

National and Ontario Prospectus and Registration Exemptions

National and Ontario Prospectus and Registration Exemptions

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National and Ontario Prospectus and Registration Exemptions

NOTICE OF INSTRUMENT

National Instrument 45-106,
Form 45-106F1, Form 45-106F2, Form 45-106F3, Form 45-106F4, Form 45-106F5
and Companion Policy 45-106CP
Prospectus and Registration Exemptions

and

REVOCAION AND REPLACEMENT OF

Ontario Securities Commission Rule 45-501,
Form 45-501F1
and Companion Policy 45-501CP
Exempt Distributions

and

REVOCAION OF

National Instrument 32-101
Small Securityholder Selling and Purchase Arrangements

Ontario Securities Commission Rule 32-502
Registration Exemption for Certain Trades by Financial Intermediaries

Ontario Securities Commission Rule 32-503
Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate
Sponsored Plans

Multilateral Instrument 45-105
Trades to Employees, Senior Officers, Directors and Consultants

Ontario Securities Commission Rule 45-502
Dividend or Interest Reinvestment and Stock Dividend Plans

Ontario Securities Commission Rule 46-501
Self-Directed Registered Education Savings Plans

National Instrument 62-101
Control Block Distribution Issues

Ontario Securities Commission Rule 81-501
Mutual Fund Reinvestment Plans

and

AMENDMENTS TO

Ontario Securities Commission Rule 13-502
Fees

Ontario Securities Commission Rule 31-503
Limited Market Dealers

**National Instrument 33-105
Underwriting Conflicts**

**National Instrument 45-101
Rights Offerings**

**Multilateral Instrument 45-102
Resale of Securities**

**National Instrument 62-103
The Early Warning System and Related Take-over Bid and Insider Reporting Issues**

**Ontario Securities Commission Rule 91-501
Strip Bonds**

**Ontario Securities Commission Rule 91-502
Trades in Recognized Options**

and

NEW RULES

**Ontario Securities Commission Rule 45-802
Implementing National Instrument 45-106 Prospectus and Registration Exemptions
and Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions**

**Ontario Securities Commission Rule 32-504
(under the Commodity Futures Act)
Adviser Registration Exemption**

1. CHANGES TO PROSPECTUS AND REGISTRATION EXEMPTIONS REGIME

The current exemptions regime in Ontario is changing in two primary ways:

- (i) We, alongside the Canadian Securities Administrators (the CSA), have developed National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106). NI 45-106 consolidates the various exemptions from the prospectus and registration requirements contained in provincial statutes, and national, multilateral and local instruments.
- (ii) We have consolidated many of our local exemptions that have not been included in NI 45-106 in amended and restated Ontario Securities Commission Rule *Ontario Prospectus and Registration Exemptions* (the Revised 45-501). The Revised 45-501 Materials (as defined below) replace the current Ontario Securities Commission Rule 45-501 *Exempt Distributions* (the Existing 45-501), Form 45-501F1 and the Companion Policy to the Existing 45-501.

This Notice is being published concurrently with the following two notices:

- (i) the CSA Notice regarding NI 45-106 (attached as Attachment A to this Notice (the CSA 45-106 Notice)); and
- (ii) the CSA Notice regarding consequential amendments arising from NI 45-106 (attached as Attachment B to this Notice (the CSA Consequential Amendment Notice)).

2. OUTLINE OF NOTICE

1. Changes to prospectus and registration exemptions regime
2. Outline of notice
3. Purpose
4. Background
5. Summary of Comments and Changes to the December 2004 Materials

- (a) NI 45-106 Materials
 - (b) The Revised 45-501 Materials
 - (c) Consequential amendments arising from NI 45-106
 - (d) Ontario specific consequential amendments arising from NI 45-106 and the Revised 45-501
6. Consequential amendments
 - (a) Revocation of instruments and rules incorporated into NI 45-106
 - (b) Revocation of regulations incorporated into NI 45-106
 - (c) Revocation of rules incorporated into the Revised 45-501
 - (d) Revocation of regulations incorporated into the Revised 45-501
 - (e) Other Amendments
 7. Provisions not being carried forward upon the coming into force of NI 45-106 and the Revised 45-501
 8. Notices to be withdrawn
 9. Authority – Ontario
 10. Effective Date
 11. Questions

Appendices

- | | |
|--------------|--|
| Attachment A | CSA 45-106 Notice (to which the List of Commenters, the Summary of Comments and CSA Responses, the Summary of Changes to the Instrument and Policy, and the CSA Table of Concordance are attached) |
| Attachment B | CSA Consequential Amendment Notice (to which the List of Commenters, the Summary of Comments Received and Responses, the National Revocations, the NI 33-105 Amendments, the NI 45-101 Amendments, the NI 62-102 Amendments and the MI 45-102 Amendments are attached) |
| Attachment C | NI 45-106 Materials |
| Attachment D | Revised 45-501 Materials (to which the List of Commenters and the Summary of Comments Received and Responses are attached) |
| Attachment E | OSC Implementing Rule |
| Attachment F | Rule 13-502 Amendments |
| Attachment G | Rule 31-503 Amendments |
| Attachment H | Rule 91-501 Amendments |
| Attachment I | Rule 91-502 Amendments |
| Attachment J | CFA Rule |

3. PURPOSE

At present, most jurisdictions have a similar but not identical set of exemptions. Market participants that wish to effect a multi-jurisdictional exempt distribution must familiarize themselves with the various exempt distribution regimes of the relevant jurisdictions. This typically necessitates culling through the various acts, regulations and rules of the different jurisdictions. The purpose of this initiative is (i) to develop a national harmonized prospectus and registration exemptions instrument which will contain the vast majority of the exemptions from the prospectus and registration requirements; and (ii) update our exemptions

regime by adopting new exemptions, broadening existing exemptions and removing or revoking certain of our local exemptions that we consider inappropriate or no longer relevant. On implementation of NI 45-106, market participants attempting to effect a multi-jurisdictional exempt distribution will generally have to look no further than NI 45-106 to view the landscape of available exemptions (see the Table of Concordance attached as Appendix D to the CSA 45-106 Notice).

4. BACKGROUND

On December 17, 2004, the following materials were published for a 90-day comment period (collectively, the December 2004 Materials):

(a) NI 45-106

- NI 45-106;
- Forms 45-106F1 *Report of Exempt Distribution*, 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, 45-106F3 *Offering Memorandum for Qualifying Issuers*, 45-106F4 *Risk Acknowledgement* and 45-106F5 *Risk Acknowledgement (Saskatchewan)* (together, the NI 45-106 Forms); and
- Companion Policy 45-106CP *Prospectus and Registration Exemptions* (the 45-106CP and together with NI 45-106 and the NI 45-106 Forms, the NI 45-106 Materials).

(b) Revised 45-501

- Revised 45-501;
- amended and restated Form 45-501F1 (the Revised Form 45-501F1); and
- amended and restated Companion Policy 45-501CP Ontario Prospectus and Registration Exemptions (the Revised 45-501CP and together with the Revised 45-501 and the Revised Form 45-501F1, the Revised 45-501 Materials).

(c) Consequential amendments arising from NI 45-106

- amendments to National Instrument 33-105 *Underwriting Conflicts* (the NI 33-105 Amendments);
- amendments to National Instrument 45-101 *Rights Offerings* (the NI 45-101 Amendments);
- amendments to National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* (the NI 62-103 Amendments);
- amendments to Multilateral Instrument 45-102 *Resale of Securities* and Companion Policy 45-102CP; and
- revocations of National Instrument 32-101 *Small Securityholder Selling and Purchase Arrangements*, Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants*, and National Instrument 62-101 *Control Block Distribution Issues* (the National Revocations).

(d) Ontario specific consequential amendments arising from NI 45-106 and the Revised 45-501

- amendment instrument amending Ontario Securities Commission Rule 13-502 *Fees* (the Rule 13-502 Amendments);
- amendment instrument amending Ontario Securities Commission Rule 31-503 *Limited Market Dealers* (the Rule 31-503 Amendments);
- amendment instrument amending Ontario Securities Commission Rule 91-501 *Strip Bonds* (the Rule 91-501 Amendments);
- amendment instrument amending Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* (the Rule 91-502 Amendments);
- Ontario Securities Commission Rule 45-802 *Implementing National Instrument 45-106 Prospectus and Registration Exemptions and Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions* (the OSC Implementing Rule), which revokes certain local rules; and

- Ontario Securities Commission Rule 32-504 (under the *Commodity Futures Act*) *Adviser Registration Exemption* (the CFA Rule).

If you wish to consult the December 2004 Materials, please click on the following link:

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part4/rule_20041217_45-106_prspcts-reg-exempt.pdf

5. SUMMARY OF COMMENTS AND CHANGES TO THE DECEMBER 2004 MATERIALS

The comment period for the December 2004 Materials expired on March 17, 2005. We have considered the comments received and thank the commenters. In response to the comments, we have made certain changes to the December 2004 Materials; however, as we believe these changes are not material, we are not republishing the December 2004 Materials for a further comment period.

(a) NI 45-106

The names of commenters and a summary of comments relating to the NI 45-106 Materials, together with the CSA's responses, can be found in Appendices A and B to the CSA 45-106 Notice. A summary of the noteworthy changes made to the NI 45-106 Materials can be found at Appendix C to the CSA 45-106 Notice. In addition to the detail provided in Appendix C to the CSA 45-106 Notice, we wish to highlight changes made to the following provisions:

Paragraph (q) of the Accredited Investor Definition

Paragraph (x) of the definition of "accredited investor" in the Existing 45-501 contains a restriction that prohibits persons managing fully managed accounts from relying on the accredited investor exemption for investments in securities of a mutual fund or non-redeemable investment fund. In light of recent events concerning hedge funds and comments made by the Investment Dealers Association of Canada in its report of May 18, 2005 entitled *Regulatory Analysis of Hedge Funds*, the OSC has decided to maintain this restriction in paragraph (q) of the definition of "accredited investor" in NI 45-106. We intend to study this issue further.

Deletion of Section 1.5 of NI 45-106 as published in the December 2004 Materials

We have removed section 1.5 from NI 45-106. This section had provided that the only exemption available for a trade in securities to a purchaser acting as an underwriter was the exemption found in section 2.33 of NI 45-106 [section 2.34 in the December 2004 Materials] (the underwriter exemption).

Instead, we provided guidance in section 1.8 of the Revised 45-106CP on the proper use of exemptions, such as the accredited investor exemption, by a person acting as an underwriter. An underwriter should not sell securities to the public without a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the underwriter exemption. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement or if a prospectus is delivered to the purchasers of the securities. We have clarified that there may be legitimate transactions where an underwriter purchases securities under an exemption from the dealer registration requirement and prospectus requirement other than the underwriter exemption, such as the accredited investor exemption; however, we believe these transactions are only appropriate where the underwriter purchases the securities with investment intent and not with a view to distribution.

Corresponding changes have been made to section 5.3 of the Revised 45-501 as published in the December 2004 Materials. The additional guidance for underwriters is set out in section 3.5 of the Revised 45-501CP.

Section 2.36 of NI 45-106 [Mortgages]

The Mortgage Exemption as published in the December 2004 Materials included a carve-out for syndicated mortgages. We received a number of comments in response to this proposed change. Several commenters involved in the business of originating, funding, purchasing, selling and servicing mortgage investments expressed concern that syndicated mortgages were not included in the mortgage exemption.

The commenters made a number of points including:

- Mortgage broker legislation should regulate all aspects of the mortgage industry, including syndicated mortgages.

- Any attempt to improve the protection of investors should be achieved in consultation with the mortgage brokerage industry and should allow time for further study.
- If syndicated mortgages are governed by securities legislation, a dual registration regime would be created resulting in increased compliance costs.
- A syndicated mortgage is no more complex than a mortgage held by a single private individual as the underlying investment is the same.

We have amended section 2.36 in order to maintain the status quo regarding syndicated mortgages while we study this issue further. The mortgages exemption will be available for the trade of syndicated mortgages in Ontario and, with the exception of British Columbia, Manitoba, Québec and Saskatchewan, in every other Canadian jurisdiction.

Section 8.3 [Transition – MI 45-103/MI 45-105/OSC Rule 45-501]

A transitional provision has been inserted into Part 8 of NI 45-106 to facilitate transactions that were initiated, but not completed prior to the coming into force of NI 45-106 and the Revised 45-501.

Section 8.4 of NI 45-106 [Transition closely-held issuer]

A transitional provision has been inserted into part 8 of NI 45-106 to facilitate the resale of securities previously acquired pursuant to the closely-held issuer exemption. The closely-held issuer exemption currently contained in Existing 45-501 will not be available (subject to the transition provision contained in section 8.3 of NI 45-106) upon the coming into force of NI 45-106 and the Revised 45-501. Upon the coming into force of NI 45-106 a security holder who acquired its securities pursuant to the closely-held issuer exemption will be able to resell its securities in the same manner as a security holder who acquired its securities pursuant to the private issuer exemption.

(b) The Revised 45-501 Materials

The names of commenters and a summary of comments relating to the Revised 45-501 Materials, together with our responses, can be found in Attachment D to this Notice. A reference to section 2.10, the minimum amount exemption, has been added to section 6.1 of the Revised 45-501. Additionally, we have made the change noted above regarding section 5.3 of the Revised 45-501 as published in the December 2004 Materials. The additional guidance for underwriters is set out in section 3.5 of the Revised 45-501CP.

(c) Consequential amendments arising from NI 45-106

The names of commenters and a summary of their comments relating to the proposed repeals and consequential amendments, together with the CSA's responses, are contained in Appendix A and B to the CSA Consequential Amendment Notice. In addition to the detail provided in Appendix A and B to the CSA Consequential Amendment Notice, we wish to highlight the change made to the resale treatment applicable to promoters who have acquired their securities under certain exemptions contained in the Existing 45-501; that is, prior to the coming into force of NI 45-106 and the Revised 45-501.

In the December 2004 Materials, we indicated that the current Ontario resale regime for securities acquired by a promoter via an exempt distribution under Existing 45-501 would be maintained; that is, securities acquired by a promoter would be subject to a more restrictive hold period irrespective of whether the exemption under which the security was traded would otherwise attract a less restrictive hold period. Upon further consideration and in response to a comment received on the December 2004 Materials, we have removed the separate resale treatment for promoters. As a result, upon the coming into force of NI 45-106 and the Revised 45-501 the resale treatment applicable to securities previously acquired by a promoter under Existing 45-501 will depend on the exemption under which the security was traded.

(d) Ontario specific consequential amendments arising from NI 45-106 and the Revised 45-501

We did not receive any comments relating to Ontario specific consequential amendments arising from NI 45-106 and the Revised 45-501.

6. CONSEQUENTIAL AMENDMENTS

(a) Revocation of instruments and rules incorporated into NI 45-106

The following instruments and rules have, with certain modifications, been incorporated into NI 45-106 and will be revoked upon the coming into force of NI 45-106:

- Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;
- Ontario Securities Commission Rule 81-501 *Mutual Fund Reinvestment Plans*;
- Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants*;
- National Instrument 32-101 *Small Securityholder Selling and Purchase Arrangements*; and
- National Instrument 62-101 *Control Block Distribution Issues*.

The texts of the proposed revocations are set out in Attachment E to this Notice and in Schedule 1 to the CSA Consequential Amendment Notice.

(b) Revocation of regulations incorporated into NI 45-106

The following provisions of Ontario Regulation 1015 (the Regulation) to the *Securities Act* (Ontario) (the Act) have, with certain modifications, been incorporated into NI 45-106 and will be revoked upon the coming into force of NI 45-106:

- section 148 (which will be replaced by section 3.8 of NI 45-106 [*Investment dealer acting as portfolio manager*]);
- clause 151(b) (which will be replaced by section 3.4 of NI 45-106 [*Estates, bankruptcies and liquidations*]);
- clause 151(e) (which will be replaced by section 2.3 of NI 45-106 [*Accredited investor*]);
- clause 151(g) (which will be replaced by section 2.16 of NI 45-106 [*Take-over bid and issuer bid*]); and
- section 206 (which will be replaced in part by sections 2.43 and 3.9 of NI 45-106 [*Removal of exemptions – market intermediaries*]).

(c) Revocation of rules incorporated into the Revised 45-501

The following rules have, with certain modifications, been incorporated into the Revised 45-501 and will be revoked upon the coming into force of the Revised 45-501:

- Ontario Securities Commission Rule 32-502 *Registration Exemption for Certain Trades by Financial Intermediaries*;
- Ontario Securities Commission Rule 32-503 *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans*; and
- Ontario Securities Commission Rule 46-501 *Self-Directed Registered Education Savings Plans*.

The texts of the proposed revocations are set out in the OSC Implementing Instrument set out in Attachment E to this Notice.

(d) Revocation of regulations incorporated into the Revised 45-501

The following provisions of the Regulation have, with certain modifications, been incorporated into the Revised 45-501 and will be revoked upon the coming into force of the Revised 45-501:

- section 150 (which will be replaced by section 2.8 of the Revised 45-501 [*Filing requirement under section 2.34 of NI 45-106*]); and
- section 206 (which will be replaced in part by section 5.1 of the Revised 45-501 [*Removal of exemptions – market intermediaries*]).

(e) Other Amendments

The following will be amended upon the coming into force of NI 45-106 and the Revised 45-501:

- Multilateral Instrument 45-102 *Resale of Securities* - the text of the amendments is set out in Schedule 5 to the CSA Consequential Amendment Notice.
- National Instrument 33-105 *Underwriting Conflicts* - the NI 33-105 Amendments are set out in Schedule 2 to the CSA Consequential Amendment Notice.

- National Instrument 45-101 *Rights Offerings* - the NI 45-101 amendments are set out in Schedule 3 to the CSA Consequential Amendment Notice.
- National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* - the NI 62-103 Amendments are set out in Schedule 4 to the CSA Consequential Amendment Notice.
- Ontario Securities Commission Rule 13-502 *Fees* - the Rule 13-502 Amendments are set out in Attachment F to this Notice.
- Ontario Securities Commission Rule 31-503 *Limited Market Dealers* - the Rule 31-503 Amendments are set out in Attachment G to this Notice.
- Ontario Securities Commission Rule 91-501 *Strip Bonds* Rule 91-501 Amendments - the Rule 91-501 Amendments are set out in Attachment H to this Notice.
- Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* - the Rule 91-502 Amendments are set out in Attachment I to this Notice.
- Ontario Securities Commission Rule 32-504 (under the *Commodity Futures Act*) *Adviser Registration Exemption* – the CFA Rule is set out in Attachment J to this Notice.
- “Housekeeping” amendments to update the securities legislative references in the following provisions of the Regulation:
 - the definition of “finance company” under subsection 1(2);
 - subsection 101(1);
 - the definition of “COATS security” under section 152;
 - clause 154(1)(c);
 - the definition of “designated institution” under subsection 204(1); and
 - subsection 230(1).

For background information, please see the December 2004 Materials.

7. PROVISIONS NOT BEING CARRIED FORWARD UPON THE COMING INTO FORCE OF NI 45-106 AND THE REVISED 45-501

The following provisions will be removed or revoked upon the coming into force of NI 45-106 and the Revised 45-501:

- clause 34(e) of the Act;
- paragraphs 35(1)7, 11, 23 of the Act;
- paragraphs 35(2)11, 12 and 13 and clause 73(1)(a) of the Act as it relates to these paragraphs;
- paragraph 35(2)15 of the Act;
- clause 73(1)(b), (c) of the Act;
- subsection 69(2) of the Regulation;
- sections 71-78 and 137 of the Regulation
- clauses 151(c), (d), and (f) of the Regulation; and
- Forms 24-26 of the Regulation.

For background information, please see the December 2004 Materials.

8. NOTICES TO BE WITHDRAWN

The following notices will be withdrawn upon the coming into force of NI 45-106 and the Revised 45-501 as they will no longer be relevant:

- Ontario Securities Commission Staff Notice 45-701 – Paragraph 35(2)14 of the *Securities Act* (Ontario); and
- Ontario Securities Commission Staff Notice 45-702 – Frequently Asked Questions – Ontario Securities Commission Rule 45-501 – Exempt Distributions.

9. EFFECTIVE DATE

NI 45-106, the NI 45-106 Forms, the Revised 45-501, the Revised Form 45-501F1, the NI 33-105 Amendments, the NI 45-101 Amendments, the NI 62-103 Amendments, amendments to Multilateral Instrument 45-102 *Resale of Securities*, the National Revocations, the Rule 13-502 Amendments, the Rule 31-503 Amendments, the Rule 91-501 Amendments, the Rule 91-502 Amendments, the OSC Implementing Rule and the CFA Rule (collectively, the Proposed Materials) and the other materials required to be delivered to the minister responsible for the oversight of the Ontario Securities Commission (the Minister) were delivered on June 30, 2005. If the Minister does not reject the Proposed Materials or return them to the Commission for further consideration, the Proposed Materials will come into force on September 14, 2005.

The Commission has adopted NI 45-106CP, the Revised 45-501CP and the amendments to Companion Policy MI 45-102CP *Resale of Securities*. NI 45-106CP, the Revised 45-501CP and the amendments to Companion Policy MI 45-102CP *Resale of Securities* will come into force on the date that the Proposed Materials come into force.

10. AUTHORITY – ONTARIO

The following provisions of the Act provide the Commission with authority to adopt the NI 45-106 Materials, the Revised 45-501 Materials and the consequential amendments (other than the CFA Rule) referred to in this Notice:

- Paragraphs 143(1)8 and 20 authorize the Commission to make rules which provide for exemptions from the registration requirements and prospectus requirements under the Act and for the removal of exemptions for those requirements.
- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.
- Paragraph 143(1)28 authorizes the Commission to regulate issuer bids, including by providing for exemptions in addition to those set out in subsections 93(1) and (3) of the Act.
- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act.
- Paragraph 143(1)43 authorizes the Commission to make rules prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Ontario securities.
- Paragraph 143(1)48 authorizes the Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.
- Paragraph 143(1)54 authorizes the Commission to make rules respecting exemptions from or varying the requirements of subsections 72(4), (5), (6) and (7) of the Act.
- Paragraph 143(1)55 authorizes the Commission to specify exemptions and circumstances that will be subject to section 130.1.
- Subsection 143(7) authorizes the Commission to make a regulation that amends or revokes any provision of the Regulation, subject to Ministerial approval.

Paragraph 65(1)8 of the *Commodity Futures Act* (Ontario) authorizes the Commission to make rules providing for exemptions from the registration requirements under that act.

11. QUESTIONS

Questions may be referred to:

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Date: July 8, 2005

ATTACHMENT A

NOTICE

**NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS,
FORM 45-106F1, FORM 45-106F2, FORM 45-106F3,
FORM 45-106F4, FORM 45-106F5 AND
COMPANION POLICY 45-106CP PROSPECTUS AND REGISTRATION EXEMPTIONS**

July 8 2005

Introduction

We, the Canadian Securities Administrators (CSA), have developed National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106), a rule that harmonizes and consolidates exemptions from the prospectus and registration requirements contained in provincial statutes, and national, multilateral and local instruments. Some of the exemptions require that forms be filed. The required forms are Form 45-106F1 *Report of Exempt Distribution*, Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, Form 45-106F4 *Risk Acknowledgment* and Form 45-106F5 *Risk Acknowledgment-Saskatchewan Close Personal Friends and Close Business Associates* (the Forms). NI 45-106 and the Forms are together referred to as the Instrument.

