchange;
 - (iv) Alpha Exchange Inc.;
 - (v) The New York Stock Exchange LLC;
 - (vi) NYSE Amex LLC;
 - (vii) The NASDAQ Stock Market LLC;

“OTC-quoted securities” means a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over-the-counter markets in the United States of America and includes a class of securities whose trades have been reported in the grey market;

“OTC reporting issuer” means an OTC issuer that is a reporting issuer;

“permitted client” means a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“promotional activities” means activities or communications, by or on behalf of an issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include any of the following

- (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;
 - (ii) to raise public awareness of the issuer;
- (b) activities or communications necessary to comply with the requirements of
 - (i) the securities legislation of any jurisdiction of Canada;
 - (ii) the securities laws of any foreign jurisdiction governing the issuer;
 - (iii) any exchange or market on which the issuer’s securities trade;

“ticker-symbol date” means the date that an OTC issuer is first assigned a ticker symbol for any class of its securities;

“trade”, in Québec, for the purpose of this Instrument, refers to any of the following activities

- (a) the activities described in the definition of “dealer” in section 5 of the *Securities Act* (R.S.Q., c. V-1.1), including the following activities:
 - (i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, instalment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);
 - (ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
 - (iii) the receipt by a registrant of an order to buy or sell a security;
- (b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

2. National Instrument definitions apply

Terms used in this Instrument that are defined or interpreted in National Instrument 51-102 *Continuous Disclosure Obligations* have the same meaning in this Instrument.

3. Reporting issuer designation and determination

(1) An OTC issuer is a reporting issuer under securities legislation if one or more of the following apply

- (a) on or after July 31, 2012, its business has been directed or administered in or from the local jurisdiction;
- (b) on or after July 31, 2012, promotional activities have been carried on in or from the local jurisdiction;
- (c) the ticker-symbol date is on or after July 31, 2012, and, on or before the ticker-symbol date, the issuer distributed a security to a person resident in the local jurisdiction and that security is of the class of securities that became the issuer's OTC-quoted securities.

(2) In subsection (1), in a CMR Jurisdiction, on or after July 31, 2012, must be read as on or after the CMR launch date.

4. Ceasing to be an OTC reporting issuer

(1) Except in Québec, an OTC issuer ceases to be a reporting issuer under section 3 if all of the following conditions are met

- (a) its business is not directed or administered, and has not been directed or administered for at least one year, in or from the local jurisdiction;
- (b) promotional activities are not carried on, and have not been carried on for at least one year, in or from the local jurisdiction;
- (c) more than one year has passed since the ticker-symbol date;
- (d) it has filed Form 51-105F1 *Notice – OTC Issuer Ceases to be an OTC Reporting Issuer*.

(2) Except in Québec, if an OTC reporting issuer ceases to be an OTC issuer as a result of its securities being listed or quoted on an exchange or a quotation and trade reporting system specified in the definition of "OTC issuer" in section 1, the OTC reporting issuer must file Form 51-105F4 *Notice – Issuer Ceases to be an OTC Reporting Issuer* at least 10 days before its next required filing under securities legislation in the local jurisdiction.

(3) In Québec, an OTC reporting issuer must apply to the securities regulatory authority to have its status as an OTC reporting issuer revoked in order to cease to be a reporting issuer under section 3.

PART 2 DISCLOSURE

5. Additional disclosure requirements

In addition to all other provisions of securities legislation that apply to a reporting issuer and its insiders, an OTC reporting issuer must comply with the provisions of the following National Instruments

- (a) National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* that apply to an electronic filer, despite section 2.1 of that instrument;
- (b) National Instrument 51-102 *Continuous Disclosure Obligations* that apply to a reporting issuer that is a venture issuer;
- (c) Part 6 of National Instrument 51-102 *Continuous Disclosure Obligations* despite section 6.1 of that instrument;
- (d) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* that apply to a reporting issuer that is a venture issuer;
- (e) National Instrument 52-110 *Audit Committees* that apply to a reporting issuer that is a venture issuer;
- (f) National Instrument 58-101 *Disclosure of Corporate Governance Practices* that apply to a reporting issuer that is a venture issuer.

6. Timely disclosure obligations

- (1) Section 14.2 of National Instrument 71-101 *The Multijurisdictional Disclosure System* and section 4.2 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* do not apply to an OTC reporting issuer.
- (2) An OTC reporting issuer may file a copy of the Form 8-K *Current Report* that it files with the SEC to comply with its obligation in paragraph 7.1(1)(b) of National Instrument 51-102 *Continuous Disclosure Obligations* to file Form 51-102F3 *Material Change Report*.