Companion Policy 45-106CP *Prospectus and Registration Exemptions* (the Policy) includes explanations, discussion and examples on how the CSA will interpret and apply the Instrument.

Concurrent with the publication of this notice is an additional CSA Notice setting out the following consequential amendments:

1. Repeal of

- National Instrument 32-101 *Small Securityholder Selling and Purchase Arrangements*;
- Multilateral Instrument 45-103 *Capital Raising Exemptions*,
- Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants*, and
- National Instrument 62-101 *Control Block Distribution Issues*.

2. Amendments to

- National Instrument 33-105 *Underwriting Conflicts*,
- National Instrument 45-101 *Rights Offerings*, and
- National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues*, and

3. Amending and renaming Multilateral Instrument 45-102 *Resale of Securities*.

Each jurisdiction will publish a local notice proposing certain local repeals and amendments. The local notice will also cite local exemptions that are being repealed and not carried forward in the Instrument.

Upon final publication of the Instrument we will publish a third CSA Staff Notice that will cite remaining local exemptions for each jurisdiction.

The Instrument has been made or is expected to be made by each member of the CSA, and will be implemented as

- a rule in each of British Columbia, Alberta, Manitoba, Ontario and Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador;
- a commission regulation in Saskatchewan and a regulation in Québec; and
- a policy in all other jurisdictions represented by the CSA.

We also expect the Policy will be adopted in all jurisdictions.

The Instrument will be implemented in British Columbia, subject to obtaining the requisite ministerial approval.

In Québec, the Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary approvals are obtained, the Instrument and consequential amendments will come into force on September 14, 2005.

Substance and Purpose

The Instrument

- harmonizes the majority of prospectus and registration exemptions among Canadian jurisdictions;
- replaces most existing local exemptions; and
- consolidates many exemptions to make them more straightforward and user friendly

Summary of Written comments Received by the CSA

During the comment period, we received submissions from 30 commenters on the Instrument and the Policy. We have considered the comments received and thank all the commenters. The names of the 30 commenters and the summary of the comments on the Instrument and the Policy, together with our responses, are contained in Appendices A and B to this notice.

After considering the comments, we have made amendments to the Instrument and the Policy. However, as these changes are not material, we are not republishing the Instrument or the Policy for a further comment period.

Summary of Changes to the Instrument and Policy

See Appendix C for a description of the noteworthy changes made to the Instrument and Policy.

Table of Concordance

See Appendix D for a Table of Concordance that cites the location in the Instrument of existing prospectus and dealer registration exemptions for all jurisdictions. The Table of Concordance is being published concurrently with this CSA Notice in Alberta, British Columbia, Saskatchewan, Québec, Ontario and Nova Scotia.

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**APPENDIX A
TO CSA NOTICE OF NATIONAL INSTRUMENT 45-106**

LIST OF COMMENTERS

James McGovern	Alternative Investment Management Association
Stephen Bigsby	Association of Canadian Pension Management
Stephen Bigsby, Keith Douglas	Association of Canadian Pension Management
Rajiv Silgado	Barclays Global Investors
Michael J. Bennett	Blaney McMurtry
Securities and Capital Markets Group	Borden Ladner Gervais
Mark Webb	Canadian Institute of Mortgage Brokers and Lenders
D. Bruce McLeod	Canadian Listed Company Association
Rowland Kelly	Credit Union Central of British Columbia
Robert S. Murphy	Davies Ward Phillips & Vineberg LLP
J. Stevenson	DE Capital Partners Inc.
Jeffrey F. Olin	Desjardins Securities
Eli Dadouch	Firm Capital Corporation
Ivan Stone	Foremost Financial Corporation
David Matlow	Goodmans LLP
Robert F. Richards, Richard M. Tattersal	Heathbridge Capital Management Ltd.
John W. Murray	The Investment Funds Institute of Canada
Bill Nickel	McDougall Gauley
Tracey Kernahan	Ogilvy Renault
Dermot P. Muir	Ontario Strategic Infrastructure Financing Authority
Janet Salter	Osler, Hoskin & Harcourt LLP
Ward Sellers et al.	Osler, Hoskin & Harcourt LLP
Shane Pollock	RBC Financial Group
Wes Roitman	Romspen Investment Corporation
TD Asset Management	TD Asset Management
Simon Romano	Stikeman Elliott
Rik Parkhill, Linda Hohol	TSX Market and TSX Venture Exchange
Andrew Parkinson	Van Arbor Asset Management Ltd.
Frank Laurie	Vector Financial Services Limited

APPENDIX B
TO CSA NOTICE OF NATIONAL INSTRUMENT 45-106
SUMMARY OF COMMENTS AND CSA RESPONSES

Summary of Comment		CSA RESPONSE
1. General	Six commenters commend the CSA for attempting to create a harmonized approach to registration and prospectus exemptions, and recognize that National Instrument 45-106 <i>Prospectus and Registration Exemptions</i> (NI 45-106) is a significant improvement over the current regime.	We acknowledge the comment.
2. General	Two commenters note that, while harmonization is an important and worthwhile goal, it is important to allow for regional differences. Regional markets differ in size and industry and we should not remove exemptions that support and promote capital raising in local markets for the sole purpose of achieving harmonization.	We acknowledge the comment.
3. General	Three commenters commend the Autorité de marchés financiers (AMF) for its efforts in rationalizing the exempt distributions regime in Québec through its support of Bill 72 and its participation in NI 45-106 and National Instrument 45-102 <i>Resale of Securities</i> (NI 45-102).	We acknowledge the comment.
4. General	<p>Several commenters are disappointed that NI 45-106 contains differences across jurisdictions and that local exemptions would continue after NI 45-106 was implemented. The differences and local exemptions will perpetuate inefficiencies and higher costs. Smaller markets will suffer because some issuers will avoid distributions in small markets with different requirements. Several commenters urge the CSA to eliminate local exemptions and develop a truly harmonized rule without carve-outs.</p> <p>One commenter states that carve-outs should only be allowed if a compelling case is made by a particular regulator for a different regime in their jurisdiction based on the characteristics of the market and of investors in that jurisdiction.</p>	<p>The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one instrument and to harmonize them to the extent possible within an ambitious time frame. We see the implementation of NI 45-106 as an important first step toward further harmonization of the prospectus and registration exemptions across Canada.</p> <p>We believe the carve-outs and differences that are contained in NI 45-106 are only present where jurisdictions have made compelling arguments to maintain those carve-outs and differences.</p>
5. General	One commenter notes that local exemptions will be retained in certain provinces and that it is very difficult to comment on NI 45-106 without understanding the complete picture of prospectus and registration exemptions across Canada.	Although a few local exemptions will remain in some jurisdictions, NI 45-106 contains the vast majority of exemptions. Local exemptions that were not identified as the subject of repeal will remain in place upon implementation of NI 45-106. In addition, upon implementation of NI 45-106 we will publish a Notice that lists all local exemptions that will remain in effect.

6. General	One commenter suggests that the grouping of the exemptions could be improved in a way that would assist the ease of interpretation and use of the NI 45-106. The commenter proposes grouping exemptions according to how subsequent trades are affected by resale provisions so that those exemptions that are subject to a seasoning period are grouped together in a division separate from those that are subject to a restricted period on resale.	We acknowledge that there may be a variety of approaches that could be employed to organize the exemptions. However, we feel the approach we adopted is valid and we are not inclined to re-order the exemptions based on which resale provisions apply. We believe that the text box at the beginning of each exemption explaining which resale provisions apply will greatly contribute to clarifying how resale provisions operate for the exemptions.
7. Definition of "accredited investor" - general	One commenter supports the OSC's decision to amend the definition of "accredited investor" by removing clauses (p) to (s) of the definition in OSC Rule 45-501 <i>Exempt Distributions</i> .	We acknowledge the comment.
8. Definition of "accredited investor" - general	The scope of section 45 of the Québec <i>Securities Act</i> may not be fully maintained by the definition of "accredited investor" under Regulation 45-106 (paragraphs (p) and (q) of the definition).	We believe that the scope of section 45 of Québec <i>Securities Act</i> is fully maintained with paragraphs (a), (d), (e), (p) and (q) of the definition of "accredited investor".
9. Definition of "accredited investor" - paragraph (c)	One commenter asks whether paragraph (c) of the definition of "accredited investor" should refer to voting "shares" instead of voting "securities".	We believe "securities" is the appropriate term as it is broader and has a clear meaning in securities law. The term "shares" is not defined in securities law.
10. Definition of "accredited investor" - paragraph (e)	One commenter believes that paragraph (e) of the definition of "accredited investor" that allows individuals formerly registered as representatives to qualify as accredited investors should not extend to individuals whose registration was terminated as a result of wrongdoing.	We are not inclined to make a change to this definition. While we do not disagree with the comment in principal, we are not inclined to make this change because securities regulatory authorities have the power to deny access to exemptions in appropriate circumstances.
11. Definition of "accredited investor" - paragraph (i)	<p>One commenter wants paragraph (i) of the definition of "accredited investor" to include pension plans if the sponsor or investment advisor makes the investment decisions or the sponsor acts as an intermediary between the plan members and the issuer of the investment. The commenter submits that these types of pension plans should be deemed to be purchasing a principal for the purposes of the accredited investor exemption. In addition, the commenter states that, for the purposes of the accredited investor exemption, pension funds should be deemed to be purchasing as principal if the plan administrator or its investment adviser (and not the members) makes the investment decision.</p> <p>The same commenter made a number of comments on the CAP exemption and amendments to OSC Rule 45-501 to incorporate the content of OSC Rule 32-503.</p>	Consideration of this comment will require further policy analysis and will be addressed in future amendments to NI 45-106.

<p>12. Definition of "accredited investor" - paragraph (j), (k), and (l)</p>	<p>One commenter thinks that the financial criteria is too high for an individual but that the private investment club exemption provides an alternative.</p>	<p>We believe the current thresholds strike an appropriate balance between investor protection and allowing individuals access to the exemption to facilitate capital raising. Regarding the second part of the comment, we are unclear how the investment club exemption would provide an alternative to the accredited investor exemption. The investment club exemption only permits the issuance of securities in a private investment fund. It would not permit a number of non-accredited investors to pool their investments to collectively become an accredited investor.</p>
<p>13. Definition of "accredited investor" - paragraph (n)</p>	<p>Two commenters suggest that investment funds should qualify under this paragraph of the definition without regard to the status of investors in the investment fund who reside outside the jurisdiction.</p>	<p>In exceptional circumstances investment funds that fall outside this provision may wish to seek designation as an accredited investor or, in Alberta or British Columbia seek recognition as an exempt purchaser.</p>
<p>14. Definition of "accredited investor" - paragraph (n)</p>	<p>One commenter states that an investment fund that distributes, or has distributed, its securities to persons in the circumstances referred to in section 2.18 [<i>investment fund reinvestment</i>] should also be considered to be an accredited investor and added to those listed in paragraph (n)(ii) and that there should not be a distinction between the distribution circumstances in sections 2.10 and 2.19 and the distribution circumstances in section 2.18.</p>	<p>We agree. Section 2.18 will be added to paragraph (n) by adding a subparagraph (iii) that states: "(iii) a person described in subparagraph (i) or (ii) that acquires or acquired securities under section 2.18 [<i>investment fund reinvestment</i>]". We would also add at the beginning of subparagraph (ii) the following: "who acquire securities..."</p>
<p>15. Definition of "accredited investor" - paragraph (q)</p>	<p>Several commenters are concerned that foreign registered portfolio managers are carved out (for Ontario) of the accredited investor definition in paragraph (q). The commenters could not see a reason for carving out foreign portfolio managers who advise their foreign clients.</p>	<p>The Ontario carve out in paragraph (q) of the definition of "accredited investor" relating to foreign advisers has been removed.</p>
<p>16. Definition of "accredited investor" - paragraph (q)</p>	<p>Seven commenters support the removal of the Ontario restriction that prohibits investments in securities of an investment fund by persons managing fully managed accounts who rely on the "accredited investor" definition.</p>	<p>Paragraph (x) of the definition of "accredited investor" in the current OSC Rule 45-501 <i>Exempt Distributions</i> contains a restriction that prohibits persons managing fully managed accounts from relying on the accredited investor exemption for investments in securities of a mutual fund or non-redeemable investment fund. In light of recent events concerning hedge funds and comments made by the Investment Dealers Association of Canada in its report of May 18, 2005 entitled <i>Regulatory Analysis of Hedge Funds</i>, the OSC has decided to maintain this restriction in paragraph (q) of the definition of "accredited investor" in NI 45-106. We intend to study this issue further.</p>

17. Definition of "accredited investor" - paragraph (r)	One commenter takes issue with the requirement in paragraph (r) of the definition of "accredited investor" that charities obtain advice in regard to a trade. The commenter notes that the current regime in Ontario simply qualifies all registered charities as accredited investors. The commenter is unaware of general abuse under the current regime and submits that regulation should emphasize the responsibility of charity trustees and other administrators to manage funds appropriately, rather than requiring issuers to inquire about the quality of advice given to the charity before accepting an investment from the charity.	This requirement addresses investor protection. Charities are not required to meet any sort of sophistication test to be registered as a charity and carry on charitable activities. When this requirement was added to Multilateral Instrument 45-103 <i>Capital Raising Exemptions</i> (MI 45-103) some charities commented that it did not pose a problem. The requirement is new to some jurisdictions but given the above and in the interests of harmonization we are not willing to remove it.
18. Definition of "accredited investor" - paragraph (t) in French version	The French version of paragraph (t) excludes a significant element when compared with the English version. The exception refers to the voting securities required by law to be owned by directors of that person. The French version of this paragraph should be based on the similar phraseology used in the French version of paragraph (c) of the definition.	We agree. Paragraph (t) of the French version has been changed to reflect the comment.
19. Definition of "AIF"	One commenter suggests that the definition of AIF should include information circulars prepared in the context of reverse takeovers and changes of business undertaken by TSX Venture issuers. The commenter notes that these types of information circulars are very similar to information circulars prepared for qualifying transactions, which are included in the definition of AIF.	We have not expanded the definition of "AIF" at this time. An expansion of this definition will require policy review and analysis that is beyond the scope of this project.
20. Definition of "Canadian financial institution"	One commenter submits that this definition should be revised to require that a financial institution must be authorized to carry on business as a specified form of entity in Canada in order to benefit from treatment as an "accredited investor". For example, paragraph (c) of the definition should state that a trust company must be qualified to do business as a trust company rather than simply be authorized by an enactment to carry on business.	We believe the current wording of the definition is clear. A loan corporation, for example, must be authorized under the appropriate legislation to carry on business as a loan corporation.
21. Definition of "eligibility adviser"	One commenter states that the term "eligibility adviser" is an inappropriate term to describe the concept of an individual who advises eligible investors. The use of "eligibility adviser" may lead to confusion and misunderstanding since the "adviser" is not providing advice on the eligibility of investments, but rather is advising on the suitability of investments for eligible investors. The commenter suggested that the term "eligibility consultant" would be more appropriate.	The term is a defined term that was taken from MI 45-103, which is in place in many jurisdictions in Canada. We are not aware of this term being misunderstood or causing confusion.

22. Definition of "eligibility adviser"	One commenter questioned why accountants and lawyers are considered to be appropriate "eligibility advisers" in Saskatchewan and Manitoba, and not in other Canadian jurisdictions, and what the policy reason is for this different treatment of accountants and lawyers.	This provision is carried forward from MI 45-103. The commenters on the previous publication of MI 45-103 (summarized in the comment summary published June 2, 2003) actually supported the use of lawyers and accountants in Manitoba and Saskatchewan. In Manitoba and Saskatchewan, this carries forward existing provisions under a local exemption. This also recognizes the fact that in Manitoba and Saskatchewan there is not a sufficient presence of registrants whose registration would allow them to act as an advisor in rural and northern parts of those provinces.
23. Definition of "eligibility adviser"	One commenter asks how a lawyer or accountant will know if the person they have been retained by has ever acted for or been retained by the issuer, or its directors or officers without a great deal of time-consuming effort. The real concern is whether the lawyer or accountant has a direct or indirect relationship with the issuer. The commenter also questions why a lawyer or accountant who is bound by a code of professional conduct could not have an indirect relationship since it is open to an IDA member to have an indirect relationship.	This definition has been in place for some time in MI 45-103 and we have not had any complaints regarding how it works. Most law and accounting firms have systems in place to address the problem of determining whether the lawyer or accountant has acted for an issuer. We also note that, for indirect relationships, the relevant period of time is limited to the previous 12 months.
24. Definition of "founder"	One commenter states that the founder of an issuer should not have to be "actively involved in the business of the issuer" in order to benefit from the family, friends and business associates exemption. Because of their past involvement with the issuer, this individual should be considered to have an appropriate level of in-depth knowledge about the issuer so as to warrant an exemption.	This exemption is based on up-to-date knowledge of the business and affairs of the issuer. As a matter of policy we have determined that current involvement with the issuer is a necessary and important condition for use of the exemption.
25. Definition - non-redeemable investment fund	One commenter suggests that the CSA should consider defining "non-redeemable investment fund" in National Instrument 14-101 <i>Definitions</i> since the term "non-redeemable investment fund" is used in several national instruments and could thereby be harmonized.	We will consider the comment in future amendments to National Instrument 14-101 <i>Definitions</i> .
26. Definition of "person"	One commenter submits that the definition of "person" should be broadened because the current definition will lead to uncertainty as to the form of corporate organizations that qualify as persons. The commenter recommends replacing paragraphs (b) and (c) with the following: "(b) a corporation, limited or unlimited company, other form of corporate organization, partnership, limited partnership, limited liability partnership, trust, fund, any organization, analogous to the foregoing, any association, syndicate, organization or other organized group of persons, whether incorporated or not, and".	We have not changed the definition. We feel this definition encompasses all of the entities that we want to capture, including those entities mentioned in the commenters' comment.

<p>27. Section 1.5</p>	<p>Three commenters question why a purchaser acting as an underwriter was restricted to the exemption in section 2.34, which restricted the underwriter by allowing it to re-sell only through a prospectus or exemption. The commenters believe underwriters should be subject to the same resale provisions as any other purchaser that acquires under an exemption. The commenters argue that different re-sale treatment for underwriters will adversely affect their willingness to participate in private placements, which will diminish financing opportunities for issuers. Underwriters will be less willing to acquire excess securities not taken up in an offering (either to keep for themselves or to sell to their clients) and any compensation securities will be less attractive if they are deemed to be acquired while acting as underwriter.</p>	<p>We have removed section 1.5 from NI 45-106 and in its place have provided guidance in the Companion Policy at section 1.8 on the proper use of the accredited investor exemption by a person acting as an underwriter. The guidance addresses our policy concerns with respect to underwriters purchasing securities under an exemption with a view to distribution.</p> <p>Deletion of section 1.5 will effectively allow underwriters to acquire securities by way of their status as accredited investors where they purchase the securities without a view to distribution. As accredited investors they will be subject to a 4-month restricted period on resale.</p>
<p>28. Section 1.6 - Definition of "trade" - paragraph (e)</p>	<p>One commenter notes that a paragraph similar to paragraph (e) under the definition of "trade" exists in certain western provinces. Where this is the case, a prospectus and registration exemption is provided for the purpose of allowing transactions involving certain investors. We question the introduction of this concept in Québec in light of the lack of a clearly identified prospectus and registration exemption.</p> <p>The same commenter points out that paragraph (g), as proposed, would be unique to the definition of "trade" in Québec. The commenter believes that the use of a new expression that is not defined, is drafted in broad terms and whose scope is not determined in a policy statement will cause uncertainty. In order to maximize the harmonization of Québec rules with those of the other provinces, the commenter suggests deleting this paragraph.</p>	<p>Given that some derivatives fall within the scope of security, we do not think it is necessary to have a specific exemption for derivatives. Where applicable, other exemptions can be used to trade derivatives.</p> <p>In regard to the second comment, paragraph (g) has been removed.</p>
<p>29. Section 2.1 - Rights offering</p>	<p>One commenter is concerned that the wording of the rights offering exemption in section 2.1 may be too broad. One possible interpretation of the language is that the exemption would extend to a trade by an issuer of any right to purchase securities of its own issue. This might include trading in puts, calls, futures and other derivative rights relating to the purchase of the issuer's securities. The current rights offering exemption only applies to a trade by an issuer in a right <i>it has granted</i> to purchase additional securities of its own issue. The commenter believes that a rights offering exemption is appropriately limited to trades in rights to purchase additional securities that are granted by the issuer.</p>	<p>We agree. We added the words "that was granted by the issuer" in the opening paragraph of section 2.1(1) after the words "in a right".</p>

<p>30. Section 2.2(3) - Reinvestment plan</p>	<p>One commenter states that the words “in Canada” should be added after “every security holder”.</p>	<p>We agree. We added “in Canada” to avoid applications for exemptive relief for plans that do not permit distributions to foreign security holders. It is our understanding that some issuers have reinvestment plans that, while available to Canadian security holders, are not available to foreign security holders.</p>
<p>31. Section 2.3(4) - Accredited investor</p>	<p>One commenter questions the rationale for subsection (4) of section 2.3.</p>	<p>Prince Edward Island does not have comparable provincial trust and loan corporation legislation.</p>
<p>32. Section 2.3(6)</p>	<p>Two commenters note that section 2.3(6) provides that the accredited investor exemption is not available if the “accredited investor” is “created” or “used primarily” to purchase securities under this exemption.</p> <p>One commenter notes that similar wording is used to restrict the minimum amount exemption. The commenter is concerned that this wording is extremely broad and has the potential to create uncertainty for investment vehicles seeking to rely on such exemptions in the future. Such wording is not currently contained in the accredited investor exemption. The commenter states that clear language needs to be adopted or guidance provided in the Companion Policy as to the intent of this language. The commenter suggests the condition be deleted, or in the alternative, be replaced with a condition that states that the exemptions are not available in respect of a person “created solely for the purpose of becoming eligible to purchase securities in reliance on an exemption...”.</p> <p>One commenter also states that if the restrictions are not removed, the reference in section 2.3(6)(b) to “these exemptions” should be limited to the section 2.3 exemption.</p>	<p>We have re-drafted the restriction in response to comments that the initial wording was too broad. The re-drafted restriction will refer to persons created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of “accredited investor” in section 1.1. The corresponding drafting changes will be made to section 2.9(5), 2.10(3) and to paragraph (b)(ii) of the definition of “private issuer”.</p>
<p>33. Section 2.4 - Private issuer</p>	<p>Three commenters strongly support the reinstatement of this exemption.</p>	<p>We acknowledge the comments.</p>
<p>34. Section 2.4 - Private issuer</p>	<p>Two commenters note that the re-introduction of the private issuer exemption in Ontario is an improvement because of the specified list of who are “non-public” purchasers, which will increase certainty.</p>	<p>We acknowledge the comments.</p>
<p>35. Section 2.4 - Private issuer</p>	<p>One commenter objects to the requirement to include shareholders, beneficiaries or partners of a company, trust or partnership in the calculation of the 50 shareholders. The commenter prefers the MI 45-103 definition.</p>	<p>The purpose of this restriction in the definition is to ensure that the private issuer exemption is not abused through the creation or use of a pyramid of entities.</p>
<p>36. Section 2.4 - resale for closely-held issuers</p>	<p>Three commenters ask what will happen from a resale perspective to persons who acquired under the closely-held issuer exemption?</p> <p>Two of the commenters believe that issuers that</p>	<p>A provision has been inserted into part 8 of NI 45-106 to facilitate the resale of securities previously acquired pursuant to the closely-held issuer exemption. Upon the coming into force of NI 45-106</p>

	<p>are now closely-held issuers should be deemed to be private issuers as at the date the new rule comes into force. For Ontario the private issuer definition does not include a category for existing shareholders of closely held issuers. There will be many Ontario issuers who have used the closely held issuer exemption and issued securities to purchasers who do not fit into the categories listed in subsection 2.4 (1) (a) to (j) and who are arguably members of the public.</p>	<p>a security holder who acquired its securities pursuant to the closely-held issuer exemption will be able to resell its securities in the same manner as a security holder who acquired its securities pursuant to the private issuer exemption.</p> <p>Upon the coming into force of NI 45-106, an issuer who is currently a closely-held issuer will be able to avail itself of the private issuer exemption provided that (i) the issuer's security holders consist of only those persons set out in paragraphs 2.4(2)(a-k) (formerly 2.4(1)) of NI 45-106, and (ii) the issuer's securities (other than non-convertible debt securities) are beneficially owned by less than 50 security holders exclusive of employees and former employees of the issuer or its affiliates. We note that, upon the coming into force of NI 45-106, a number of closely-held issuers will not be able to use the private issuer exemption. The private issuer exemption facilitates capital raising from persons that (i) are familiar with the issuer and, as such, do not require the disclosure and protections provided under a prospectus, or (ii) are accredited investors. Having made the policy decision to adopt the private issuer exemption in Ontario, it would be incongruous to deem all closely-held issuers, including those closely-held issuers who have distributed securities to the public, to be private issuers. A closely-held issuer who cannot avail itself of the private issuer exemption will nonetheless be able to avail itself of a number of other exemptions including the accredited investor exemption, the minimum amount exemption and the founder, control person and family – Ontario exemption.</p>
<p>37. Section 2.4 - restrictions in constating documents for private issuers</p>	<p>One commenter suggests that the private issuer exemption be amended to remove the requirement that a private issuer have restrictions on the transfer of its securities contained in its constating documents or a security holders' agreement. While the restriction is common for Canadian private companies, many foreign private companies do not have similar restrictions in their constating documents as such restrictions may not be necessary in their domicile. Foreign issuers may be required to include such a provision (which is unusual for their jurisdiction of incorporation) for the sole purpose of meeting the requirements of Canadian securities laws. To recognize the global nature of capital raising and to facilitate private placements by foreign</p>	<p>We are not prepared to make this change to accommodate foreign issuers as part of NI 45-106. While an issuer that is not a "private issuer" will not have access to the private issuer exemption, it will have other similar exemptions available to it to raise capital (sections 2.3, 2.5 and 2.7). These exemptions are slightly different than the private issuer exemption in that they require the filing of a report and payment of a fee.</p>

	issuers, the commenter suggests that this requirement be deleted or restricted to Canadian issuers.	
38. Section 2.4 - expansion of family members to include in-laws	One commenter proposes that the definition of family members in paragraphs (b), (c) and (f) of section 2.4(1) be expanded to include in-laws. The commenter notes that this was the approach taken by the CSA in drafting the definition of immediate family member contained in Multilateral Instrument 52-110 <i>Audit Committees</i> .	In-laws are included in paragraphs (c) and (f).
39. Section 2.4 - registered verses beneficial ownership	Two commenters propose that in determining whether there are 50 shareholders or less of the issuer, the references should be to registered rather than beneficial ownership. Determining beneficial ownership, especially in the case of a sale by a shareholder as opposed to a treasury issue, may be difficult. The commenter notes that the definition of private company contained in the <i>Securities Act</i> (Ontario) allows determination of the number of shareholders by reference to registered ownership.	We are of the view that for the purpose of accessing the private issuer exemption, private issuers are responsible for knowing who their beneficial owners are.
40. Section 2.4(3) [now 2.4(4)] - Private issuer	One commenter asks whether paragraphs (i) or (j) of section 2.4(1) as they relate to paragraph (h) should also be covered in section 2.4(3).	An entity described in paragraphs (i) and (j) is covered by section 2.4(3) if it meets the definition of "accredited investor".
41. Section 2.5 - Family, friends and business associates, Section 2.7 - Founder, control person and family	Several commenters are concerned with the OSC's decision not to participate in the family, friends and business associates exemption in section 2.5. Some of the commenters believe this is unfair to Ontario issuers and investors. Three commenters believe the exemptions in sections 2.5 and 2.7 should be reconciled to provide harmonization of the exemption. One of the commenters, while expressing a preference for the Ontario exemption in section 2.7, submits that in the interests of harmonization Ontario should consider adopting the broader exemption in section 2.5.	The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one instrument and to harmonize them to the extent possible within an ambitious time frame. We recognize however, that regional differences do exist and those differences must be accommodated. Each jurisdiction has considered the merits of this exemption and made a decision on whether or not to adopt it based on what is appropriate for the capital markets in their jurisdiction.
42. Section 2.5 - Family, friends and business associates	One commenter states that it may be useful to highlight to the investor that the exemption in section 2.5 is premised solely on the relationship of the investor with the issuer's principal. The commenter suggests requiring each investor to sign a certificate to the effect that the investor is a close personal friend or close business associate of the principal and <i>has known the person for a sufficient period of time to assess the capabilities and trustworthiness</i> . Such a certificate may help to focus the investors awareness that the exempt trade is reliant on the relationship between the parties.	Jurisdictions that do not require a risk acknowledgement have concluded that the costs of such a requirement exceed the benefits.

<p>43. Section 2.6(2) - Family, friends and business associates - Saskatchewan Section 2.9(14) Offering memorandum</p>	<p>One commenter stated that the requirement to maintain a signed risk acknowledgement for a period of eight years after a distribution or trade is unnecessarily burdensome.</p>	<p>The FFSC does not believe maintaining a document for 8 years is unnecessarily burdensome.</p>
<p>44. Section 2.9 - Offering memorandum</p>	<p>One commenter states that the minimum disclosure requirements in the offering memorandum exemption should address any regulatory concerns in regard to ensuring that investors receive sufficient information on which to make their investment decision. At the same time the exemption allows the issuer to avoid the significant costs of filing a prospectus and becoming a reporting issuer.</p>	<p>We acknowledge the comment.</p>
<p>45. Section 2.9 - Offering memorandum</p>	<p>Two commenters want the CSA to develop a form of offering memorandum specific to investment funds, as there are considerable differences between what is relevant to an investor in an investment fund and what is relevant to an investor in other types of issuers.</p>	<p>We will consider developing a form of offering memorandum specific to investment funds in the future.</p>
<p>46. Section 2.9 - Offering memorandum</p>	<p>Four commenters expressed disappointment that the OSC chose not to adopt the offering memorandum exemption that is otherwise available in the other Canadian provinces. One commenter seeks clarification from the OSC on why investors in Ontario are being treated differently than investors in the other CSA jurisdictions.</p> <p>One commenter agrees with the OSCs decision not to adopt the offering memorandum exemption in Ontario. The commenter believes that the extensive prescribed disclosure for the offering memorandum merely serves to create a simplified prospectus regime alongside the existing prospectus regime. The exemption introduces additional unnecessary complexity and, given the differences in application between the participating jurisdictions, confusion into the securities laws of Canada. This is inconsistent with the goal of creating a harmonized securities regime.</p>	<p>The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one instrument and to harmonize them to the extent possible within an ambitious time frame. We recognize however, that regional differences do exist and those differences must be accommodated. Each jurisdiction has considered the merits of this exemption and made a decision on whether or not to adopt it based on what is appropriate for the capital markets in their jurisdiction.</p>
<p>47. Section 2.9 - Offering memorandum</p>	<p>Three commenters expressed disappointment over the continuation of two different offering memorandum exemptions and urged the CSA to uniformly adopt the exemption in section 2.9(1).</p> <p>One commenter notes that the liberal approach is so wide open that it would be attractive for many significant issuers to use the exemption and bypass the prospectus regulatory process in circumstances where they would be perfectly able to comply. The commenter also notes that it may also be an avenue for unscrupulous issuers to raise money from unsuspecting</p>	<p>The CSA worked diligently to achieve a single harmonized offering memorandum exemption, however, after considerable discussion and debate differences remain. The differences between the two versions of the exemption and the different treatment of investment funds reflect fundamental policy concerns regarding the availability and use of this exemption across the jurisdictions. Participating jurisdictions will monitor the use of this exemption and continue to work toward harmonization.</p>

	<p>investors. The commenter recommends that the CSA uniformly adopt the less liberal approach for two reasons: (i) the amount that an investor could lose would be limited; and (ii) investors would have to have significant assets in order to qualify as an “eligible investor”.</p> <p>One commenter questions why the OM exemption is not available in some jurisdictions and what type of mutual funds qualify under the current wording of section 2.9(2)(d).</p> <p>One commenter seeks clarification why clause 2.9(2)(d)(ii)(B) only provides the exemption for mutual funds in Manitoba, Saskatchewan and Québec that are listed for trading on an exchange or quoted on an over-the-counter market. The commenter notes that very few mutual funds are traded in the secondary market, and therefore, it is unclear why this restriction was imposed in these three provinces.</p>	
48. Section 2.9 - Offering memorandum	One commenter notes that Yukon is not included in the list of jurisdictions in which the exemption applies and queried if and when issuers and dealers would be able to rely on the exemption in Yukon.	Section 1.2 of the Companion Policy provides guidance for the availability of exemption in Yukon.
49. Section 2.9(13) - Offering memorandum	One commenter objects to the requirement for the subscriber to re-sign the subscription agreement each time there is an amendment to the offering memorandum. The process should be amended to conform with the prospectus requirement to send a copy of the amendment to subscribers and have a 2-day right of rescission.	We do not think that re-signing the subscription agreement is overly burdensome in the context of the offering memorandum exemption, which is significantly different than a prospectus offering.
50. Section 2.9 - Offering memorandum - Forms F3 and F4	One commenter suggests that the reference in the form to “promoter” be changed to “founder”. The certificate should be signed by a person “actively engaged in the issuer’s business.”	The term “promoter” is a broader than “founder” and for the purposes of the Forms, we require the signature of a “promoter”.
51. Section 2.10 - Minimum amount investment	One commenter notes that the exemption in section 2.10 is less flexible than the previous minimum amount exemption available in Ontario because section 2.10 requires the purchase price to be paid in cash. The commenter states that the exemption in Ontario allows securities to be issued for a <i>bona fide</i> future obligation, for example a promissory note. The commenter recommends maintaining this flexibility in section 2.10.	After considerable discussion among the jurisdictions it was decided to require payment in cash to address potential abuses of the exemption. In particular, we are aware of pooled funds that were being sold to retail investors without a prospectus based on this exemption for as little as an initial investment of \$5,000 coupled with the acceptance by the investor of a future obligation to the fund of \$145,000. We do not believe that exempt products should be sold to retail investors under this type of arrangement.

52. Section 2.10 - Minimum amount investment	One commenter supports the reintroduction in Ontario of the prescribed minimum amount exemption. However, the commenter submits that it would be prudent to clarify the exemption by incorporating the concept of “aggregate acquisition cost” rather than rely on the explanation in the companion policy.	In harmonizing this exemption we determined that the best approach was to require payment in cash at the time of the trade and provide some guidance in the Companion Policy. While we realize that some jurisdictions had the concept of “aggregate acquisition cost”, we specifically declined to use that approach for NI 45-106.
53. Section 2.10 - Minimum amount investment	Two commenters request that the CSA expand the minimum amount exemption to include <i>in specie</i> contributions that have a fair value of \$150,000. The commenters note that if there is a concern about the valuation of an <i>in specie</i> payment, delivery and settlement conditions similar to those found in section 9.4 of National Instrument 81-102 <i>Mutual Funds</i> could be included. One commenter notes that requiring the cash requirement may cause unnecessary transaction costs by requiring the liquidation of securities.	We have included an asset acquisition exemption that is available to issuers in section 2.12. We are not prepared to expand the minimum amount investment exemption to anything other than cash for the reasons stated above.
54. Section 2.10 - Minimum amount investment	Three commenters applaud the CSA for harmonizing the minimum amount exemption across Canada, along with making it available to mutual funds and non-redeemable investment funds.	We acknowledge the comment.
55. Section 2.10 - Minimum amount investment	Two commenters ask that the CSA consider allowing the \$150,000 minimum amount to be contributed among all of the investment funds managed by the same entity. They believed that the same rationale which deems a person who has \$150,000 to invest in a single investment to be sophisticated enough to not require a prospectus and not require a registered dealer, should also be applied to an investor who invests in two or more funds managed by the same manager.	We believe it is inaccurate to suggest that two funds are the same because they have the same manager. Each fund is different, has differing risk profiles and may be managed by sub-managers with different management styles. It is no different than buying securities of two different issuers and being allowed to pool, which is something we do not allow.
56. Section 2.10 - Minimum amount investment	One commenter notes that the requirement to pay the minimum amount “in cash at the time of the trade” does not appear to permit any time for settlement.	We expect issuers to deal with this issue based on the usual terms for settling private placements.
57. Section 2.10 - Minimum amount investment	One commenter suggests that the CSA make it permissible for related accounts to invest \$150,000. For example, if two spouses invested \$150,000 between them that should be sufficient to entitle them to use this exemption. Similarly, an individual and his or her RRSP, a parent or parents and children who share the same residence and/or “in trust for” accounts should be permitted to be considered as one investor for this purpose.	We have not expanded this exemption in the manner suggested by the commenter. We do not think that association with an accredited investor should make a person an accredited investor. Paragraph (k) of the definition of accredited investor does permit spousal incomes to be combined, but it requires the combined income to be \$100,000 more than the individual income threshold.
58. Section 2.10 - Minimum amount investment	One commenter believes it is advisable to insert an additional investment mechanism in section 2.10 similar to that provided for investment funds in section 2.19.	Consideration of an expansion as suggested by the commenter will require significant policy analysis. Accordingly, at this time, we do not believe that an additional investment mechanism is

		appropriate for securities other than investment funds.
59. Section 2.10(3) - Minimum amount investment	One commenter states that paragraph (b) of section 2.10(3) should be deleted and that paragraph (a), if it should remain, should refer to section 2.10 (see argument raised above re section 2.3(6)).	We have changed the wording of this restriction so that it applies to persons created or used “solely” (rather than “primarily”) to access the exemption.
60. Section 2.10(3) - Minimum amount investment	One commenter believes that the requirement in section 2.10 for a cash payment to use the \$150,000 exemption should not require any more than \$150,000 cash to be paid, at the time of usage. An investor should be able to invest \$400,000 represented by \$150,000 in cash and \$250,000 via a commitment.	If a minimum of \$150,000 in cash is invested, we believe that the current exemption would permit a commitment as in the example provided by the commenter, provided the commitment is part of the same transaction.
61. Section 2.11(1)(b)(i) - Business combination and reorganization	One commenter advises that section 2.11(1)(b)(i) needs to reflect the possibility of an accidental failure to deliver to every security holder, for whatever reason. Also, no particular security holders’ approval is typically required, just the class, so the wording may be inaccurate.	<p>This exemption has been in place for some time in British Columbia and problems of the nature mentioned by the commenter have not arisen. The onus is on the issuer, when proceeding outside of a statutory procedure, to determine when shareholder approval has been obtained.</p> <p>Most Canadian jurisdictions, through securities legislation or Interpretations Acts, have provisions that deal with delivery of documents. Most of these provisions make it clear that “actual” delivery is not required, but rather, reasonable steps such as posting by mail must be taken. We do not believe that accidental failure to deliver to one shareholder would prevent the use of the exemption.</p>
62. Section 2.11 - Business combination and reorganization	One commenter states that the requirement to have disclosure and shareholder approval is too restrictive. Corporate requirements are often not as strict and cost of compliance may be too great for smaller private companies. Also, section (1)(b)(ii) suggests that unanimous shareholder approval is required and it is not clear whether all shareholders have to vote, even shareholders with non-voting shares. The preferred form of this exemption is found in AB, MB, SK, and ON -it’s less restrictive.	We do not believe the shareholder approval requirement is too restrictive. Shareholder approval is a reasonable requirement in exchange for allowing securities to be traded in circumstances where issuers are being reorganized by way of a non-statutory merger, arrangement or amalgamation. Subsection (1)(b)(ii) does not mandate unanimous shareholder approval.
63. Section 2.12(1) - Asset acquisition	One commenter asks whether section 2.12(1) should also refer to securities or other property, including cash.	As noted in section 4.3 of the Companion Policy, assets may include cash in the form of working capital.
64. Sections 2.12 - Asset Acquisition, 2.13 - Petroleum, natural gas and mining properties	One commenter notes that the technology sector should have an exemption for asset acquisition that does not tie issuers to the \$150 000 asset value minimum or require them to use the “shares for debt” exemption. The commenter notes that the junior mining exploration industry has a special regime for raising capital.	We have not expanded the “special” capital raising exemptions available to junior mining companies to other industries. Expansion of this type of exemption to other industries would require further consultation and study and is beyond the scope of this project.

<p>65. Section 2.14 - Securities for debt</p>	<p>One commenter supports the introduction of this new exemption and the guidance included in the Companion Policy.</p>	<p>We acknowledge the comment.</p>
<p>66. Section 2.16 - Take-over bid and issuer bid</p>	<p>Two commenters are concerned that the language in section 2.16, "...a trade in a security under a take-over bid...", may be interpreted as being limited to trades by shareholders of the offeree issuer to the offeror. To clarify that the exemption is available in connection with share consideration provided by an offeror, the commenter proposes amending the language to read, "...a trade in a security in connection with a take-over bid..."</p>	<p>We have substituted "in connection with" for "under".</p>
<p>67. Section 2.16 - Take-over bid and issuer bid</p>	<p>One commenter suggests adding the phrase "by or to the bidder" after the word security in section 2.16(1). The commenter notes that the exemption is meant to provide exemptions for both the trade by a security holder to a bidder and securities issued by the bidder.</p>	<p>We have used the broader language of "in connection with" to cover all trades.</p>
<p>68. Section 2.16 - Take-over bid and issuer bid</p>	<p>One commenter notes that Section 2.16 does not clearly apply to both the tender to a take-over bid by a target shareholder, and the issuance of securities by a bidder in exchange in securities exchange bids. The commenter believes that the wording of section 2.16 suggests that the tender process is not covered for a take-over bid (i.e. issuer bids are treated differently for some reason).</p>	<p>We changed the word "under" in section 2.16 to "in connection with" to make it clear that we intend for section 2.16 to apply to both the tender to a take-over bid by target shareholders, and the issuance of securities by a bidder in the context of an securities exchange bid. The tender process is covered for both take-over bids and issuer bids. A trade to an issuer of its own securities is also covered in section 2.15 because not all trades to an issuer of its own securities is an issuer bid.</p>
<p>69. Section 2.17 - Offer to acquire to security holder outside local jurisdiction</p>	<p>Three commenters point out that the wording of section 2.17 may or does not apply to the trade by a bidder of its securities to target shareholders.</p> <p>One commenter notes that the wording of this section provides for an exemption in one jurisdiction to permit a security holder in another jurisdiction to trade its securities to a bidder in the first jurisdiction, but it does not provide an exemption for the issuance of securities from a bidder in the second jurisdiction to a security holder in the first jurisdiction. The commenter suggests the following alternative wording for 2.17(1) "The dealer registration requirement does not apply to a trade in a security by or to the bidder in connection with a transaction that would have been a take-over bid or an issuer bid in the local jurisdiction if the security holder were in such jurisdiction."</p> <p>One commenter suggests that section 2.17 should be expanded to also include trades currently covered in sections 72(1)(j) and (k) of the <i>Securities Act</i> (Ontario).</p>	<p>We have not expanded the exemption at this time to accommodate distributions outside the local jurisdiction. To the extent that these trades are distributions, issuers will have to look to local provisions dealing with distributions out of the jurisdiction, find another exemption or seek discretionary relief.</p>

<p>70. Sections 2.18 and 2.19 - Investment fund reinvestments</p>	<p>Five commenters suggest that the proposed investment fund reinvestment exemptions are too restrictive. The commenters request that the CSA consider expanding the exemptions in sections 2.18 and 2.19 to permit an investment fund which has more than one class and series of units, where the value of the units of each is based on the same pool of portfolio assets, the flexibility to permit re-investment and additional investment in classes or series of the same investment fund other than the class or series originally purchased by the investor. The linkage would provide flexibility to investors, without requiring them to reinvest or make additional investments in another investment portfolio of the same fund. It would also permit investor to switch between classes/series without being required to satisfy the minimum investment amount at the time of the switch and permit investors to direct reinvestments of distributions into a different series/class of the same fund.</p> <p>One commenter suggests that the expansion to other series and classes be extended to the exemption in section 2.19 (additional investment in investment funds).</p>	<p>The rationale behind the exemption is that the investor is “getting more of the same” so there is no new investment decision and therefore no need for a prospectus or a registrant. Any change to the investment, including a change in the fee structure would be inconsistent with the rationale for the exemption.</p>
<p>71. Section 2.18 - Investment fund reinvestment</p>	<p>Two commenters recommend changing the language of this exemption. Many mutual funds provide that distributions are automatically reinvested unless unit holders request to be paid in cash. The language “where the security holder directs that dividends or distributions ..” should be changed to the plan “permitting or requiring that dividends or distributions ... be reinvested ...”</p>	<p>We agree. We have changed the language to accommodate plans that require reinvestments.</p>
<p>72. Section 2.18 - Investment fund reinvestment</p>	<p>One commenter suggests that subsection 2.18(5) should be expanded to include the option of including the required disclosure in a fund’s financial statements as well as its prospectus, since an investor is only required to receive a fund’s prospectus when the fund is purchased, but will generally receive the financial statements each time they are filed.</p>	<p>We believe that it is sufficient if investors receive, at minimum, the required disclosure at the time of purchase. For that reason, we required that the disclosure be contained in the prospectus of the investment fund if one is prepared. An issuer can choose to also provide the information on an on-going basis in the financial statements if it wishes to provide regular reminders to investors. However, under the new approach in National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> that requires investors to request that financial statements be sent to them, we expect that most investors will not choose to receive the financial statements each time they are filed.</p>
<p>73. Section 2.19 - Additional investment in investment funds</p>	<p>One commenter suggested deleting the words “that initially acquired securities as principal for an acquisition cost of not less than \$150,000 paid in cash at the time of the trade”. The commenter suggested that it should not matter how the security holder acquired the securities of the investment fund that have the value of</p>	<p>This exemption is an extension of the minimum amount exemption. Access to this exemption is permitted only if securities in the investment fund have been acquired under the minimum amount exemption, which is a proxy for sophistication. In addition, the investor</p>

	\$150,000 as required in clause (b).	must continue to hold securities of the investment fund that were originally acquired for the minimum amount (regardless of their current value) or securities that have a net asset value in excess of the minimum amount.
74. Section 2.22 use of "executive officer" definition in division 4	One commenter notes that for the exemption in section 2.22 the concept of "executive officer" is introduced and is broader than the concept of "senior officer", which is used in Multilateral Instrument 45-105 <i>Trades to Employees, Senior Officers, Directors and Consultants</i> . The commenter suggests that in order to avoid confusion, it may be prudent to clarify that the portion of the definition of "executive officer" that includes an individual who performs a policy-making function in respect of the issuer should be limited to performing a policy-making function for the principal or core business of the issuer.	The language chosen parallels the language used in National Instrument 51-102 <i>Continuous Disclosure Obligations</i> . Section 2.2 of the Companion Policy provides clarification of the meaning of this term.
75. Section 2.22 - definition of "listed issuer"	One commenter noted that the CNQ should be included in the list in the definition of "listed issuer".	We have not expanded the list to include CNQ. We will consider including the CNQ in the list after we have had sufficient time to examine its applicable rules and policies.
76. Section 2.23 - Interpretation - control	One commenter asks if the wording of section 2.23 suggests that a single trustee of an income trust or other similar issuer, which has several trustees, controls the trust. If so, the commenter states that the provision should be adjusted.	The question of whether a single trustee controls a trust will depend on whether such trustee has the "power to direct the management and policies of the trust". This is a question of fact and we do not see that the provision requires adjusting.
77. Section 2.24(4) - Employee, executive officer, director and consultant	One commenter asks whether subsection (4) of section 2.24 should also refer to subsections (2) and (3) of section 2.24.	Subsection (2) is, by virtue of its wording, caught by subsection (4). Subsection (3) does not refer to a distribution so a reference in subsection (4) is not necessary.
78. Section 2.30 - Incorporation or organization	<p>Five commenters gave their opinion on whether or not this exemption should be retained.</p> <p>Three commenters agree that, due to the availability of other exemptions, the exemption contemplated by section 2.30 is unnecessary and need not be included in the final instrument.</p> <p>One commenter suggests that this is only a useful exemption if the cap on five investors is removed.</p> <p>One commenter requests that the exemption be retained. The commenter points out that much time and expense has been wasted in determining available exemptions in intra-corporate family situations over the past few years in Ontario, and this exemption is used frequently in the formation stage of companies. The commenter believes it would be a shame to lose another exemption that has no investor protection effects.</p>	We have deleted this exemption given the availability of the exemptions in sections 2.4 [Private issuer exemption], 2.5 [Family, friends and business associates exemptions], 2.7 [Control person, founder and family exemption] and 2.24 [Employee exemption].