7. Registration statement

- (1) If an OTC issuer becomes a reporting issuer on the ticker-symbol date, the OTC reporting issuer must file, within 5 days of the date it became a reporting issuer, a copy of the most recent registration statement it filed with the SEC.
- (2) The OTC reporting issuer must file the registration statement in electronic format under section 2.2 of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

8. Promotional activities

- (1) If a person will carry on promotional activities under an agreement, arrangement, commitment or understanding with an OTC reporting issuer, the OTC reporting issuer must file a notice in the form of Form 51-105F2 *Notice of Promotional Activities* naming the person and describing the activities and the relationship of the OTC reporting issuer with the person, and the particulars of their agreement, arrangement, commitment or understanding with the OTC reporting issuer.
- (2) The OTC reporting issuer must file the notice under subsection (1) within one of the following dates
 - (a) at least one day before the promotional activities commence;
 - (b) if on the date the OTC issuer became an OTC reporting issuer promotional activities are being carried on, within 5 days of that date.
- (3) The OTC reporting issuer must file the notice in electronic format in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

9. Technical reports – Mineral properties

Section 4.1 of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* does not apply to an OTC reporting issuer.

10. Personal information form and authorization

- (1) Each director, officer, promoter and control person of an OTC reporting issuer must deliver to the securities regulatory authorities Form 51-105F3A *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* or Form 51-105F3B *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* within 10 days of the issuer becoming an OTC reporting issuer, except for a promoter of an OTC issuer that becomes an OTC reporting issuer more than 2 years after the ticker-symbol date.
- (2) Each person that becomes a director, officer, promoter or control person of an OTC reporting issuer must deliver to the securities regulatory authorities a personal information form referred to in subsection (1) within 10 days of becoming a director, officer, promoter or control person of an OTC reporting issuer.
- (3) If a promoter or control person is not an individual, then each of its directors, officers and control persons must deliver a personal information form referred to in subsection (1) to the securities regulatory authorities within 10 days of the promoter or control person becoming a promoter or control person of an OTC reporting issuer.

PART 3 RESALE OF PRIVATE PLACEMENT SECURITIES

11. Resale of seed stock

After the ticker-symbol date, a person must not trade a security of an OTC reporting issuer that the person acquired on or after July 31, 2012 and before the ticker-symbol date unless either of the following occurs

- (a) the trade is in connection with one or more of the following
 - (i) a take-over bid or an issuer bid in a jurisdiction of Canada;
 - (ii) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure or court order;
 - (iii) a dissolution or winding-up of the issuer that is under a statutory procedure or court order;

- (b) all of the following conditions are met
 - (i) the certificate representing the security carries the legend, or the ownership statement issued under a direct registration system or other electronic book entry system relating to the security bears the legend restriction notation, set out in subsection 12(2);
 - (ii) the person trades the security through an investment dealer registered in a jurisdiction of Canada from an account at that investment dealer in the name of that person;
 - (iii) the investment dealer executes the trade through any of the over-the-counter markets in the United States of America.

12. Legends on seed stock

- (1) As soon as practicable after the ticker-symbol date, an OTC reporting issuer must place
 - (a) a legend on each certificate representing a security issued before the ticker-symbol date; and
 - (b) a legend restriction notation on each ownership statement issued under a direct registration system or other electronic book entry system relating to a security issued before the ticker-symbol date.

- (2) The legend and legend restriction notation must state the following

Unless permitted under section 11 of Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets, the holder of this security must not trade the security in or from a jurisdiction of Canada unless

- (a) *the security holder trades the security through an investment dealer registered in a jurisdiction of Canada from an account at that dealer in the name of that security holder, and*
- (b) *the dealer executes the trade through any of the over-the-counter markets in the United States of America.*