<p>79. Section 2.31(2) - Dividends</p>	<p>One commenter questions whether the word “dividend” in section 2.31(2) should say “dividend or distribution”, to cover non-corporate issuers and to be consistent with paragraph (1).</p>	<p>we have added “distributions” to this exemption to permit non-corporate entities to make dividend-like distributions. We also clarified in subsection (2) that the distribution must “out of earnings or surplus”.</p>
<p>80. Section 2.33 - Acting as underwriter</p>	<p>Two commenters noted that underwriters acquiring securities under this exemption could not sell their securities without a prospectus or exemption.</p> <p>One commenter presumes that this is intended because securities being sold by an underwriter should be sold under a prospectus or an available exemption.</p> <p>The other commenter submits that that there is no harm to the marketplace and no abuse of the resale provisions as long as the underwriters are required to hold as principal for the 4-month period and meet the other requirements of Multilateral Instrument 45-102.</p>	<p>We have removed section 1.5 from NI 45-106 and in its place have provided guidance in the Companion Policy at section 1.8 on the proper use of the accredited investor exemption by a person acting as an underwriter. The guidance addresses our policy concerns with respect to underwriters purchasing securities under an exemption with a view to distribution.</p> <p>Deletion of section 1.5 will effectively allow underwriters to acquire securities by way of their status as accredited investors where they purchase the securities without a view to distribution. As accredited investors they will be subject to a 4-month restricted period on resale.</p>
<p>81. Section 2.34 - Guaranteed debt</p>	<p>One commenter questions whether it is appropriate from either an investor protection or foreign relations perspective (including international treaty obligations) to require foreign government debt, but not Canadian government debt, to be rated.</p>	<p>We are comfortable allowing Canadian government debt to be free-trading and at the same time requiring that foreign debt be rated. We understand Canadian government debt and recognize that foreign debt may vary widely in terms of quality and risk. We note that in some jurisdictions the current version of this exemption requires that the foreign government issuer be recognized by the regulatory authority.</p>
<p>82. Section 2.34(2) - Guaranteed debt</p>	<p>The Ontario Strategic Infrastructure Financing Authority requests a registration and prospectus exemption for debt securities issued by it. They are not included in the exemptions in s. 2.34(2)(c) and (e).</p>	<p>The OSC has an exemption for the Ontario Strategic Infrastructure Financing Authority entity’s securities in its regulations. The other jurisdictions are not prepared, at this time, to add this entity to the list of entities whose securities can be traded without a prospectus or registrant.</p>
<p>83. Section 2.36 - Mortgages</p>	<p>Several commenters involved in the business of originating, funding, purchasing, selling and servicing mortgage investments expressed concern that syndicated mortgages were not included in the exemption in section 2.36 [mortgage exemption].</p> <p>The commenters make the following points:</p> <p>1) Mortgage broker legislation should regulate all aspects of the mortgage industry, including syndicated mortgages.</p> <p>2) Any attempt to improve the protection of investors should be achieved in consultation</p>	<p>We have amended section 2.36(2) in order to maintain the status quo regarding syndicated mortgages while we study this issue further. As a result, the exemption for syndicated mortgages will be available in all jurisdictions except British Columbia, Manitoba, Québec and Saskatchewan.</p>

	<p>with the mortgage brokerage industry and should allow time for further study.</p> <p>3) If syndicated mortgages are governed by securities legislation, a dual registration regime would be created resulting in increased costs.</p> <p>4) A syndicated mortgage is no more complex than a mortgage held by a single private individual as the underlying investment is the same.</p> <p>5) Investors in syndicated mortgages often hold a significant portion of their assets in such instruments as this is where their area of expertise lies. Such investors should not be excluded from investing in syndicated mortgages because they do not qualify as “accredited investors”.</p> <p>6) Carving out syndicated mortgages will decrease the ability of investors to diversify their portfolios and will decrease capital available to borrowers.</p> <p>One commenter submits that if the exclusion of syndicated mortgages from the mortgage exemption is maintained, the following changes should be made to accommodate syndicated mortgages:</p> <p>1) Rather than an offering memorandum, mortgage brokers should be allowed to use existing disclosure documents such as the Form 1 (under the <i>Mortgage Brokers Act</i>) in Ontario, which do not carry statutory rights of action.</p> <p>2) Reports of exempt distribution should not be required for syndicated mortgages.</p> <p>3) In Ontario and Newfoundland, there should be a grace period of 4 months for registration as a limited market dealer.</p> <p>4) Exemptions similar to the private issuer exemption in section 2.4 and the family, founder control person exemption in section 2.7 should be created for syndicated mortgages. In each case the term “mortgage broker” could be substituted for the term “issuer”. There may be other exemptions that could be adapted in this way to provide exemptions that are better tailored to meet the requirements of syndicated mortgages.</p>	
<p>84. Section 2.39 - Variable insurance contract</p>	<p>One commenter requested that the CSA consider whether it should exempt trades in variable insurance contracts issued by insurance companies rather than trades in variable insurance contracts by insurance companies. The commenter noted that this change would facilitate the trade of variable</p>	<p>We have not changed the wording as suggested by the commenter. In our view, the exemption does not restrict trades by agents of an insurance company.</p>

	insurance contracts by licensed insurance agents.	
85. Section 2.41 - Schedule III Banks	One commenter suggests that the exemptions for evidences of deposit should be extended to all "Canadian financial institutions" as defined in NI 45-106.	It is not necessary to provide an exemption for evidences of deposit issued by all Canadian financial institutions because in most jurisdictions such evidences of deposit are excluded from the definition of "security" under securities legislation. Jurisdictions that do not have the exclusion provide a local exemption.
86. Section 2.42 - Conversion, exchange, or exercise	One commenter advises that the wording of section 2.42(1)(b) in conjunction with section 2.42(2) could be misconstrued as requiring an issuer to provide notice to regulators in the case of trades of both securities of another issuer that is a reporting issuer and securities of its own issue where the issuer is, itself, a reporting issuer. The commenter recommends clarifying the wording in section 2.42(1)(b) to read as follows, "subject to subsection (2), the issuer trades a security of a reporting issuer <u>held by it</u> to an existing security holder in accordance with the terms and conditions of a security previously issued by that issuer".	We agree. We have added additional wording to clarify.
87. Section 2.42 - Conversion, exchange, or exercise	One commenter recommends adding the words "of the issuer" after "existing security holder" in section 2.42(1)(b). The same commenter also requests that the companion policy give some guidance as to what is required under section 2.42(2)(b) to satisfy a regulator.	We agree. Additional wording has been added. Regarding the second comment, this wording has been in place for some time in provincial securities laws and we are not inclined to add guidance in the Companion Policy because the information that is required will depend on the nature of the particular offering.
88. Section 2.43 - Removal of exemptions - market intermediaries	One commenter questions the connection between section 2.43(1) of the instrument with section 3.2 of the companion policy. Subsection 2.43(1) of the instrument lists the exemptions that are unavailable in Ontario to market intermediaries and section 3.2 of the companion policy states that the exemption listed in subsection 2.44(1) are unavailable to market intermediaries in Newfoundland and Labrador, as well as Ontario.	We have added Newfoundland and Labrador to section 2.43(1).
89. Section 3.6(1) - Small security holder	One commenter observes that CNQ and other marketplaces are not included in section 3.6(1). The commenter also questions the need for an exchange's rules to be "substantially similar". The commenter argues that the rules could be different and still be acceptable.	We have not expanded the list to include the CNQ (see comment # 75). We believe "substantively similar" is an adequate test. If an exchange's rules are different but the exchange believes they are acceptable, then the appropriate course of action would be for the exchange to apply for designation for the purposes of NI 45-106.

<p>90. Section 3.7 - Adviser</p>	<p>One commenter believes section 3.7(b) is too limiting and does not accord with what occurs in practice. Many commentators, including representatives of registered dealers or advisers, comment in newspapers without falling into these narrow exemptions. They may not give advise solely through such media, they may give advise through radio or TV or the emerging free newspapers, or in books, etc. The legitimate investor protection issue is presumably unqualified and unregistered people pushing securities for compensation from the issuer (or a broker), and that should be addressed without unduly restricting freedom of expression and without discouraging educational an informative discussions.</p>	<p>This exemption has been deliberately limited to written publications that are subscribed for. These publications may, under the current wording of the exemption, be delivered electronically. We are not prepared at this time to expand this exemption to include other forms of media such as television because that would require policy analysis that is beyond the scope of this project. We note that section 3.7(a)(v) provides an exemption for registered dealers while registered advisers do not require an exemption.</p>
<p>91. Section 4.1 - Control block distributions</p>	<p>One commenter suggests replacing the language of section 4.1(3)(a)(i) with “has filed the reports required under the early warning requirements or files the reports required under Part 4 of NI 62-103”, in order to clarify that an eligible institutional investor can avail itself of the exemption even if it does not participate in the alternative monthly reporting regime.</p> <p>The commenter also points out a typo in section 4.1(4), which should be corrected by deleting “of” and replacing it with “in”.</p>	<p>We agree. We have made the suggested changes.</p>
<p>92. Section 4.2 - Trade by control person after take-over bid</p>	<p>One commenter notes that the exemption applies to a “take-over bid” as opposed to the current exemption in OSC Rule 45-501 that applies to a “formal bid”.</p>	<p>The exemption has its roots in Ontario securities legislation and was originally restricted to “formal bids”, i.e., bids for which, among other things, a take-over bid circular is issued and filed. However, Québec does not have the concept of a “formal bid”. As a result, the exemption refers to a “take-over bid”. We have clarified in the introductory sentence of subsection 4.2(1) that the exemption is only available if the take-over bid or the competing take-over bid, as the case may be, was a bid for which a take-over bid circular was issued and filed.</p>
<p>93. Section 4.2 - Trade by control person after take-over bid</p>	<p>One commenter advises that section 4.2(2) should also exclude the need to comply with section 4.2(1)(c).</p>	<p>Exclusion of the need to comply with section 4.2(1)(c) would make the exemption available for an indeterminate period whereas a 20-day period of availability is appropriate.</p>
<p>94. Part 5 - Offerings by TSX Venture Exchange</p>	<p>Two commenters were disappointed that the OSC chose not to adopt this exemption. One commenter raised the concern that if the exemption is unavailable in Ontario it will result in a significant subset of TSX Venture Exchange issuers being disadvantaged in their ability to raise funds in Ontario.</p> <p>The other commenter noted that, as with the omission of the offering memorandum exemption, this will actually reduce disclosure and director liability as issuers use exemptions</p>	<p>The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one instrument and to harmonize them to the extent possible within an ambitious time frame. We see the implementation of NI 45-106 as an important first step toward further harmonization of the prospectus and registration exemptions across Canada.</p> <p>We believe the carve-outs and</p>

	requiring no disclosure document or certification of disclosure.	differences that are contained in NI 45-106 are only present where jurisdictions have made compelling arguments to maintain those carve-outs and differences. In particular, the OSC is of the view that proposed changes to NI 44-101 <i>Alternative Forms of Prospectus</i> will make this exemption unnecessary for market participants in Ontario.
95. Section 5.2 - TSX Venture Exchange Offering	One Commenter agrees that the exemption in section 5.2 is not necessary for the Ontario market.	We acknowledge the comment.
96. Part 6: Reporting Requirements s. 6.1 - Report of exempt distribution	One commenter questioned the need for filing reports in connection with private placements. The commenter noted that securities issued pursuant to other exemptions do not require reports to be filed and was uncertain why there was a distinction. The commenter suggested that in lieu of filing a report of exempt distribution issuers of exempt securities could be required to maintain records of such issuance including evidence of compliance for a specified period of time.	We have not removed any filing requirements as we consider this information necessary for the proper regulation of the capital markets.
97. Part 6: Reporting Requirements	One commenter urged the CSA to reconsider the requirement to provide names and personal information of purchaser of securities issued under exemptions. With the advent of privacy laws, the commenter did not see a continued regulatory need for publicly naming purchasers of exempt securities. As an alternative issuers could be required to maintain this information on their own books and records only.	The information provided in Schedule I of Form 45-106 F1 <i>Report of Exempt Distribution</i> requires disclosure of personal information regarding purchasers. However, this information is not made available to the public and this is indicated on the form.
98. Part 6: Reporting Requirements	One commenter suggests that the CSA does not need to continue to publish summaries of the reports of exempt distributions. The commenter questions the need for giving notice to the public of any private placement and especially private placements in non-reporting issuers. For reporting issuers the disclosure should be dealt with under the timely and continuous disclosure obligations.	Not all jurisdictions publish summaries of reports of exempt distributions. But those that do believe notice to the public regarding certain private placements is beneficial while not harming issuers who are able to take advantage of a wide variety of available exemptions. We note that private issuers using the private issuer exemption are not required to file reports of trades.
99. Part 6: Reporting Requirements	One commenter states that there is a discrepancy between the requirement in section 6.1 to file a report in the local jurisdiction in which the distribution takes place and section 1.4 of the companion policy which states that a distribution can occur in more than one jurisdiction. The commenter requests that the CSA clarify the situation and state that a report need only be filed in the jurisdiction where the purchaser resides.	We do not believe there is a discrepancy. We have added guidance in section 5.1 of the Companion Policy to clarify when a report of exempt distribution must be filed. Harmonization across jurisdictions on the question of where trades and distributions occur is beyond the scope of this project.
100. Section 8.1 - transitional	One commenter asks whether section 8.1(1)(a) should be clarified to state that the securities referred to are the initially acquired securities.	We agree. We have made the suggested change.

<p>101. Form 45-106F1</p>	<p>One commenter asks whether additional industries need to be specified in this form, such as retail sales businesses and food service businesses.</p> <p>Also, the commenter asks whether explicit privacy consent is necessary if disclosure is required by law.</p>	<p>We have not added more categories because we have general categories and an “other” category.</p> <p>Privacy legislation in Ontario requires the OSC to obtain consent when it is indirectly collecting personal information. In this case, the OSC is requiring an issuer to collect the personal information of purchasers on behalf of the OSC.</p>
<p>102. Form 45-106F1</p>	<p>One commenter noted that the Form requires disclosure of purchasers in all foreign jurisdictions in addition to each local jurisdiction, and that this requirement will be new in Ontario. The commenter also submitted that there is no need for issuers to file these details (identity, address and phone number for non-Canadian purchasers).</p>	<p>Disclosure of purchasers in all jurisdictions is not a new requirement for most jurisdictions. If a distribution occurs in a jurisdiction of Canada under these exemptions disclosure of this information is required. We believe that disclosure of this information is necessary to protect the integrity of our markets. We also note that information disclosed in Schedule 1 is not publicly available.</p>
<p>103. Companion Policy 1.4</p>	<p>Two commenters seek clarification on the issue of where trades or distributions occur.</p> <p>One commenter believes that the effect of section 1.4 is to unnecessarily restrict Ontario-based issuers from using exemptions. The provision will hurt capital-raising competitiveness vis-à-vis non-Ontario competitors without in any way being relevant to investor protection. The commenter cannot see why, as a policy or constitutional matter any jurisdiction should seek to regulate the raising of capital by companies in its territory from investors in other Canadian jurisdictions. A better approach than section 1.4 would be for each jurisdiction to either confirm the interpretation that the place of residence of the investor determines the exemptions available, or alternatively if they are worried about capital-raising outside Canada, to grant an exemption to issuers based in their jurisdiction in respect of capital-raising in other Canadian jurisdictions. In any event, the “coming to rest” analysis in Interpretation Note 1 should be referred to for Ontario purposes. This applies to other provinces that diverge from the national approach. See also section 3.2 in CP 45-501 in Ontario.</p> <p>One commenter notes that this section is inconsistent with OSC Interpretation Note 1 and asks that the CSA clarify that a distribution only occurs in the jurisdiction where the purchaser resides. The commenter noted that they do not believe that there is any policy reason to take the position that there must be compliance with the legislation of both the jurisdiction of the</p>	<p>Harmonization across jurisdictions on the question of where trades and distributions occur is beyond the scope of this project.</p>

	<p>issuer and that of the purchaser. As the purpose of the legislation is to protect investors, the commenter suggested that there should be dealer registration and prospectus exemptions in the jurisdiction of the seller, if the trade is compliance with the laws of the purchaser.</p>	
<p>104. Companion Policy s. 1.7</p>	<p>One commenter notes that section 1.7 of the Companion Policy has historically (Companion Policy 45-103CP <i>Capital Raising Exemptions</i>) had the effect of preventing a seller or its agent in connection with a trade that is exempt from the dealer registration requirements from giving advice that would be incidental to a trade. The commenter states that this provision should not be interpreted to prevent an unregistered dealer from providing the same type of advice with respect to an exempt trade that a registered dealer could give in connection with a trade. The commenter suggests adding an exemption: "The adviser registration requirement does not apply to a person if the advice given is incidental to a trade that is exempt from the dealer registration requirement".</p>	<p>The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis. The suggestion is properly dealt with under the registration reform project and is not within the scope of NI 45-106.</p>
<p>105. Companion Policy Section 1.8</p>	<p>One commenter believes that section 1.8 should be restricted to the \$150,000 exemption.</p>	<p>We believe syndication is a concern in other contexts as well (for example the private issuer exemption).</p>
<p>106. Companion Policy s. 1.9</p>	<p>One commenter suggests that the wording of section 1.9 be changed to read: "An issuer should request that the purchaser indicate within which branch of the accredited investor definition the purchaser fits." The change would make it clear that it is adequate to follow the current practice of requiring the investor to initial or check a box opposite one of the clauses that make up the definition.</p>	<p>Generally, we believe that anyone relying on an exemption is responsible for determining that a particular exemption is available for the trade they intend to conduct. There may be a range of methods available to make such a determination and it is not appropriate for us to limit those methods. For accredited investors, we believe sellers should determine the appropriate mechanism for satisfying themselves that purchasers are accredited investors. We have added guidance to section 1.10 of the Companion Policy to help issuers ensure that they are using the accredited investor exemption appropriately.</p>
<p>107. Companion Policy Section 3.9(2)</p>	<p>The conditions applicable to the use of the offering memorandum exemption by investment funds as set out in section 3.9(2) of the Companion Policy do not seem to fully reflect the conditions stipulated in subsection 2.9(2) of NI 45-106.</p>	<p>We have clarified the wording in the Companion Policy.</p>
<p>108. Companion Policy Section 4.2</p>	<p>One commenter advises that section 4.2 should refer to the <i>Bankruptcy and Insolvency Act</i>.</p>	<p>The reference in section 4.2 provides an example and we do not believe that the example requires expansion.</p>
<p>109. National Policy 48</p>	<p>One commenter states that the NP 48 should be clarified, hopefully by confirming that it is of no force and effect with respect to any of the exemptions in NI 45-106.</p>	<p>NP 48 is currently being reformulated and this matter will be dealt with in a separate initiative.</p>

110. Limited Market Dealers	<p>Six commenters noted that despite the attempt by the CSA to develop a harmonized prospectus and registration exemption regime, both Ontario and Newfoundland and Labrador continue to require certain market intermediaries who participate in a private placement of securities to be registered as limited market dealers. The commenters questioned the policy, or regulatory, goal of such registration in light of the lack of proficiency, capital and insurance requirements, which are imposed on such market intermediaries. These commenters also suggested that Ontario and Newfoundland and Labrador revisit whether universal registration is appropriate.</p> <p>One of the commenters also noted that this category of registration creates additional confusion in the marketplace and makes it difficult for an issuer to have a unified marketing and distribution plan for all of Canada.</p>	The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis. The limited market dealer category will be considered and public comment will be requested in the context of that project.
111. Sale of pooled funds and other exempt products	One commenter states that it is unreasonable that mutual fund dealers can sell pooled funds and other exempt products in some jurisdictions and yet are prohibited from selling them in others. The commenter also noted that it is imperative that a uniform Canadian standard be established regarding what mutual fund dealers can and cannot sell.	The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis.
112. Trades in mutual fund securities to corporate sponsored plans	One commenter strongly urges the CSA to consider including mutual fund exemptions similar to those found in OSC Rule 32-503 in NI 45-106, so that they are available for the benefit of participants in capital accumulation plans established in all jurisdictions of Canada. The commenter notes that the concerns regarding availability of these exemptions outside of Ontario are not addressed by the proposed exemptions for trades of mutual fund securities to capital accumulation plans set out in CSA Notice 81-405 <i>Proposed Exemptions for Certain Capital Accumulation Plans</i> .	We do not currently intend to incorporate OSC Rule 32-503 into NI 45-106.
113. Capital accumulation plan	Two commenters suggest that the Capital Accumulation Plan exemption should have also been integrated into NI 45-106, as this instrument should harmonize all exemptions in one instrument.	We intend to incorporate the Capital Accumulation Plan exemption into NI 45-106 at a later date.
114. British Columbia's Bonus and Finder's fee exemption	One commenter notes that NI 45-106 does not incorporate the British Columbia exemption for bonuses and finder's fees. The B.C. exemption is useful for TSX Venture issuers to issue securities to non-insiders for services performed in connection with arranging a loan, acquiring or disposing of an asset, or making various other	Jurisdictions outside B.C. are not prepared to adopt this exemption at this time, but will consider adopting it in the future. We note that many of those who might use this exemption may be able to use the "consultant" exemption in section 2.24 of NI 45-106.

	<p>distributions. The commenter suggests that the CSA should adopt this exemption, but without any residency requirements.</p>	<p>The BCSC intends to continue to offer this exemption and will consider deleting the residency restrictions that currently exist.</p>
<p>115. Foreign Advisers</p>	<p>One commenter suggests that a registration exemption should be added for foreign advisers similar to OSC Rule 35-502 <i>Non-Resident Advisers</i>. The commenter notes that the OSC is the only commission with a rule on this point, the other CSA jurisdictions routinely grant foreign advisers exemptive relief from the registration requirements. The commenter recommends the CSA adopt this nationally in the interests of uniformity and in order to provide for greater clarity of the regime as it applies to advisers wishing to do business in the other provinces and territories.</p>	<p>The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis. The issue of non-resident advisers will be discussed in the context of that project.</p>

**APPENDIX C
TO CSA NOTICE OF NATIONAL INSTRUMENT 45-106**

SUMMARY OF CHANGES TO THE INSTRUMENT

This summary sets out the changes made to proposed NI 45-106 *Prospectus and Registration Exemptions* that was published for comment on December 17, 2004. Please refer to Appendix B for an explanation of these changes.

NI 45-106

Part 1 Definitions and Interpretations

- the definitions of “private issuer”, “syndicated mortgage” and “variable insurance contract” were moved from Part 1 to sections 2.4, 2.36 and 2.39 respectively since these terms are only used once.
- definition of “accredited investor”
 - we added four entities particular to Québec in paragraph (g).
 - we added a subparagraph (iii) to paragraph (n) to clarify that an investment fund that meets the criteria in subparagraphs (i) or (ii) is not disqualified from being an accredited investor simply because the investment fund offers a reinvestment plan.
 - we changed paragraph (p) to refer to the defined term “fully managed account”.
 - the Ontario carve-out in paragraph (q) for foreign advisers has been deleted and the current Ontario provision for fully managed accounts that restricts purchases of securities to securities that are not securities of investment funds has been reinstated. The latter change maintains the status quo in Ontario.
 - the reference to “legal” in paragraph (t) has been deleted since the term was redundant.
 - we changed paragraph (v) to permit exempt purchasers in British Columbia and Alberta to be recognized as accredited investors.
- definition of “Canadian financial institution” - We added the revised term “financial services cooperative” in order to reflect the meaning of this expression under the Act respecting financial services cooperatives (Québec), which now, in Québec, encompasses caisses populaires and other similar entities.
- section 1.5 [Underwriter exemption] - We have deleted this provision.
- section 1.6 [Definition of trade - Québec] - We have added a reference to section 5 of the *Securities Act* (Québec) and we deleted paragraph (g) of the publication for comment draft.
- Part 2 Prospectus and Registration Exemptions
 - section 2.2 [Reinvestment plan] - We changed paragraph (a) of subsection (1) to remove the requirement that the security holder “direct” that dividends or other distributions be reinvested. We also clarified subsection (3) to apply only to security holders in Canada.
 - section 2.3 [Accredited investor] - We changed subsection (6) to refer to persons that are created or used “solely” to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of “accredited investor” in section 1.1.
 - section 2.9 [Offering memorandum] - We changed subsection (5) to refer to entities created or used “solely” to purchase or hold securities in reliance on this exemption.
 - section 2.10 [Minimum amount investment] - We added paragraph (c) to subsection (1) to clarify that the exemption is available for a trade in a security of a single issuer. We also changed subsection (3) to refer to entities created or used “solely” to purchase or hold securities in reliance on this exemption.

- section 2.16 [Take-over bid and issuer bid] - We changed “under” to “in connection with” to make it clear that the exemption applies to all trades, including trades of tendered securities and trades of securities that are exchanged for tendered securities.
- section 2.18 [Investment fund reinvestment] - We changed paragraph (a) of subsection (1) to remove the requirement that the security holder “direct” that dividends or other distributions be reinvested. We also clarified subsection (3) to apply only to security holders in Canada.
- section 2.19 [Additional investment in investment funds] - We reorganized this section for clarity.
- section 2.22 [Division 4: Employee, Executive Officer, Director and Consultant Exemptions - definitions] - Under the definition of “listed issuer” we deleted references to any successor to any of the entities enumerated under the definition of “listed issuer” in paragraphs (a)(vi) and (b).
- section 2.30 [Division 5: Miscellaneous Exemptions - incorporation or organization] - We have deleted this exemption.
- section 2.31 [Dividends and distributions - section 2.32 of publication for comment draft] - We have added “distributions” to this exemption to permit non-corporate entities to make dividend-like distributions. We also clarified in subsection (2) that the distribution must be “out of earnings or surplus”.
- section 2.34 [Guaranteed debt - section 2.35 of publication for comment draft] We have qualified paragraph (e) to apply only in Ontario. We have deleted the requirement for certain debt securities to be rated by a rating agency if the trade occurs in British Columbia.
- section 2.36 [Mortgages - section 2.37 of publication for comment draft] - In subsection (2), we clarified that the trade must occur in the local jurisdiction. We have included syndicated mortgages within the exemption in all jurisdictions except British Columbia, Manitoba, Québec and Saskatchewan.
- section 2.39 [Variable insurance contract - section 2.40 of publication for comment draft] - We added a definition for “insurance company” for clarification.
- section 2.43 [Removal of exemptions- market intermediaries - section 2.44 of publication for comment draft] We added a reference to Newfoundland and Labrador and reorganized the section for clarity.

Part 3: Registration Only Exemptions

- section 3.8 [Investment dealer acting as portfolio manager] - We have identified that the IDA rules, policies or instruments that apply to this exemption in British Columbia must be previously filed with and not objected to by, the securities regulatory authority in British Columbia. This is consistent with the exemption in British Columbia’s current legislation. We also made it clear that any partner, director, officer or employee of a registered investment dealer who manages an investment portfolio for the registered investment dealer must be registered under the securities legislation of the jurisdiction to trade in securities.

Part 4: Control Block Distributions

- section 4.2 [Trades by a control person after a take-over bid] - We clarified that the take-over bid must be one for which a take-over bid circular was issued and filed.
- Part 8: Transitional, Coming Into Force.
- sections 8.1 and 8.2 [Additional investment - investment funds/Definition of “accredited investor” - investment fund] - We have added legislative references for several of the jurisdictions.
- section 8.3 [Transition - MI 45-103/MI 45-105/OSC Rule 45-501] - We have added a transition provision to address trades or distributions made in reliance on MI 45-103, MI 45-105 and Ontario Securities Commission Rule 45-501 *Exempt Distributions*.
- section 8.4 [Transition - closely-held issuer] - We have added a resale transition provision for security holders of closely-held issuers.

Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers

- the offering [cover page]- We have added a requirement that the offering memorandum include additional minimum subscription information.
- section 2.7 [material agreements] - Under paragraph (iii) we have added an additional disclosure category - "description of any service provided".
- item 8 [risk factors] - Under paragraph (b) we have added an additional example of risks to the issuer - "dependence on financial viability of guarantor".

Form 45-106F3 Offering Memorandum for Qualifying Issuers

- the offering [cover page]- We have added a requirement that the offering memorandum include additional minimum subscription information.
- item 8 [risk factors] - Under paragraph (b) we have added an additional example of risks to the issuer - "dependence on financial viability of guarantor".

Companion Policy 45-106CP Prospectus and Registration Exemptions

Part 1 - Introduction

- section 1.8 [underwriters] - Since section 1.5 of the Instrument was deleted, we have added a discussion about underwriters and their use of exemptions with a view to distribution.
- section 1.10 [responsibility for compliance] - We have added a discussion regarding the seller's assessment of a purchaser as an "accredited investor".

Part 3 - Capital Raising Exemptions

- section 3.5 [Accredited investor, exempt purchaser] -We have added a discussion to explain that an applicant should apply for recognition as an exempt purchaser in Alberta and British Columbia pursuant to the appropriate local rules in either of these provinces.
- section 3.9 [offering memorandum] - We have clarified the use of the offering memorandum exemption by investment funds.

Part 5 - Forms

- section 5.1 [report of exempt distributions] - We have added guidance for determining whether a report of exempt distributions needs to be filed.

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**APPENDIX D
TO CSA NOTICE OF NATIONAL INSTRUMENT 45-106**

TABLE OF CONCORDANCE

This table has been prepared as a reference tool to assist users of NI 45-106. This table should be viewed as guidance only and should not be considered or relied upon as legal advice.

NI 45-106							
Section #	Exemption	British Columbia		Alberta		Saskatchewan	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 2: Prospectus and Registration Exemptions							
Division 1: Capital Raising Exemptions							
2.1	Rights Offering	BCSA: s. 45(2)(8)(i)	BCSA: s. 74(2)(7)(i)	ASA: s. 86(1)(o)(i)	ASA: s. 131(1)(h)(i)	SSA: s. 39(1)(o)	SSA: s. 81(1)(h)
2.2	Reinvestment Plan	BCSA: s. 45(2)(11)	BCSA: s. 74(2)(10)	ASA: s. 86(1)(cc)	ASA: s. 131(1)(y)	SSA: s. 39(1)(ff)	SSA: s. 81(1)(cc)
2.3	Accredited Investor	MI 45-103: s. 5.1(1)	MI 45-103: s. 5.1(2)	MI 45-103: s. 5.1(1)	MI 45-103: s. 5.1(2)	SSA: s. 39(1)(c); s. 39(3)(a)(b); MI 45-103 s. 5.1	SSA: s. 81(1)(a); s. 81(2)(a)(b); MI 45-103 s. 5.1
2.4	Private Issuer	MI 45-103: s.2.1(1)	MI 45-103: s.2.1(2)	MI 45-103: s. 2.1(1)	MI 45-103: s. 2.1(2)	SSA: s. 39(2)(k); MI 45-103 s. 2.1	SSA: s. 82(1)(a); MI 45-103 s. 2.1
2.5	Family, Friends and Business Associates	MI 45-103: s.3.1(1)	MI 45-103: s.3.1(2)	MI 45-103: s. 3.1(1)	MI 45-103: s. 3.1(2)	SSA: s. 39(1)(cc); MI 45-103 s. 3.1	SSA: s. 81(1)(z); MI 45-103 s. 3.1
2.7	Founder, Control Person and Family - Ontario	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision

NI 45-106							
Section #	Exemption	British Columbia		Alberta		Saskatchewan	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.8	Affiliates	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.9	Offering Memorandum	MI 45-103: s. 4.1(1)	MI 45-103: s. 4.1(3)	MI 45-103: s. 4.1(3)	MI 45-103: s. 4.1(4)	SSA: s. 39(1)(y); MI 45-103 s. 4.1	SSA: s. 81(1)(s); MI 45-103 s. 4.1
2.10	Minimum Amount Investment	BCSA: s. 45(2)(5)	BCSA: s. 74(2)(4)	ASC General Rules: s. 66.2	ASC General Rules: s. 122.2	SSA: s. 39(1)(e);	SSA: s. 81(1)(d);
Division 2: Transaction Exemptions							
2.11	Business Combination and Reorganization	BCSA: s. 45(2)(9)(i) and (ii), and s. 45(2)(12)(ii)	BCSA: s. 74(2)(8) (i) and (ii), and s. 74(2)(11)(ii)	ASA: s. 86(1) (m)(ii), (p) & (dd)	ASA: s. 131(1)(i), (f)(ii), (z)	SSA: s. 39(1)(m)(ii);(p),(p.1)	SSA: s. 81(1)(f)(ii);(i),(i.1)
2.12	Asset Acquisition	BCSA: s. 45(2)(6)	BCSA: s. 74(2)(5)	ASA: s. 86(1)(s) & ASC Gen Rules s. 66.1	ASA: s. 131(1)(l) & ASC Gen Rules s. 122.1	SSA: s. 39(1)(t)	SSA: s. 81(1)(m)
2.13	Petroleum, Natural Gas and Mining Properties	BCSA: s. 45(2)(21)	BCSA: s. 74(2)(18)	ASA: s. 87(k)	ASA: s. 131(1)(m)	SSA: s. 39(1)(z)	SSA: s. 81(1)(n)
2.14	Securities for Debt	BCSC Rules: s. 89(c)	BCSC Rules: s. 128 (e)	No analogous provision	No analogous provision	SSA: s. 39(1)(m.1)	SSA: s. 81(1)(f.1)
2.15	Issuer Acquisition or Redemption	BCSA: s. 45(2)(29)	BCSA: s. 74(2)(27)	ASA s. 86(1)(t)	ASA s. 131(1)(n)	SSA: s. 39(1)(s)	SSA: s. 81(1)(l)

NI 45-106							
Section #	Exemption	British Columbia		Alberta		Saskatchewan	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.16	Take-over Bid and Issuer Bid	BCSA: ss. 45(2)(24) and (28)	BCSA: s. 74(2)(21), (24), (25) and (26)	ASA s. 86(1)(q), (r) and (ee)	ASA s. 131(1)(j), (k) and (aa)	SSA: s. 39(1)(q),(r)	SSA: s. 81(1)(j),(k)
2.17	Offer to Acquire to Security Holder Outside Local Jurisdiction	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision

Division 3: Investment Fund Exemptions							
2.18	Investment Fund Reinvestment	BCSA: s. 45(2)(25)	BCSA: s. 74(2)(22)	ASC General Rules: s. 66(b)	ASC General Rules: s. 122(b)	SSA: s. 39(1)(gg)	SSA: s. 81(1)(dd)
2.19	Additional Investment in Investment Funds	BCSA: s. 45(2)(22)	BCSA: s. 74(2)(19)	ASC General Rules: s. 66(c)	ASC General Rules: s. 122(c)	SSA: s. 39(1)(hh)	SSA: s. 81(1)(ee)
2.20	Private Investment Club	BCSA: s. 46(c)	BCSA: s. 75(a)	ASA: s. 87(c)	ASA: s. 143(1)(a)	SSA: s. 39(2)(C)	SSA: s. 82(1)(a)
2.21	Private Investment Fund - Loan and Trust Pools	BCSA: s. 46(c)	BCSA: s. 75(a)	ASA: s. 87(c)	ASA: s. 143(1)(a)	SSA: s. 39(2)(d)	SSA: s. 82(1)(a)
Division 4: Employee, Executive Officer, Director and Consultant Exemptions							
2.24	Employee, Executive Officer, Director, and Consultant	BCSA: s. 45(2)(10)(i)(ii)(iii), BCSC Rules: s. 89(f), MI 45-105: s. 2.1(1)	BCSA: s. 74(2)(9) (i)(ii)(iii), BCSC Rules: s. 128(g) and MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	SSA: s. 39(1)(u); MI 45-105: s. 2.1(1)	SSA: s. 81(1)(o); MI 45-105: s. 2.1(2)

NI 45-106							
Section #	Exemption	British Columbia		Alberta		Saskatchewan	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.26	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of Non-Reporting Issuer	MI 45-105: s.2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)
2.27	Permitted Transferees	BCSA: s.45(2)(10)(iii) and MI 45-105 s.2.4(1), (2)	BCSA: s. 74(2)(9)(iii) and MI 45-105: s.2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)
2.28	Resale - Non-reporting Issuer	MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2	
2.29	Issuer Bid	MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only	
Division 5: Miscellaneous Exemptions							
2.30	Isolated Trade by Issuer	BCSA: s. 45(2)(3)	BCSA: s. 74(2)(2)	ASA: s. 86(1)(b)	ASA: s. 131(1)(b)	SSA: s. 39(1)(b)	SSA: s. 81(1)(b)
2.31	Dividends and Distributions	BCSA: s. 45(2)(12)(i) s. 45(2)(14)	BCSA: s. 74(2)(11)(i), s. 74(2)(13)	ASA: s. 86(1)(m)(i) and (n)	ASA: s. 131(1)(f)(i) & (g)	SSA: s. 39(1)(m)(i);(n)	SSA: s. 81(1)(f)(i);(g)
2.32	Trade to Lender by Control Person for Collateral	No analogous provision	No analogous provision	ASA: s. 86(1)(f)	ASA: s. 131(1)(e)	SSA: s. 39(1)(f)	SSA: s. 81(1)(e)
2.33	Acting as Underwriter	BCSA: s. 45(2)(16)	BCSA: s. 74(2)(15)	No analogous provision	No analogous provision	SSA: s. 39(1)(i)	SSA: s. 81(1)(u)

NI 45-106							
Section #	Exemption	British Columbia		Alberta		Saskatchewan	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.34	Guaranteed Debt	BCSA: s. 46(a)	BCSA: s. 75(a)	ASA: s. 87(a) and (b)	ASA: s. 143(1)(a)	SSA: s. 39(2)(a)	SSA: s. 82(1)(a)
2.35	Short-term debt	BCSA: s. 46(d)	BCSA: s. 75(a)	ASA: s. 87(d)	ASA: s. 143(1)(a)	SSA: s. 39(2)(e)	SSA: s. 82(1)(a)
2.36	Mortgages	BCSA: s. 46(e)	BCSA: s. 75(a)	ASA: s. 87(e)	ASA: s. 143(1)(a)	SSA: s. 39(2)(f)	SSA: s. 82(1)(a)
2.37	Personal Property Security Act	BCSA: s. 46(f)	BCSA: s. 75(a)	ASA: s. 87(f)	ASA: s. 143(1)(a)	SSA: s. 39(2)(g)	SSA: s. 82(1)(a)
2.38	Not for profit issuer	BCSA: s. 46(g)	BCSA: s. 75(a)	ASA: s. 87(g)	ASA: s. 143(1)(a)	SSA: s. 39(2)(h)	SSA: s. 82(1)(a)
2.39	Variable Insurance Contract	BCSA: s. 46(l)	BCSA: s. 75(a)	ASA: s. 87(l)	ASA: s. 143(1)(a)	SSA: s. 39(2)(o)	SSA: s. 82(1)(a)
2.40	RRSP/RRIF	No analogous provision	No analogous provision	ASC Rule 45-502	ASC Rule 45-502	MI 45-105 (Limited to certain RRSPs)	MI 45-105 (Limited to certain RRSPs)
2.41	Schedule III Banks and Cooperative Associations - evidence of deposit	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.42	Conversion, Exchange, or Exercise	BCSA: s. 45(2)(8)(ii), s. 45(2)(12)(iii), and MI 45-105: s. 2.3(1)	BCSA: s. 74(2)(7)(ii), s. 74(2)(11)(iii) MI 45-105: s. 2.3(2)	ASA: s. 86(1)(m)(iii) & MI 45-105: s. 2.3(1)	ASA: s. 131(1)(f)(iii) & MI 45-105: s. 2.3(2)	SSA: s. 39(1)(m)(iii), (iv)	SSA: s. 81(1)(f)(iii), (iv)

NI 45-106							
Section #	Exemption	British Columbia		Alberta		Saskatchewan	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 3: Registration Only Exemptions							
3.1	Registered Dealer	BCSA: s. 45(2)(7)		ASA: s. 86(1)(j)		SSA: s. 39(1)(j)	
3.2	Exchange Contract	BCSA: s. 47		ASA: s. 88		SSA: s. 39.1	
3.3	Isolated Trade	BCSA: s.45(2)(3)		ASA: s. 86(1)(b)		SSA: s. 39(1)(b)	
3.4	Estates, Bankruptcies, and Liquidations	BCSA: s. 45(2)(1)(i)-(vi)		ASA: s. 86(1)(a)		SSA: s. 39(1)(a)	
3.5	Employees of Registered Dealer	No analogous provision		ASA: s. 86(1)(h)		SSA: s. 39(1)(h)	
3.6	Small Security Holder Selling and Purchase Arrangements	NI 32-101		NI 32-101		NI 32-101	
3.7	Adviser	BCSA: s. 44(2)		ASA: s. 85		SSA: s. 38	
3.8	Investment Dealer Acting as Portfolio Manager	BCSC Rules: s. 86		ASC General Rules: s. 65		SReg.: s. 60	

NI 45-106							
Section #	Exemption	British Columbia		Alberta		Saskatchewan	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 4: Control Block Distributions							
4.1	Control Block Distributions		NI 62-101		NI 62-101		NI 62-101
4.2	Trades by a Control Person After a Take-Over Bid		No analogous provision		ASC General Rules: s. 123.1		Sreg.: s. 99
Part 5: Offerings by TSX Venture Exchange Offering Document							
5.2	TSX Venture Exchange Offering		BCI 45-509 Prospectus Exemption Only		ASC Blanket Order 45-507, Prospectus Exemption Only		SFSC GRO 45-910, Prospectus Exemption Only

NI 45-106							
Section #	Exemption	Manitoba		Ontario		Québec	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 2: Prospectus and Registration Exemptions							
Division 1: Capital Raising Exemptions							
2.1	Rights Offering	MSA: s. 19(1)(i)	MSA: s. 58(1)(b)	OSA: s. 35(1)14(i)	OSA: s. 72(1)(h)(i)	QSA : s. 155.1 2°	QSA :s. 52 1°, 52 3°, and 53
2.2	Reinvestment Plan	MSA: s. 19(1)(h.2), Order 230/87 (mutual funds)	MSA: s. 58(1)(b), Order 230/87 (mutual funds)	OSC Rule 45-502	OSC Rule 45-502	QSA: s. 155.1 2°	QSA: s. 52 2°, 52 3° and 53
2.3	Accredited Investor	MSA: s. 19(1)(c), 19(1)(f) MI 45-103 s. 5.1	MSA: s. 58(1)(a), 58(1)(b), 58(1)(c), 58(2) MI 45-103 s. 5.1	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	QSA: s. 157	QSA: s. 43, 44 and 45 (sophisticated purchaser)
2.4	Private Issuer	MSA: s. 19(2)(i) MI 45-103 s. 2.1	MSA: s. 58(3)(a) MI 45-103 s. 2.1	No analogous provision	No analogous provision	QSA: s. 3 2° (closed company)	QSA: s. 3 2° (closed company)
2.5	Family, Friends and Business Associates	MI 45-103: s. 3.1	MI 45-103: s. 3.1	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.7	Founder, Control Person and Family - Ontario	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	No analogous provision	No analogous provision
2.8	Affiliates	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	No analogous provision	No analogous provision
2.9	Offering Memorandum	MI 45-103: s. 4.1	MI 45-103: s. 4.1	No analogous provision	No analogous provision	QSA: s. 155.1 2°	QSA: s. 47, 48 and 48.1 and QSR: s. 66