13. Resale of private placement securities acquired after ticker-symbol date

- (1) A person must not trade a security of an OTC reporting issuer that the person acquired under an exemption from the prospectus requirement after the ticker-symbol date unless the following conditions are satisfied
 - (a) unless the security was acquired under a director or employee stock option, a 4-month period has passed from one of the following
 - (i) the date the OTC reporting issuer distributed the security;
 - (ii) the date a control person distributed the security;
 - (b) if the person trading the security is a control person of the OTC reporting issuer, the person has held the security for at least 6 months;
 - (c) the number of securities the person proposes to trade, plus the number of securities of the OTC reporting issuer of the same class that the person has traded in the preceding 12-month period, does not exceed 5% of the OTC reporting issuer's outstanding securities of the same class;
 - (d) the person trades the security through an investment dealer registered in a jurisdiction of Canada;
 - (e) the investment dealer executes the trade through any of the over-the-counter markets in the United States of America;
 - (f) there has been no unusual effort made to prepare the market or create a demand for the security;
 - (g) no extraordinary commission or other consideration is paid to a person for the trade;
 - (h) if the person trading the security is an insider of the OTC reporting issuer, the person reasonably believes that the OTC reporting issuer is not in default of securities legislation; and
 - (i) the certificate representing the security bears a legend, or the ownership statement issued under a direct registration system or other electronic book entry system relating to the security bears a legend restriction notation, stating the following:

The holder of this security must not trade the security in or from a jurisdiction of Canada unless the conditions in section 13 of Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets are met.

- (2) Despite subsection (1), a person may trade a security of an OTC reporting issuer that the person acquired under an exemption from the prospectus requirement if the trade is in connection with one or more of the following
- (a) a take-over bid or an issuer bid in a jurisdiction of Canada;
 - (b) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure or court order;
 - (c) a dissolution or winding-up of the issuer that is under a statutory procedure or court order.

14. No other hold periods

Sections 2.3, 2.4, 2.5 and 2.6 of National Instrument 45-102 *Resale of Securities* do not apply to the first trade of a security of an OTC reporting issuer distributed under an exemption from the prospectus requirement.

PART 4 OTHER RESTRICTIONS

15. Securities for services

An OTC reporting issuer must not distribute a security to a director, officer, or consultant of the issuer for the provision of a service unless

- (a) the consideration for the service is commercially reasonable;
- (b) in the case of a debt, the debt is a bona fide debt; and
- (c) the security is distributed for a price that is at least at its current market value.

16. Take-over bid

Section 4.2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* does not apply to a take-over bid for an OTC reporting issuer for 2 years after the ticker-symbol date.

17. Insider reports

A person that is exempt or otherwise not required to file an insider report under U.S. federal securities law relating to insider reporting may not rely on the exemption from insider reporting under section 17.1 of National Instrument 71-101 *The Multijurisdictional Disclosure System* or

section 4.12 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

PART 5 EXEMPTION

18. Exemption

- (1) The regulator, except in Québec, or securities regulatory authority may, under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction, grant an exemption from this Instrument.
- (2) In a CMR Jurisdiction, an OTC issuer is exempt from section 3 if it would otherwise apply only by reason of the OTC issuer carrying on promotional activities in or from a CMR Jurisdiction or distributing a security to a person in a CMR Jurisdiction (or both), provided that:
- (a) the OTC issuer has securities listed on a designated exchange; or
 - (b) the OTC issuer does not have any class of securities listed on an exchange or quoted on a quotation and trade reporting system other than non-convertible debt securities; or
 - (c) all of the following apply:
 - (i) the distribution is exempt from the prospectus requirement;
 - (ii) the promotional activities in or from a CMR Jurisdiction are directed only at permitted clients; and
 - (iii) each person in a CMR Jurisdiction to which the OTC issuer distributes a security is a permitted client.

PART 6 TRANSITION AND COMING INTO FORCE

19. Transition – Financial disclosure for non-SEC filers

~~Except in British Columbia, for an OTC reporting issuer that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under paragraph 15 (d) of the 1934 Act, the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* and National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* concerning the filing of~~

- ~~(a) annual financial statements, related MD&A and annual certificates apply only to financial years beginning on or after January 1, 2012;~~
- ~~(b) interim financial reports, related MD&A and interim certificates apply only to interim periods that~~

- (i) ~~begin on or after January 1, 2012; and~~
- (ii) ~~end after July 31, 2012;~~
- (c) ~~AIFs apply only to financial years beginning on or after January 1, 2012.~~[Intentionally Blank]

20. Transition – Oil and gas disclosure

~~Except in British Columbia, for an OTC reporting issuer, the requirement of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* concerning the filing of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information* applies only to financial years beginning on or after January 1, 2012.~~[Intentionally Blank]

21. Coming into force

- (1) ~~This Instrument comes into force on July 31, 2012.~~[Intentionally Blank]
- (2) ~~Despite subsection (1), except in British Columbia, sections 5, 6, 7, and 8 come into force on September 30, 2012.~~[Intentionally Blank]