NI 45-106							
Section #	Exemption	Manitoba		Ontario		Québec	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.10	Minimum Amount Investment	MSA: s. 19(3) Reg. s. 90	MSA: s. 58(1)(a) Reg s. 90	No analogous provision	No analogous provision	QSA: s. 155.1 2°	QSA: s. 51
Division 2: Transaction Exemptions							
2.11	Business Combination and Reorganization	MSA: s. 19(1)(h.3)	MSA: s. 58(1)(b)	OSC Rule 45-501: s. 2.8, OSA: s. 35(1)12(ii), s. 35(1)15	OSC Rule 45-501: s. 2.8, OSA: s. 72(1)(f)(ii), s. 72(1)(i)	QSA: s. 155.1 2°	QSA: s. 50
2.12	Asset Acquisition	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.16	OSC Rule 45-501: s. 2.16	No analogous provision	No analogous provision
2.13	Petroleum, Natural Gas and Mining Properties	MSA: s. 19(1)(b)(v), 19(1)(l)(iii)	MSA: s. 58(1)(b)	OSA: s. 35(2)14	OSA: s. 72(1)(m)	No analogous provision	No analogous provision
2.14	Securities for Debt	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.15	Issuer Acquisition or Redemption	MSA: s. 19(1)(h.1)	MSA: s. 58(1)(b)	OSC Rule 45-501: s. 2.3	OSC Rule 45-501: s. 2.3	No analogous provision	No analogous provision
2.16	Take-over Bid and Issuer Bid	MSA: s. 19(1)(k)	MSA: s. 58(1)(b)	OSA: s. 35(1)16,17, OSC Rule 45-501: s. 2.5	OSA: s. 72(1)(j),(k), OSC Rule 45-501: s. 2.5	QSA : s. 155.1 2.1°	QSA : s. 63
2.17	Offer to Acquire to Security Holder Outside Local Jurisdiction	No analogous provision	No analogous provision	OSC Rule 45-501: s. 2.15	OSC Rule 45-501: s. 2.15	No analogous provision	No analogous provision

NI 45-106							
Section #	Exemption	Manitoba		Ontario		Québec	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Division 3: Investment Fund Exemptions							
2.18	Investment Fund Reinvestment	No analogous provision	No analogous provision	OSC Rule 81-501	OSC Rule 81-501	QSA: s. 155.1 2°	QSA: s. 52 2° and 53
2.19	Additional Investment in Investment Funds	No analogous provision	No analogous provision	OSC Rule 45-501: s.2.12(1)	OSC Rule 45-501: s.2.12(1)	No analogous provision	No analogous provision
2.20	Private Investment Club	No analogous provision	No analogous provision	OSA: s. 35(2)3	OSA: s. 73(1)(a)	QSA: s. 3 12°	QSA: s. 3 12°
2.21	Private Investment Fund - Loan and Trust Pools	No analogous provision	No analogous provision	OSA: s. 35(2)3, OSC Rule 45-501: s.3.3	OSA: s. 73(1)(a), OSC Rule 45-501: s.3.3	No analogous provision	No analogous provision
Division 4: Employee, Executive Officer, Director and Consultant Exemptions							
2.24	Employee, Executive Officer, Director, and Consultant	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	QSA: s. 155.1 2°	QSA: s. 52 5° (for employees and senior executives only) and Policy Statement Q3
2.26	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of Non-Reporting Issuer	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	No analogous provision	No analogous provision

NI 45-106							
Section #	Exemption	Manitoba		Ontario		Québec	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.27	Permitted Transferees	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	No analogous provision	No analogous provision
2.28	Resale - Non-reporting Issuer	MI 45-105: s. 3.2		MI 45-105: s. 3.2		No analogous provision	
2.29	Issuer Bid	MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		QSA: s. 147.21 3°, Issuer Bid Exemption Only	
Division 5: Miscellaneous Exemptions							
2.30	Isolated Trade by Issuer	MSA: s. 19(1)(b)	MSA: s. 58(1)(b)	OSA: s. 35(1)2	OSA: s. 72(1)(b)	QSA: s. 3 8°	QSA: s. 3 8° (for debt securities only)
2.31	Dividends and Distributions	MSA: s. 19(1)(h.2)	MSA: s. 58(1)(b)	OSA: s. 35(1)12(i), 13	OSA: s. 72(1)(f)(i),(g)	QSA: s. 155.1 2°	QSA: s. 52 2°
2.32	Trade to Lender by Control Person for Collateral	No analogous provision	No analogous provision	OSA: s. 35(1)6	OSA: s. 72(1)(e)	No analogous provision	No analogous provision
2.33	Acting as Underwriter	MSA: s. 19(1)(f)	MSA: s. 58(1)(b)	OSA: s. 35(1)9	OSA: s. 72(1)(r)	QSA: s. 155.1 2°	QSA: s. 55
2.34	Guaranteed Debt	MSA: s. 19(2)(a)	MSA: s. 58(3)(a)	OSA: s. 35(2)1, 2, OSC Rule 45-501: s. 2.10	OSA: s. 73(1)(a), OSC Rule 45-501: s. 2.10	QSA: s. 3 par 1°, 14° and 15° and s. 157.1 2°	QSA: s. 3 par 1°, 14° and 15° and s. 41
2.35	Short-term debt	MSA: s. 19(2)(c)	MSA: s. 58(3)(a)	OSA: s. 35(2)4	OSA: s. 73(1)(a)	QSA: s. 155.1 2°	QSA: s. 41 3°

NI 45-106							
Section #	Exemption	Manitoba		Ontario		Québec	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.36	Mortgages	MSA: s. 19(2)(d)	MSA: s. 58(3)(a)	OSA: s. 35(2)5	OSA: s. 73(1)(a)	No analogous provision	No analogous provision
2.37	Personal Property Security Act	MSA: s. 19(2)(e)	MSA: s. 58(3)(a)	OSA: s. 35(2)6	OSA: s. 73(1)(a)	QSA: s. 3 7°	QSA: s. 3 7°
2.38	Not for profit issuer	MSA: s. 19(2)(f)	MSA: s. 58(3)(a)	OSA: s. 35(2)7	OSA: s. 73(1)(a)	QSA: s. 3 3°	QSA: s. 3 3°
2.39	Variable Insurance Contract	Man. Reg. 491/88R: s. 76	Man. Reg. 491/88R: s. 76	OSC Rule 45-501: s. 2.2	OSC Rule 45-501: s. 2.2	QSA : s. 3 13°	QSA : s. 3 13°
2.40	RRSP/RRIF	MI 45-105 (Limited to certain RRSPs)	MI 45-105 (Limited to certain RRSPs)	OSC Rule 45-501: s. 2.11	OSC Rule 45-501: s. 2.11	No analogous provision	No analogous provision
2.41	Schedule III Banks and Cooperative Associations - evidence of deposit	MSA: s. 19(1)(c)	MSA: s. 58(1)(a)	No analogous provision	No analogous provision	QSA: s. 3 9°	QSA: s. 3 9°
2.42	Conversion, Exchange, or Exercise	MSA: s. 19(1)(h), 19(1)(h.1), 19(1)(h.2)	MSA: s. 58(1)(b)	OSA: s. 35(1)12(iii), s. 35(1)14(ii), OSC Rule 45-501: s. 2.6, s. 2.7	OSA: s. 72(1)(f)(iii), s. 72(1)(h)(ii), OSC Rule 45-501: s. 2.6, s. 2.7	QSA: s. 155.1 2°	QSA: s. 52 1° and 52 4°
Part 3: Registration Only Exemptions							
3.1	Registered Dealer	MSA: s. 19(1)(g)		OSA: s. 35(1)10		QSA: s. 155.1 1°	

NI 45-106							
Section #	Exemption	Manitoba		Ontario		Québec	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
3.2	Exchange Contract	No analogous provision		No analogous provision		No analogous provision	
3.3	Isolated Trade	MSA: s. 19(1)(b)		OSA: s. 35(1)2		No analogous provision	
3.4	Estates, Bankruptcies, and Liquidations	MSA: s. 19(1)(a)		OSA: s. 35(1)1, Ont. Reg. 1015: s.151(b)		QSA: s. 155.1 5°, 3 8°	
3.5	Employees of Registered Dealer	MSA: s.19(1)(e)		OSA: s. 35(1)8		No analogous provision	
3.6	Small Security Holder Selling and Purchase Arrangements	Orders 162/87 (TSE) and 410/87 (ME)		NI 32-101		NI 32-101	
3.7	Adviser	18(a), (b), (c) and (d)		OSA: s. 34(a-d)		QSA: s. 156	
3.8	Investment Dealer Acting as Portfolio Manager	No analogous provision		Ont. Reg. 1015: s.148		QSR: s. 194	
Part 4: Control Block Distributions							
4.1	Control Block Distributions		NI 62-101		NI 62-101		No analogous provision
4.2	Trades by a		No analogous provision		OSC Rule 45-501: s. 2.4		No analogous provision

NI 45-106							
Section #	Exemption	Manitoba		Ontario		Québec	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
	Control Person After a Take-Over Bid						
Part 5: Offerings by TSX Venture Exchange Offering Document							
5.2	TSX Venture Exchange Offering		MSA: s. 58(3)(b), 58(3)(c), Prospectus Exemption Only		No analogous provision		No analogous provision

NI 45-106							
Section #	Exemption	Nova Scotia		New Brunswick		PEI	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 2: Prospectus and Registration Exemptions							
Division 1: Capital Raising Exemptions							
2.1	Rights Offering	NSSA: s. 41(1)(o)(i)	NSSA: s. 77(1)(h)(i)	NBSC Rule 45-501: s. 2.1(1)	NBSC Rule 45-501: s. 2.1(2)	PEISA: s.2(3)(q)(i)	PEISA: s.13(1)(k)(i)
2.2	Reinvestment Plan	NSSA: s. 41(1)(z) and (za)	NSSA: s. 77(1)(v) and (va)	NBSC Rule 45-501: s. 2.2(1)(2)(4)	NBSC Rule 45-501: s. 2.2(3)	PEI Rule 45-506	PEI Rule 45-506
2.3	Accredited Investor	MI 45-103: s. 5.1(1), NSSA: s. 41(1)(c), (d) and (l)	MI 45-103: s. 5.1(2), NSSA: s. 77(1)(a) and (c)	NBSC Rule 45-501: s. 2.3	NBSC Rule 45-501: s. 2.3	MI-45-103	MI 45-103
2.4	Private Issuer	MI 45-103: s. 2.1(1), NSSA: s. 41(2)(j)	MI 45-103: s. 2.1(2), NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.4(1)	NBSC Rule 45-501: s. 2.4(2)	MI-45-103 PEISA: s. 2(4)(h)	MI 45-103 PEISA: s. 14.1(a)
2.5	Family, Friends and Business Associates	MI 45-103: s. 3.1(1), NSSA: s. 41(1)(w) and (x)	MI 45-103: s. 3.1(2), NSSA: s. 77(1)(s) and (t)	NBSC Rule 45-501: s. 2.5(1)	NBSC Rule 45-501: s. 2.5(2)	MI 45-103	MI 45-103
2.7	Founder, Control Person and Family - Ontario	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.8	Affiliates	No analogous provision	No analogous provision	NBSC Rule 45-501: s. 2.6(1)	NBSC Rule 45-501: s. 2.6(2)	No analogous provision	No analogous provision

NI 45-106							
Section #	Exemption	Nova Scotia		New Brunswick		PEI	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.9	Offering Memorandum	MI 45-103: s. 4.1(1), NSSA: s. 41(1)(v)	MI 45-103: s. 4.1(2), NSSA: s. 77(1)(p)	NBSC Rule 45-501: s. 2.7 (1)	NBSC Rule 45-501: s. 2.7 (2)	MI 45-103	MI 45-103
2.10	Minimum Amount Investment	NSSA: s. 41(1)(e)	NSSA: s. 77(1)(d)	NBSC Rule 45-501: s. 2.8 (1)	NBSC Rule 45-501: s. 2.8 (2)	PEISA: s. 2(3)(d)	PEISA: s. 13(1)(c)
Division 2: Transaction Exemptions							
2.11	Business Combination and Reorganization	NSSA: 41(1)(m)(ii) and 41(1)(p), Blanket Order No. 45-503	NSSA: s. 77(1)(f)(ii) and 77(1)(i), Blanket Order No. 45-503	NBSC Rule 45-501: s. 2.9 (1)	NBSC Rule 45-501: s. 2.9 (2)	PEI Rule 45-502 and PEISA: s. 2(3)(k), s. 2(3)(j)(ii)	PEI Rule 45-502 and PEISA: s. 13(1)(f) s. 13(1)(e)(ii)
2.12	Asset Acquisition	NSSA: s. 41(1)(s)	NSSA: s. 77(1)(l)	NBSC Rule 45-501: s. 2.10 (1)	NBSC Rule 45-501: s. 2.10 (2)	No analogous provision	PEISA: s. 13(1)(g)
2.13	Petroleum, Natural Gas and Mining Properties	NSSA: s. 41(2)(n)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.11 (1)	NBSC Rule 45-501: s. 2.11 (2)	No analogous provision	No analogous provision
2.14	Securities for Debt	No analogous provision	No analogous provision	NBSC Rule 45-501: s. 2.12 (1)	NBSC Rule 45-501: s. 2.12 (2)	No analogous provision	No analogous provision
2.15	Issuer Acquisition or Redemption	NSSA: s. 41(1)(ad)	NSSA: s. 77(1)(x)	NBSC Rule 45-501: s. 2.13 (1)	NBSC Rule 45-501: s. 2.13 (2)	No analogous provision	No analogous provision
2.16	Take-over Bid and Issuer Bid	NSSA: s. 41(1)(q) and (r)	NSSA: s. 77(1)(j) and (k)	NBSC Rule 45-501: s. 2.14 (10)	NBSC Rule 45-501: s. 2.14 (2)	PEI Rule 45-510	PEI Rule 45-510

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Section #	Exemption	Nova Scotia		New Brunswick		PEI	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.17	Offer to Acquire to Security Holder Outside Local Jurisdiction	No analogous provision	No analogous provision	NBSC Rule 45-501: s. 2.15 (1)	NBSC Rule 45-501: s. 2.15 (2)	No analogous provision	No analogous provision
Division 3: Investment Fund Exemptions							
2.18	Investment Fund Reinvestment	NSSA: s. 41(1)(ai)	NSSA: s. 77(1)(ac)	NBSC Rule 45-501: s. 2.16 (1)	NBSC Rule 45-501: s. 2.16(3)	PEI Rule 45-508	PEI Rule 45-508
2.19	Additional Investment in Investment Funds	NSSA: s. 41(1)(aj)	NSSA: s. 77(1)(ad)	NBSC Rule 45-501: s. 2.17 (1)	NBSC Rule 45-501: s. 2.17 (2)	PEI Rule 45-512	PEI Rule 45-512
2.20	Private Investment Club	NSSA: s. 41(2)(c)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.18 (1)	NBSC Rule 45-501: s. 2.18 (2)	PEI Rule 45-505	PEI Rule 45-505
2.21	Private Investment Fund - Loan and Trust Pools	Blanket Order No. 13	Blanket Order No. 13	NBSC Rule 45-501: s. 2.19 (1)	NBSC Rule 45-501: s. 2.19 (2)	No analogous provision	No analogous provision
Division 4: Employee, Executive Officer, Director and Consultant Exemptions							
2.24	Employee, Executive Officer, Director, and Consultant	MI 45-105: s. 2.1(1), NSSA: s. 41(1)(t) and 41(1)(al)	MI 45-105: s. 2.1(2), NSSA: s. 77(1)(n) and 77(1)(af)	NBSC Rule 45-501: s. 2.22 (1) (2) (3)	NBSC Rule 45-501: s. 2.22 (4)	PEISA: s. 2(3)(1), MI 45-105: s. 2.1(1)	PEISA: s. 13(1)(h), MI 45-105: s. 2.1(2)

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Section #	Exemption	Nova Scotia		New Brunswick		PEI	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.26	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of Non-Reporting Issuer	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	NBSC Rule 45-501: s. 2.25 (1) (2)	NBSC Rule 45-501: s. 2.25 (3)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)
2.27	Permitted Transferees	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	NBSC Rule 45-501: s. 2.26 (1) (2) (3)	NBSC Rule 45-501: s. 2.26 (4)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)
2.28	Resale - Non-reporting Issuer	MI 45-105: s. 3.2		NBSC Rule 45-501: s. 2.27		MI 45-105: s. 3.2	
2.29	Issuer Bid	MI 45-105: s. 4.1, Issuer Bid Exemption Only		NBSC Rule 45-501: s. 2.28 Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only	
Division 5: Miscellaneous Exemptions							
2.30	Isolated Trade by Issuer	NSSA: s. 41(1)(b)	NSSA: s. 77(1)(b)	NBSC Rule 45-501: s. 2.30 (1)	NBSC Rule 45-501: s. 2.30 (2)	PEISA: s. 2(3)(b)	PEISA: s. 13(1)(b)
2.31	Dividends and Distributions	NSSA: s. 41(1)(m)(i) and 41(1)(n)	NSSA: s. 77(1)(f)(i) and 77(1)(g)	NBSC Rule 45-501: s. 2.31 (1) (2)	NBSC Rule 45-501: s. 2.31 (3)	PEISA: s. 2(3)(j)(i), s. 2(3)(p)	PEISA: s. 13(1)(e)(i), s. 13(1)(j)
2.32	Trade to Lender by Control Person for Collateral	NSSA: s. 41(1)(f)	NSSA: s. 77(1)(e)	NBSC Rule 45-501: s. 2.32 (1)	NBSC Rule 45-501: s. 2.31 (2)	PEI Rule 45-504	PEISA: s. 13(1)(d)

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Section #	Exemption	Nova Scotia		New Brunswick		PEI	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.33	Acting as Underwriter	NSSA: s. 41(1)(i)	NSSA: s. 77(1)(r)	NBSC Rule 45-501: s. 2.33 (1)	NBSC Rule 45-501: s. 2.33 (2)	PEISA: s. 2(3)(g)	PEI Rule 45-509
2.34	Guaranteed Debt	NSSA: s. 41(2)(a)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.34 (2)	NBSC Rule 45-501: s. 2.34 (3)	PEISA: s. 2(4)(b)	PEISA: s. 14.1(a), s. 14.1(a)
2.35	Short-term debt	NSSA: s. 41(2)(d)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.35 (1)	NBSC Rule 45-501: s. 2.35 (2)	PEISA: s. 2(4)(c)	PEISA: s. 14.1(a)
2.36	Mortgages	NSSA: s. 41(2)(e)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.36 (1) (2)	NBSC Rule 45-501: s. 2.36 (3)	No analogous provision	No analogous provision
2.37	Personal Property Security Act	NSSA: s. 41(2)(f)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.37 (1)	NBSC Rule 45-501: s. 2.37 (2)	PEISA: s. 2(4)(d)	PEISA: s. 14.1(a)
2.38	Not for profit issuer	NSSA: s. 41(2)(g)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.38 (1)	NBSC Rule 45-501: s. 2.38 (2)	PEISA: s. 2(4)(e)	PEISA: s. 14.1(a)
2.39	Variable Insurance Contract	NSSA: s. 41(2)(o)	NSSA: s. 78(1)(a)	NBSC Rule 45-501: s. 2.40 (1)	NBSC Rule 45-501: s. 2.40 (2)	PEI Rule 45-503	PEI Rule 45-503
2.40	RRSP/RRIF	No analogous provision	No analogous provision	NBSC Rule 45-501: s. 2.41 (1)	NBSC Rule 45-501: s. 2.41 (2)	PEI Rule 45-511	PEI Rule 45-511
2.41	Schedule III Banks and Cooperative Associations - evidence of deposit	No analogous provision	No analogous provision	NBSC Rule 45-501: s. 2.42 (1)	NBSC Rule 45-501: s. 2.42 (2)	No analogous provision	No analogous provision

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Section #	Exemption	Nova Scotia		New Brunswick		PEI	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.42	Conversion, Exchange, or Exercise	NSSA: s. 41(1)(m)(iii) and 41(1)(o)(ii), Blanket Order No. 38	NSSA: s. 77(1)(f)(iii) and 77(1)(h)(ii), Blanket Order No. 38	NBSC Rule 45-501: s. 2.43 (1) (2)	NBSC Rule 45-501: s. 2.43 (3)	PEI Rule 45-501, PEISA: s. 2(3)(j)(iii)	PEI Rule 45-501, PEISA: s. 13(1)(e)(iii)
Part 3: Registration Only Exemptions							
3.1	Registered Dealer	NSSA: s. 41(1)(j)		NBSC Rule 45-501: s. 3.1		PEISA: s. 2(3)(h)	
3.2	Exchange Contract	No analogous provision		No analogous provision		No analogous provision	
3.3	Isolated Trade	NSSA: s. 41(1)(b)		NBSC Rule 45-501: s. 3.2		PEISA: s.2(3)(b)	
3.4	Estates, Bankruptcies, and Liquidations	NSSA: s. 41(1)(a)		NBSC Rule 45-501: s. 3.3		PEISA: s. 2(3)(a)	
3.5	Employees of Registered Dealer	NSSA: s. 41(1)(h)		NBSC Rule 45-501: s. 3.4		PEISA: s. 2(3)(f)	
3.6	Small Security Holder Selling and Purchase Arrangements	NI 32-101		NBSC Rule 45-501: s. 3.5 (2)		NI 32-101	
3.7	Adviser	NSSA: s. 40		NBSC Rule 45-501: s. 3.6		PEISA: s. 2(5)	

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Section #	Exemption	Nova Scotia		New Brunswick		PEI	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
3.8	Investment Dealer Acting as Portfolio Manager	NS Regs: s. 77		NBSC Rule 45-501: s. 3.7		PEISA Reg: s. 48	
Part 4: Control Block Distributions							
4.1	Control Block Distributions		NI 62-101		NBSC Rule 45-501: s. 4.1 (3)		No analogous provision
4.2	Trades by a Control Person After a Take-Over Bid		NS Regs: s. 127(t)		NBSC Rule 45-501: s. 4.2		No analogous provision
Part 5: Offerings by TSX Venture Exchange Offering Document							
5.2	TSX Venture Exchange Offering		No analogous provision		NBSC Rule 45-501: s. 5.2		No analogous provision

NI 45-106									
Section #	Exemption	Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Part 2: Prospectus and Registration Exemptions									
Division 1: Capital Raising Exemptions									
2.1	Rights Offering	NLSA: s.36(1)(n)	NLSA: s.73(1)(h)	YSA s.2(h)	Registrar's Order March 1, 1980 s. 5	NWT Blanket Order #2: s. 3(f)	NWT Blanket Order #1: s. 3(f)	NU Blanket Order #3 s. 3(f)	NU Blanket Order #1 s. 3(f)
2.2	Reinvestment Plan	NLSA: s.36(1)(x) Blanket Order 13 (mutual Funds)	NLSA: s.54(3)(e) Blanket Order 13 (mutual funds)	YSA: s. 2(h)	No analogous provision	NWT Blanket Order #2: s. 3(x)	NWT Blanket Order #1: s. 3(x)	NU Blanket Order #3 s. 3(x)	NU Blanket Order #1 s. 3(x)
2.3	Accredited Investor	MI 45-103: s.5.1(1); NLSA s.36(1)(c) and (d)	MI 45-103: s.5.1(2), s.73(1)(a) and (c)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(a) and (r)	NWT Blanket Order #1: s. 3(a) and (r)	Blanket Order #3: s. 3(a) and (r)	Blanket Order #1: s. 3(a) and (r)
2.4	Private Issuer	MI 45-103: s.2.1(1), NLSA: s.36(2)(j)	MI 45-103: s.2.1(2), NLSA: s.73(1)(a)	No analogous provision	No analogous provision	MI 45-103, NWT Blanket Order #2: s. 3(ii), (r) and (s), NWTSA: s. 2(g)	MI 45-103, NWT Blanket Order #1: s. 3(ii)	MI 45-103, NU Blanket Order #3: s. 3(ii), (r) and (s), NUSA: s. 2(g)	MI 45-103, NU Blanket Order #1: s. 3(ii)
2.5	Family, Friends and Business Associates	MI 45-103: s.3.1(1)	MI 45-103: s.3.1(2)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(s)	NWT Blanket Order #1: s. 3(s)	NU Blanket Order #3: s. 3(s)	Blanket Order #1: s. 3(s)
2.7	Founder, Control Person and Family - Ontario	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.8	Affiliates	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.9	Offering Memorandum	MI 45-103: s.4.1(1)	MI 45-103: s.4.1(2)	No analogous provision	No analogous provision	MI 45-103	MI 45-103, NWT Blanket Order #1: s. 3(r)	MI 45-103	MI 45-103, NU Blanket Order #1: s. 3(r)

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Section #	Exemption	Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.10	Minimum Amount Investment	NLSA: s. 36(1)(e)	NLSA: s. 73(1)(d)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(c)	NWT Blanket Order #1: s. 3(c)	NU Blanket Order #3: s. 3(c)	NU Blanket Order #1: s. 3(c)
Division 2: Transaction Exemptions									
2.11	Business Combination and Re-organization	NLSA: s. 36(1)(n)(ii), 36(1)(n)(o), Blanket Order 48	NLSA: s. 73(1)(f)(ii), 73(1)(i), Blanket Order 48	YSA: s. 2(i)	Registrar's Order March 1, 1980: s. 6	NWT Blanket Order #2: s. 3(e)(ii) and (g), NWTSA: s. 2(i) and (j)	NWT Blanket Order #1: s. 3(e)(ii) and (g)	NU Blanket Order #3: s. 3(e)(ii) and (g), NUSA: s. 2(i) and (j)	NU Blanket Order #1: s. 3(e)(ii) and (g)
2.12	Asset Acquisition	NLSA: s. 36(1)(r)	NLSA: s. 77(1)(l)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(k)	NWT Blanket Order #1: s. 3(k)	NU Blanket Order #3: s. 3(k)	NU Blanket Order #1: s. 3(k)
2.13	Petroleum, Natural Gas and Mining Properties	NLSA: s. 36(2)(n)	NLSA: s. 73(1)(m)	YSA s. 2(k)	Registrar's Order March 1, 1980 s. 16	NWT Blanket Order #2: s. 3(l)	NWT Blanket Order #1: s. 3(l)	NU Blanket Order #3: s. 3(l)	NU Blanket Order #1: s. 3(l)
2.14	Securities for Debt	No analogous provision	No analogous provision	YSA s. 2(e)	Registrar's Order March 1, 1980 s. 1	NWTSA: s. 2(e)	No analogous provision	NUSA: s. 2(e)	No analogous provision
2.15	Issuer Acquisition or Redemption	NLSA: s. 36(1)(x)	NLSA: s. 54(3)(b)(ii)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(j)	NWT Blanket Order #1: s. 3(j)	NU Blanket Order #3: s. 3(j)	NU Blanket Order #1: s. 3(j)
2.16	Take-over Bid and Issuer Bid	NLSA: s. 36(1)(p) and (q)	NLSA: s. 73(1)(j) and (k)	C.O. 1979/155 s. 1(b)	Registrar's Order March 1, 1980 s. 6	NWT Blanket Order #2: s. 3(h) and (i)	NWT Blanket Order #1: s. 3(h) and (i)	NU Blanket Order #3: s. 3(h) and (i)	NU Blanket Order #1: s. 3(h) and (i)
2.17	Offer to Acquire to Security Holder Outside Local Jurisdiction	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision

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Section #	Exemption	Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
Division 3: Investment Fund Exemptions									
2.18	Investment Fund Reinvestment	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(y)	NWT Blanket Order #1: s. 3(y)	NU Blanket Order #3: s. 3(y)	NU Blanket Order #1: s. 3(y)
2.19	Additional Investment in Investment Funds	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(z)	NWT Blanket Order #1: s. 3(z)	NU Blanket Order #3: s. 3(z)	NU Blanket Order #1: s. 3(z)
2.20	Private Investment Club	NLSA: s. 36(2)(c)	NLSA: s. 74(1)(a)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(cc)	NWT Blanket Order #1: s. 3(cc)	NU Blanket Order #3: s. 3(cc)	NU Blanket Order #1: s. 3(cc)
2.21	Private Investment Fund - Loan and Trust Pools	NLSA: s. 36(2)(c)	NLSA: s. 74(1)(a)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(jj)	NWT Blanket Order #1: s. 3(jj)	NU Blanket Order #3: s. 3(jj)	NU Blanket Order #1: s. 3(jj)
Division 4: Employee, Executive Officer, Director and Consultant Exemptions									
2.24	Employee, Executive Officer, Director, and Consultant	NLSA: s. 36(1)(s), MI 45-105: s. 2.1(1)	NLSA: s. 74(1)(n), MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1), NWT Blanket Order #2: s. 3(n)	MI 45-105: s. 2.1(2), NWT Blanket Order #1: s. 3(n)	MI 45-105: s. 2.1(1), NU Blanket Order #3: s. 3(n)	MI 45-105: s. 2.1(2), NU Blanket Order #1: s. 3(n)
2.26	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of Non-Reporting Issuer	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)
2.27	Permitted Transferees	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)

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Section #	Exemption	Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.28	Resale - Non-reporting Issuer	MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s.3.2		MI 45-105: s.3.2	
2.29	Issuer Bid	MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s.4.1, NWT Blanket Order #2: s. 3(i), Issuer Bid Exemption Only		MI 45-105: s.4.1, NU Blanket Order #3: s. 3(i), Issuer Bid Exemption Only	
Division 5: Miscellaneous Exemptions									
2.30	Isolated Trade by Issuer	NLSA: s. 36(1)(b)	NLSA: s. 73(1)(b)	YSA: s. 2(c)	Registrar's Order March 1, 1980 s. 1	NWT Blanket Order #2: s. 3(b)	NWT Blanket Order #1: s. 3(b)	NU Blanket Order #3: s. 3(b)	NU Blanket Order #1: s. 3(b)
2.31	Dividends and Distributions	NLSA: s. 36(1)(l)(i) and 36(1)(m)	NLSA: s. 73(1)(f)(i) and 73(1)(g)	YSA: s. 2(h)	Registrar's Order March 1, 1980 s. 5(a)	NWT Blanket Order #2: s. 3(e)(i) and NWTSA: s. 2(h)	NWT Blanket Order #1: s. 3(e)(i)	NU Blanket Order #3: s. 3(e)(i) and NUSA: s. 2(h)	NU Blanket Order #1: s. 3(e)(i)
2.32	Trade to Lender by Control Person for Collateral	NLSA: s. 36(1)(f)	NLSA: s. 73(1)(e)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(d) and NWTSA: s. 2(e)	NWT Blanket Order #1: s. 3(d)	NU Blanket Order #3: s. 3(d) and NUSA: s. 2(e)	NU Blanket Order #1: s. 3(d)
2.33	Acting as Underwriter	NLSA: s. 36(1)(i)	NLSA: s. 73(1)(r)	No analogous provision	Registrar's Order March 1, 1980 s.4	NWT Blanket Order #2: s. 3(v)	NWT Blanket Order #1: s. 3(v)	NU Blanket Order #3: s. 3(v)	NU Blanket Order #1 s. 3(v)
2.34	Guaranteed Debt	NLSA: s. 36(2)(a)	NLSA: s. 74(1)(a)	YSA: s. 2(i)	Registrar's Order March 1, 1980 s. 10	NWT Blanket Order #2: s. 3(aa)	NWT Blanket Order #1: s. 3(aa)	NU Blanket Order #3: s. 3(aa)	NU Blanket Order #1: s. 3(aa)
2.35	Short-term debt	NLSA: s. 36(2)(d)	NLSA: s. 74(1)(a)	YSA: s. 2(e)	Registrar's Order March 1, 1980 s. 11	NWT Blanket Order #2: s. 3(dd) and NWTSA: s. 2(n)	NWT Blanket Order #1: s. 3(dd)	NU Blanket Order #3: s. 3(dd) and NUSA: s. 2(n)	NU Blanket Order #1: s. 3(dd)
2.36	Mortgages	NLSA: s. 36(2)(e)	NLSA: s. 74(1)(a)	YSA: s. 2(l)	Registrar's Order March 1, 1980: s. 10	NWT Blanket Order #2: s. 3(ee) and NWTSA: s.	NWT Blanket Order #1: s. 3(ee)	NU Blanket Order #3: s. 3(ee) and NUSA:	NU Blanket Order #1: s. 3(ee)

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Section #	Exemption	Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
						2(m)		s. 2(m)	
2.37	Personal Property Security Act	NLSA: s. 36(2)(f)	NLSA: s. 74(1)(a)	YSA: s. 2(n)	Registrar's Order March 1, 1980: s. 11	NWT Blanket Order #2: s. 3(ff) and NWTSA: s. 2(o)	NWT Blanket Order #1: s. 3(ff)	NU Blanket Order #3: s. 3(ff) and NUSA: s. 2(o)	NU Blanket Order #1: s. 3(ff)
2.38	Not for profit issuer	NLSA: s. 36(2)(g)	NLSA: s. 74(1)(a)	YSA: s. 2(o)	Registrar's Order March 1, 1980: s. 12	NWT Blanket Order #2: s. 3(gg) and NWTSA: s. 2(p)	NWT Blanket Order #1: s. 3(gg)	NU Blanket Order #3: s. 3(gg) and NUSA: s. 2(p)	NU Blanket Order #1: s. 3(gg)
2.39	Variable Insurance Contract	NLSA: s. 54(3)(a)	NLSA: s. 36(1)(x)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(kk)	NWT Blanket Order #1: s. 3(kk)	NU Blanket Order #3: s. 3(kk)	NU Blanket Order #1: s. 3(kk)
2.40	RRSP/RRIF	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(ll)	NWT Blanket Order #1: s. 3(ll)	NU Blanket Order #3: s. 3(ll)	NU Blanket Order #1: s. 3(ll)
2.41	Schedule III Banks and Cooperative Associations - evidence of deposit	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.42	Conversion, Exchange, or Exercise	NLSA: s. 36(1)(l)(iii) and 36(1)(n)(ii), Blanket Order 23	NLSA: s. 73(1)(f)(iii) and 73(1)(h)(ii), Blanket Order 23	YSA: s. 2(h)	Registrar's Order March 1, 1980: s. 5(c)	NWT Blanket Order #2: s. 3(e)(iii)	NWT Blanket Order #1: s. 3(e)(iii)	NU Blanket Order #3: s. 3(e)(iii)	NU Blanket Order #1: s. 3(e)(iii)
Part 3: Registration Only Exemptions									
3.1	Registered Dealer	NLSA: s. 36(1)(j)		YSA: s. 2(a)		NWTSA: s. 2(b)		NUSA: s. 2(b)	
3.2	Exchange Contract	No analogous provision		No analogous provision		No analogous provision		No analogous provision	

NI 45-106									
Section #	Exemption	Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
3.3	Isolated Trade	NLSA: s. 36(1)(b)		YSA: s. 2(a)		NWTSA: s. 2(a)		NUSA: s. 2(a)	
3.4	Estates, Bankruptcies, and Liquidations	NLSA: s. 36(1)(a)		YSA: s. 2(f)		NWT Blanket Order #2: s. 3(mm) and NWTSA s. 2(f)		NU Blanket Order #3: s. 3(mm) and NUSA: s. 2(f)	
3.5	Employees of Registered Dealer	NLSA: s. 36(1)(h)		No analogous provision		No analogous provision		No analogous provision	
3.6	Small Security Holder Selling and Purchase Arrangements	NI 32-101		NI 32-101		NI 32-101		NI 32-101	
3.7	Adviser	NLSA: s. 35		YSA: s. 30		NWT Blanket Order #2: s. 2		NU Blanket Order #3: s. 2	
3.8	Investment Dealer Acting as Portfolio Manager	NL Reg.: s. 133		YSA: s. 30		No analogous provision		No analogous provision	
Part 4: Control Block Distributions									
4.1	Control Block Distributions		NI 62-101		No analogous provision		NWT Blanket Order #1: s. 3(q)		NU Blanket Order #1: s. 3(q)
4.2	Trades by a Control Person After a Take-Over Bid		NL Regs: s. 15(1)		No analogous provision		No analogous provision		No analogous provision

NI 45-106									
Section #	Exemption	Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption

Part 5: Offerings by TSX Venture Exchange Offering Document									
5.2	TSX Venture Exchange Offering		No analogous provision		No analogous provision		NWT Blanket Order #1: s. 2(c)		NU Blanket Order #1: s. 2(c)

ATTACHMENT B**NOTICE****CONSEQUENTIAL AMENDMENTS ARISING FROM
NATIONAL INSTRUMENT 45-106 *PROSPECTUS AND REGISTRATION EXEMPTIONS*****AND****REPEAL OF NATIONAL INSTRUMENT 32-101 *SMALL SECURITYHOLDER SELLING AND PURCHASE ARRANGEMENTS*, MULTILATERAL INSTRUMENT 45-103 *CAPITAL RAISING EXEMPTIONS*,
MULTILATERAL INSTRUMENT 45-105 *TRADES TO EMPLOYEES, SENIOR OFFICERS, DIRECTORS AND CONSULTANTS AND*
NATIONAL INSTRUMENT 62-101 *CONTROL BLOCK DISTRIBUTION ISSUES*****AND****AMENDMENTS TO NATIONAL INSTRUMENT 33-105 *UNDERWRITING CONFLICTS*,
NATIONAL INSTRUMENT 45-101 *RIGHTS OFFERINGS*, NATIONAL INSTRUMENT 62-103
THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES
AND MULTILATERAL INSTRUMENT 45-102 *RESALE OF SECURITIES***

July 8, 2005

Implementation of NI 45-106-Related Consequential Amendments

Effective September 14, 2005, the members of the Canadian Securities Administrators (CSA or we) are, in conjunction with the implementation of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106),

1. repealing
 - National Instrument 32-101 *Small Securityholder Selling and Purchase Arrangements*,
 - Multilateral Instrument 45-103 *Capital Raising Exemptions*,
 - Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants*, and
 - National Instrument 62-101 *Control Block Distribution Issues*,
2. amending
 - National Instrument 33-105 *Underwriting Conflicts* (NI 33-105),
 - National Instrument 45-101 *Rights Offerings* (NI 45-101), and
 - National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* (NI 62-103), and
3. amending and renaming Multilateral Instrument 45-102 *Resale of Securities* (New NI 45-102).

The September 14, 2005 implementation date will permit securities regulatory authorities in British Columbia, Ontario, Nova Scotia and Saskatchewan to obtain the ministerial approvals required under their rule-making procedures before NI 45-106 and related repeals and consequential amendments to these national and multilateral instruments can come into effect.

NI 45-106 and related repeals and consequential amendments to national and multilateral instruments will be implemented as

- rules in Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador,
- blanket orders or rules in British Columbia,
- regulations in Québec,

- commission regulations in Saskatchewan, and
- policies or codes in the Northwest Territories, Nunavut and Yukon.

The text of the repeals and consequential amendments are being published concurrently with this notice and will be available on websites of CSA members, including the following:

- www.albertasecurities.com
- www.bcsc.bc.ca
- www.osc.gov.on.ca
- www.lautorite.qc.ca

Notice of amendments to local securities legislation together with a notice that identifies remaining local exemptions for each jurisdiction will be published separately in each jurisdiction.

Background

The CSA published NI 45-106 together with proposed consequential repeals and amendments to certain national and multilateral instruments on December 17, 2004. The comment period ended March 17, 2005. We received 30 written submissions in response to our request for comments, most of which related to NI 45-106. The majority of comments were favourable. See "Summary of Changes" below for a description of changes made to the national and multilateral instruments listed above as a result of comments received.

NI 45-106 consolidates and harmonizes the prospectus and registration exemptions contained in various provincial statutes and national, multilateral and local instruments into a single national instrument, while related consequential amendments and repeals will facilitate the consolidation and harmonization of existing exemptions and the associated resale, disclosure and filing requirements.

At present, most jurisdictions have a similar but not identical set of exemptions. Market participants that wish to effect a multi-jurisdictional exempt distribution must familiarize themselves with the various exempt distribution regimes of the relevant jurisdictions. This typically necessitates culling through the various acts, regulations and rules of the different jurisdictions. On implementation of NI 45-106, market participants will generally have to look no further than NI 45-106 for available exemptions.

Summary of Written Comments Received by the CSA

We received submissions from 19 commenters during the 90 day comment period and additional submissions from 11 commenters after the comment period ended. We have considered the comments received and thank all of the commenters. The names of commenters and a summary of their comments relating to the proposed repeals and consequential amendments, together with our responses, are contained in Appendices A and B to this notice.

After considering the comments received, we have made a number of changes to both NI 45-106 and to New NI 45-102. As these changes are not material, we are not republishing NI 45-106 or New NI 45-102 for a further comment period.

Summary of Changes to Proposed Consequential Amendments

This section describes changes made to the proposed consequential amendments to various national and multilateral instruments published for comment on December 17, 2004 concurrently with NI 45-106. While the consequential amendments to NI 33-101 remain unchanged from those published previously, the CSA has made changes to New NI 45-102 in response to comments received as well as several minor drafting changes to NI 45-101 and NI 62-103.

Amendments to New NI 45-102

1. We have added wording to the Ontario-prong of the definition of *private issuer* to clarify that this prong is necessary to facilitate the resale of securities acquired under the "private issuer" exemption as it existed in 1998 OSC Rule 45-501 (as defined in the Ontario provisions of Appendix D of New NI 45-102).
2. We have eliminated proposed section 2.15 [Resale by Promoters in Ontario] and Appendix G [Promoters] as Ontario intends to remove the separate resale treatment for promoters that is currently contained in section 6.1 of OSC Rule 45-501.

3. We have revised the list of exemptions in Appendices D, E and F to reflect numbering and other changes (such as the elimination of the incorporation exemption) to the exemptions contained in NI 45-106.

Amendments to NI 45-101

1. We have repealed and replaced the definition of acceptance date in Part 1 to remove the Québec-prong of the definition to reflect recent amendments to the *Securities Act* (Québec) that brought the notice requirement into conformity with the 10-day notice period in all other jurisdictions.

Amendments to NI 62-103

1. We are repealing clause (f) in the definition of applicable provisions in Part 1 referring to section 2.1 of NI 62-101 as that instrument is being repealed concurrently with the implementation of NI 45-106.
2. We are repealing clause (b) in section 6.1(1) and (2) referring to transactions effected under NI 32-101 as that instrument is being repealed concurrently with the implementation of NI 45-106.

Adoption of NI 33-105 in Saskatchewan

National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) is not currently in effect in Saskatchewan. The Saskatchewan Financial Services Commission concurrently published a local notice seeking comment on NI 33-105 with proposed amendments when the CSA published NI 45-106 and related proposed repeals and consequential amendments to various national and multilateral instruments on December 17, 2004. As the Saskatchewan Financial Services Commission received no comments, NI 33-105 will come into effect in Saskatchewan concurrently with NI 45-106.

Text of Repeals and Consequential Amendments to National and Multilateral Instruments

The text of the repeals and consequential amendments to the national and multilateral instruments referred to above are found following the Appendices in Schedules 1 to 6.

Questions

Questions relating to the repeals and consequential amendments outlined in this notice may be referred to:

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**APPENDIX A
TO NOTICE**

**LIST OF COMMENTERS
ON
NI 45-106 RELATED REPEALS AND CONSEQUENTIAL AMENDMENTS TO
VARIOUS NATIONAL AND MULTILATERAL INSTRUMENTS**

1. Simon Romano (Stikeman Elliott) letter dated December 20, 2004
2. Securities Transfer Association of Canada letter dated February 21, 2005
3. Borden Ladner Gervais letter dated March 21, 2005

**APPENDIX B
TO NOTICE**

**SUMMARY OF COMMENTS RECEIVED ON PROPOSED REPEALS AND
CONSEQUENTIAL AMENDMENTS TO VARIOUS NATIONAL AND MULTILATERAL INSTRUMENTS
AND
RESPONSE OF THE CANADIAN SECURITIES ADMINISTRATORS**

A. Introductions

On December 17, 2004, the CSA concurrently published NI 45-106 and related repeals and consequential amendments to various national and multilateral instruments for comment.

The CSA received 30 submissions on NI 45-106 and related repeals and consequential amendments. We have considered the comments received and thank all of the commenters for providing their comments. The following is a summary of the comments relating to the proposed repeals and consequential amendments to various national and multilateral instruments, together with the CSA's responses.

Instrument and Section	Summary of Issues	CSA Responses
Private Issuer - section 2.4(1)	One commenter indicates a preference for the private issuer definition for Ontario to "return to its roots" and refer to registered, rather than beneficial, holders. The same commenter questions why joint registered holders are deemed to be a single beneficial owner, as they may be jointly held (as in a trust situation) for a number of beneficial owners.	<p>The Ontario-prong of the definition of <i>private issuer</i> in New NI 45-102 mirrors the definition of <i>private issuer</i> as it existed in 1998 OSC Rule 45-501 (as that term is defined in the Ontario transitional provisions of Appendix D to New NI 45-102) prior to its repeal in November, 2001. The Ontario-prong of the definition is a necessary transitional provision to facilitate the resale of securities acquired under the "old" private issuer exemption in 1998 OSC Rule 45-501.</p> <p>Accordingly, the CSA do not intend to revise the Ontario-prong of the definition of private issuer in the manner suggested by the commenter.</p> <p>We have added wording to the Ontario-prong of the definition of <i>private issuer</i> to clarify the limited circumstances in which this prong will apply.</p>
"Ordinary Course" Resale Restrictions - sections 2.5(2) and 2.5(3) of New NI 45-102 <i>Resale of Securities</i> (NI 45-102)	One commenter thinks it is inappropriate from a policy perspective for public security holders following a merger transaction (such as the amalgamation of two issuers) to be subject to "ordinary course" resale restrictions such as those contained in items 5 and 6 of section 2.5(2) of New NI 45-102.	<p>The CSA acknowledge the comment but note that the "ordinary course" resale restrictions found in items 5. and 6. of section 2.5(2) and items 3. and 4. of section 2.6(3) are not new to New NI 45-102. These resale restrictions have been part of Multilateral Instrument 45-102 <i>Resale of Securities</i> since its inception in November 2001 and were carried-over from statutory resale provisions in the securities legislation of most jurisdictions.</p> <p>We also note that securities exchanged in connection with a merger transaction in reliance on the exemption in section 2.11 of NI 45-106 would be subject to the resale restrictions in section 2.6 of New NI 45-102.</p>
Pledges - section 2.8(2) of New NI 45-102	One commenter suggests that a clarification be added to item 5. of section 2.8(2) of New NI 45-102 that the reference to selling security holder does not apply to pledgees as the term selling security holder can sometimes be used to describe pledgees.	We do not believe that item 5 of section 2.8(2) is confusing as currently worded or that it requires clarification. Item 5 is intended only to apply to a selling securityholder. If item 5 was intended to apply to lenders, pledgees, mortgagees or other encumbrancers, pledgees would have been

Instrument and Section	Summary of Issues	CSA Responses
		specifically included as is the case in item 2 of section 2.8(2).
Underwriters Transitional provisions - Appendices D & F of New NI 45-102	One commenter questions what will happen to the resale restrictions that apply to underwriters who took options or other securities under the accredited investor exemption in effect today.	Underwriters who acquired options or other securities under the accredited investor exemption in section 5.1 of Multilateral Instrument 45-103 Capital Raising Exemptions (MI 45-103) will look to the transitional provisions listed in Appendix D of New NI 45-102 for applicable resale restrictions. These securities will continue to be subject to a 4 month restricted and seasoning period under section 2.5 of NI 45-102.
Resale by Promoters in Ontario - section 2.15 of New NI 45-102	One commenter questions the need to maintain the status quo for promoters who may have previously acquired securities with the expectation that they would be subject to control block type restrictions (under s. 6.1 of current OSC Rule 45-501) in light of the decision not to impose these additional restrictions on promoters in the future.	We acknowledge the comment. We intend to remove the separate resale treatment for promoters that is contained in section 6.1 of current OSC Rule 45-501. This will mean proposed section 2.15 and Appendix G in the December 2004 publication draft of New NI 45-102 will be eliminated from the final version of New NI 45-102.

SCHEDULE 1**REPEAL OF****NATIONAL INSTRUMENT 32-101 *SMALL SECURITYHOLDER SELLING AND PURCHASE ARRANGEMENTS*****AND****NATIONAL INSTRUMENT 62-101 *CONTROL BLOCK DISTRIBUTION ISSUES*****AND****MULTILATERAL INSTRUMENT 45-103 *CAPITAL RAISING EXEMPTIONS*****AND****MULTILATERAL INSTRUMENT 45-105 *TRADES TO EMPLOYEES,
SENIOR OFFICERS, DIRECTORS, AND CONSULTANTS*****PART 1 REPEAL OF NATIONAL INSTRUMENT 32-101**

1.1 **Repeal** - National Instrument 32-101 *Small Securityholder Selling and Purchase Arrangements* is repealed.

PART 2 REPEAL OF NATIONAL INSTRUMENT 62-101

2.1 **Repeal** - National Instrument 62-101 *Control Block Distribution Issues* is repealed.

PART 3 REPEAL OF MULTILATERAL INSTRUMENT 45-103

3.1 **Repeal** - Multilateral Instrument 45-103 *Capital Raising Exemptions* is repealed.

PART 4 REPEAL OF MULTILATERAL INSTRUMENT 45-105

4.1 **Repeal** - Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* is repealed.

PART 5 EFFECTIVE DATE

5.1 **Effective Date** - These repeals are effective September 14, 2005.

SCHEDULE 2
AMENDMENTS TO NATIONAL INSTRUMENT 33-105 UNDERWRITING CONFLICTS**PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 33-105**

1.1 **Amendments** - National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) is amended by:

- (a) in clause (b) of section 3.1, striking and replacing “a provision listed in Appendix B” with:
“section 2.8 of National Instrument 45-102 Resale of Securities”;
- (b) repealing and replacing Appendix A with:

Appendix A - Exempt Securities

Jurisdiction	Securities Legislation Reference
All	Sections 2.20, 2.21 and 2.34 to 2.39 of National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>
Alberta	Section 87(h), (h.1) and (h.2) of the <i>Securities Act</i> (Alberta)
British Columbia	Section 46 of the <i>Securities Act</i> (British Columbia)
Manitoba	Subsection 19(2)(g) and (h) of the <i>Securities Act</i> (Manitoba)
Newfoundland and Labrador	Subsections 36(2)(h) and (i) of the <i>Securities Act</i> (Newfoundland and Labrador)
Nova Scotia	Clause 41(2)(i) of the <i>Securities Act</i> (Nova Scotia)
Ontario	Sections 2.4 to 2.6 of OSC Rule 45-501
Prince Edward Island	Subsection 2(4)(f) and (g) of the <i>Securities Act</i> (Prince Edward Island)
Québec	Section 41 of the <i>Securities Act</i> (Québec)
Saskatchewan	Subsection 39(2)(i) and (j) of <i>The Securities Act, 1988</i> (Saskatchewan)

- (c) repealing Appendix B.

PART 2 EFFECTIVE DATE

2.1 **Effective Date** - This amendment is effective September 14, 2005.

SCHEDULE 3**AMENDMENTS TO NATIONAL INSTRUMENT 45-101 RIGHTS OFFERINGS****PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 45-101**

1.1 **Amendment** - National Instrument 45-101 *Rights Offerings* is amended by

(a) repealing the definition of acceptance date in Part 1 and substituting:

"acceptance date" means

- (i) the date that is 10 days after the date the issuer gives the notice referred to in the rights offering prospectus exemption, or
- (ii) if the reviewing authority has objected to the proposed trade under the rights offering prospectus exemption, the date the reviewing authority notifies the issuer by written notice that it no longer objects to the use of the rights offering prospectus exemption;

(b) repealing the definition of "rights offering" in Part 1 and substituting:

"rights offering" means the issuance by an issuer to existing security holders of a right to purchase additional securities of the issuer's own issue.

PART 2 EFFECTIVE DATE

2.1 **Effective Date** - This amendment is effective September 14, 2005.

SCHEDULE 4

**AMENDMENTS TO NATIONAL INSTRUMENT 62-103
THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES**

PART 1 AMENDMENTS TO NATIONAL INSTRUMENT 62-103

1.1 Amendment - National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues* is amended by:

- (a) in the definition of “applicable provisions” in section 1.1, striking clause (f);
- (b) repealing subsection (1) of section 6.1 and substituting:
 - (1) An entity is exempt from the early warning requirements and the obligation to report under Part 4 in connection with an increase in the securityholding percentage of the entity in a class of securities of a reporting issuer that arises without any action being taken by the entity and solely from a reduction in outstanding securities that occurs as a result of redemptions, retractions or other repurchases by the reporting issuer, that affect or are offered to all security holders of the relevant class.
- (c) repealing subsection (2) of section 6.1 and substituting:
 - (2) An entity is exempt from the early warning requirements and the obligation to report under Part 4 in connection with a decrease in the securityholding percentage of the entity in a class of securities of a reporting issuer that arises without any action being taken by the entity and solely from an increase in outstanding securities that occurs as a result of treasury issuances of securities by the reporting issuer.
- (d) in Appendix A
 - (i) under the Alberta securities legislative reference, striking and replacing “Clause 1(f)(iii) of the *Securities Act (Alberta)*” with:
 - “Clause 1(p)(iii) of the *Securities Act (Alberta)*”
 - (ii) under the New Brunswick securities legislative reference, striking and replacing “Paragraph (b) of the definition of “primary distribution to the public” contained in section 1 of the *Securities Frauds Prevention Act (New Brunswick)*” with:
 - “Paragraph (c) of the definition of “distribution” contained in section 1(1) of the *Securities Act (New Brunswick)*” and
 - (iii) adding the following jurisdiction and securities legislative reference after Ontario:
 - “Québec Subparagraph 9 of the definition of “distribution” contained in section 5 of the *Securities Act (Québec)*”
- (e) in Appendix B
 - (i) under the Alberta securities legislative reference, striking and replacing “Subsections 141(1), 141(2) and 141(3) of the *Securities Act (Alberta)*” with:
 - “Subsections 176(1), 176(2) and 176(3) of the *Securities Act (Alberta)*”
 - (ii) adding the following jurisdiction and securities legislative reference after Manitoba:
 - “New Brunswick Subsection 126(1) and (2) of the *Securities Act (New Brunswick)*”

PART 2 EFFECTIVE DATE

2.1 Effective Date - These amendments are effective September 14, 2005.

SCHEDULE 5

AMENDMENTS TO MULTILATERAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

PART 1 AMENDMENTS TO MULTILATERAL INSTRUMENT 45-102

1.1 **Amendment** - Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) is amended by:

- (a) in MI 45-102, striking "Multilateral Instrument 45-102" and substituting "National Instrument 45-102" as follows:
 - (i) in the title of the instrument, and
 - (ii) in the title of Appendix B and C;
- (b) in section 1.1,
 - (i) repealing the definition of "former MI 45-102",
 - (ii) repealing and replacing the definition of "MI 45-102" with:

"MI 45-102" means Multilateral Instrument 45-102 *Resale of Securities* that came into force on March 30, 2004;
 - (iii) repealing and replacing the definition of "MI 45-103" with:

"MI 45-103" means Multilateral Instrument 45-103 *Capital Raising Exemptions* that came into force on June 6, 2003;
 - (iv) repealing and replacing the definition of "MI 45-105" with the following:

"MI 45-105" means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* that came into force on August 15, 2003;
 - (v) adding the following after the definition of "multiple convertible security":

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;
 - (vi) repealing and replacing the definition of "private company" with the following:

"private company" has the same meaning as in securities legislation;
 - (vii) repealing and replacing the definition of "private issuer" with:

"private issuer" means, as the context requires,

 - (a) a private issuer as defined in securities legislation,
 - (b) a private issuer as defined in NI 45-106, or
 - (c) in Ontario, for purposes of the definition of private issuer as it existed in 1998 OSC Rule 45-501 (as defined in the Ontario transitional provisions in Appendix D) prior to its repeal on November 30, 2001, a person that
 - (i) is not a reporting issuer or a mutual fund,
 - (ii) is an issuer all of whose issued and outstanding shares
 - (A) 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

- (B) are beneficially owned, directly or indirectly, by not more than 50 persons or companies counting any two or more joint registered holders as one beneficial owner, exclusive of persons
 - (I) that are employed by the issuer or an affiliated entity of the issuer, or
 - (II) 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
- (iii) has not distributed any securities to the public;
- (viii) repealing and replacing the definition of “SEDAR” with:

“SEDAR” has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR);
- (ix) adding the following after the definition of “SEDAR”:

“trade”, in Québec, has the same meaning as in NI 45-106; and
- (c) amending section 2.1 by striking “New Brunswick and the Yukon Territory” and substituting “and Yukon”;
- (d) amending item 3. of section 2.5 (2) by adding “ or on or after [insert effective date of NI 45-106] in Québec,” after “ March 30, 2004,”
- (e) amending item 3.(a) and (b) by adding “and, in Québec, the securities regulatory authority,” after “regulator”,
- (f) amending section 2.5(3) by adding “and, in Québec, the securities regulatory authority,” after “regulator”,
- (g) repealing and replacing section 2.7 with:

2.7 Exemption for a Trade if the Issuer Becomes a Reporting Issuer After the Distribution Date - Item 1 of subsection 2.5(2), 2.6(3) or 2.8(2) does not apply if the issuer became a reporting issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and is a reporting issuer in a jurisdiction of Canada at the time of the trade.
- (h) amending section 2.8 by repealing subsection (5);
- (i) amending section 2.9 by repealing and replacing subsection (1) with:

(1) In determining the period of time that an issuer was a reporting issuer in a jurisdiction of Canada for the purposes of section 2.5, 2.6 or 2.8, if the issuer was a party to an amalgamation, merger, continuation or arrangement, the selling security holder may include the period of time that one of the parties to the amalgamation, merger, continuation or arrangement was a reporting issuer in a jurisdiction of Canada immediately before the amalgamation, merger, continuation or arrangement.
- (j) in Form 45-102F1,
 - (A) striking “MI 45-102” and substituting “NI 45-102” in the title and in the Notice to selling security holders - collection and use of personal information, and
 - (B) adding the following Québec contact information to the Notice to selling security holders - collection and use of personal information:

Autorité des marchés financiers
 Tour de la Bourse
 800 square Victoria
 C.P. 246, 22e étage

Montréal, Québec H4Z 1G3

Attention: Responsable de l'accès à l'information

- (k) repealing Appendices A, D, E and F and replacing them with the appendices (new Appendices A, D, E and F) in the attached Schedule 4.

PART 2 EFFECTIVE DATE

2.1 **Effective Date** - These amendments are effective September 14, 2005.

**APPENDIX A
TO
NATIONAL INSTRUMENT 45-102
RESALE OF SECURITIES**

CONTROL DISTRIBUTIONS

JURISDICTION SECURITIES LEGISLATION REFERENCE

Alberta	Definition of "control person" in section 1(l) and subclause (iii) of the definition of "distribution" contained in section 1(p) of the <i>Securities Act</i> (Alberta)
British Columbia Columbia)	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (British
Manitoba	Paragraph (b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
Newfoundland and Labrador	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
New Brunswick	Definition of "control person" and clause (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (New Brunswick)
Northwest Territories	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Ontario	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
Prince Edward Island	Clause (iii) of the definition of "distribution" in section 1 of the <i>Securities Act</i> (Prince Edward Island)
Québec	Paragraph 9 of the definition of "distribution" contained in section 5 of the <i>Securities Act</i> (Québec)
Saskatchewan	Subclauses 2(1)(r)(iii), (iv) and (v) of <i>The Securities Act, 1988</i> (Saskatchewan)

**APPENDIX D
TO
NATIONAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**RESTRICTED PERIOD TRADES
(Section 2.3)**

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- subsection 2.3(2) [Accredited investor]
- subsection 2.5(2) [Family, friends and business associates] (except in Ontario)
- subsection 2.7(2) [Founder, control person and family] (Ontario)
- subsection 2.8(2) [Affiliates]
- subsection 2.9(3) [Offering memorandum] (in British Columbia, New Brunswick, Nova Scotia, and Newfoundland and Labrador)
- subsection 2.9(5) [Offering memorandum] (in Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan)
- subsection 2.10(2) [Minimum amount investment]
- subsection 2.12(2) [Asset acquisition]
- subsection 2.13(2) [Petroleum, natural gas and mining properties]
- subsection 2.14(2) [Securities for debt]
- subsection 2.19(2) [Additional investment in investment funds]
- subsection 2.30(2) [Isolated trade by issuer]
- subsection 2.40(2) [RRSP/RRIF], if the security acquired under section 2.40 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 listed above,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to the [insert effective date of NI 45-106] that the first trade was subject to section 2.5 of MI 45-102
- subsection 2.42(3) [Conversion, exchange or exercise] if the security acquired in the circumstances referred to in clause (a) of subsection 2.42 (1) was acquired in accordance with the terms and conditions of a previously issued security under
 - (a) one of the exemptions listed above,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to the [insert effective date of NI 45-106] that the first trade was subject to section 2.5 of MI 45-102
- section 5.2 [TSX Venture exchange offering], if the security acquired under section 5.2 was acquired by

- (a) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, the issuer's underwriter, or a member of the underwriter's "professional group" (as defined in National Instrument 33-105 *Underwriting Conflicts*), or
- (b) any other purchaser who purchases securities in excess of \$40,000.

as well as the following local exemptions from the prospectus requirement:

- section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*
- clauses 77(1)(u) and (w) and subclauses 77(1)(ab)(ii) and (iii) of the *Securities Act* (Nova Scotia)
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.5 of NI 45-102

Transitional Provisions

1. **General:** An exemption from the prospectus requirement listed in Appendix D of MI 45-102 in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to *[insert effective date of NI 45-106]* that the first trade was subject to section 2.5 of MI 45-102. The exemptions listed in Appendix D on March 30, 2004 were:
 - Sections 131(1)(b), (c), (l), and (m) of the *Securities Act* (**Alberta**)
 - Section 122(d) and 122.2 of the Alberta Securities Commission Rules, section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*, subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
 - Section 131(1)(f)(iii) of the *Securities Act* (**Alberta**), if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Alberta), the Alberta Securities Commission Rules or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
 - Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the *Securities Act* (**British Columbia**)
 - Sections 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (**British Columbia**) and subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
 - Sections 74(2)(11)(ii), 74(2)(11)(iii) and 74(2)(13) of the *Securities Act* (**British Columbia**) if the security acquired by the selling security holder or the right to purchase, convert or exchange or otherwise acquire, was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or MI 45-103 referred to in this Appendix, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
 - Section 74(2)(12) of the *Securities Act* (**British Columbia**) if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or MI 45-103 referred to in this Appendix, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
 - Clauses 54(3)(f) and (g) and 73(1)(a), (b), (c), (d), (h), (l), (m), (p) and (q) of the *Securities Act* (**Newfoundland and Labrador**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103, or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
 - Subclause 73(1)(f)(iii) of the *Securities Act* (**Newfoundland and Labrador**) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Newfoundland and Labrador) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

- Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z) of Blanket Order No. 1 of the Registrar of Securities (**Northwest Territories**), subsections 3.1(2), 4.1(2), 4.1(4), 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (**Northwest Territories**) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Clauses 77(1)(a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) and (ad) of the *Securities Act* (**Nova Scotia**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Subclause 77(1)(f)(iii) of the *Securities Act* (**Nova Scotia**) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z) of Blanket Order No.1 of the Registrar of Securities (**Nunavut**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Subparagraph 3(e)(iii) of Blanket Order No.1 of the Registrar of Securities (**Nunavut**) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Nunavut) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Clauses 13(1)(a), (b), (c), (g) and (i) of the *Securities Act* (**Prince Edward Island**), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Subclause 13(1)(e)(iii) of the *Securities Act* (**Prince Edward Island**) if the right to purchase, convert or exchange was previously acquired under one the above-listed exemptions under the *Securities Act* (Prince Edward Island) or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Subclauses 81(1)(f)(iii) and (iv) of *The Securities Act, 1988* (**Saskatchewan**) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) or MI 45-103 referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102
- Clause 81(1)(e) of *The Securities Act, 1988* (**Saskatchewan**) if the person or company from whom the securities were acquired obtained the securities under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix

2. Québec Provisions

- Sections 43, 47, 48 and 51 of the *Securities Act* (Québec) as they read prior to their amendment or repeal by section 7 and 8 of *An Act to amend the Securities Act and other legislative provisions*
- Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act* (Québec) before March 30, 2004 if the exemption included as a condition a restricted period of 12 months

3. Ontario Provisions

Definitions

In this Appendix

“**1998 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

“**2001 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

“**2004 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

“**2005 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on September 14, 2005;

“**convertible security**” means, in Ontario, a security of an issuer that is convertible into, or carries the right of the holder to purchase, or of the issuer to cause the purchase of, a security of the same issuer;

“**exchangeable security**” means, in Ontario, a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or the right of the issuer to cause the purchase of, a security of another issuer;

“**exchange issuer**” means, in Ontario, an issuer that distributes securities of a reporting issuer held by it in accordance with the terms of an exchangeable security of its own issue;

“**multiple convertible security**” means, in Ontario, a security of an issuer that is convertible into or exchangeable for, or carries the right of the holder to purchase, or of the issuer or exchange issuer to cause the purchase of, a convertible security, an exchangeable security or another multiple convertible security;

“**OSC Rule 45-502**” means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

“**Type 1 trade**” means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

“**underlying security**” means, in Ontario, a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

(a) Securities Act (Ontario)

Clauses 72(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Ontario) and subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario), or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

(b) 2005 OSC Rule 45-501

Section 2.1 of the 2005 OSC Rule 45-501

Section 2.2 of the 2005 OSC Rule 45-501

(c) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.3 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.5 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501.

Section 2.12 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501

Section 2.13 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501

Section 2.14 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501

Section 2.16 of the 2004 OSC Rule 45-501

(d) 1998 OSC Rule 45-501

Section 2.4 of the 1998 OSC Rule 45-501

Section 2.5 of the 1998 OSC Rule 45-501

Section 2.11 of the 1998 OSC Rule 45-501

(e) Other

Any provision under which an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade or in a trade under section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501.

APPENDIX E
TO
NATIONAL INSTRUMENT 45-102
RESALE OF SECURITIES
SEASONING PERIOD TRADES
(Section 2.4)

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- subsection 2.1(2) [Rights offering]
- subsection 2.2(4) [Reinvestment plan]
- subsection 2.4(2) [Private issuer]
- subsection 2.11(2) [Business combination and reorganization]
- subsection 2.16(2) [Take-over bid and issuer bid]
- subsection 2.17(2) [Offer to acquire to security holder outside local jurisdiction]
- subsection 2.18(6) [Investment fund reinvestment]
- subsection 2.20(2) [Private investment club]
- subsection 2.21(3) [Private investment fund - loan and trust pools]
- subsection 2.24(4) [Employee, executive officer, director and consultant]
- subsection 2.26(3) [Trades among current or former employees, executive officers, directors or consultants of non-reporting issuer]
- subsection 2.27(4) [Permitted transferees]
- subsection 2.31(3) [Dividends and distributions]
- subsection 2.40(2) [RRSP/RRIF], if the security acquired under section 2.40 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 listed above,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to the [insert effective date of NI 45-106] that the first trade was subject to section 2.6 of MI 45-102
- subsection 2.42(3) [Conversion, exchange or exercise - security of own issue] if the security acquired in the circumstances referred to in clause (a) of subsection 2.42 (1) was acquired in accordance with the terms and conditions of a previously issued security under
 - (a) one of the exemptions listed above,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to the [insert effective date of NI 45-106] that the first trade was subject to section 2.6 of this Instrument

- subsection 2.42 (3) [Conversion, exchange or exercise - security of a reporting issuer] for a security being traded in the circumstances referred to in clause (b) of subsection 2.42 (1)

as well as the following local exemptions from the prospectus requirement:

- Alberta Securities Commission Rule 45-502 *Trade with RESP*, if not included in Appendix D
- Nova Scotia Securities Commission Blanket Order No. 46
- Prince Edward Island Local Rule 45-510 - Exempt Distributions - Exemptions for Trades Pursuant to Take-over Bids and Issuer Bids.
- An exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.6 of NI 45-102

Transitional Provisions

1. General:

An exemption from the prospectus requirement listed in Appendix E of MI 45-102 *Resale of Securities* in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102. The exemptions listed in Appendix E of MI 45-102 on March 30, 2004 were:

- Section 131(1)(f) if not included in Appendix D of this Instrument, sections 131(1)(h), (i), (j), (k), and (y) of the *Securities Act (Alberta)* and sections 107(1) (j.1) and (k.1) prior to their repeal by section 5 of the *Securities Amendment Act, 1989 (Alberta)*, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- Section 74(2)(11)(iii) if not included in Appendix D or F and sections 74(2)(7), (8) if not included in Appendix F, (9) to (11), (13), (22) and (24) of the *Securities Act (British Columbia)*
- Section 128(g) of the *Securities Rules (British Columbia)*, section 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- Section 74(2)(12) of the *Securities Act (British Columbia)*, if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act (British Columbia)*, the *Securities Rules (British Columbia)* or a multilateral instrument referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- Clauses 54(3) and 73(1)(f) if not included in Appendix D or F of this Instrument, (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act (Newfoundland and Labrador)*, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (**Northwest Territories**), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- Clause 77(1)(f) of the *Securities Act (Nova Scotia)* if not included in Appendix D or F of this Instrument, and clauses 77(1)(h), (i) if not included in Appendix F, (j), (k), (n), (v), (va), (ac), (ae) and (af) of the *Securities Act (Nova Scotia)*, and clause 78(1)(a) of the *Securities Act (Nova Scotia)* as it relates to clause 41(2)(j) of the *Securities Act (Nova Scotia)* and Blanket Order No. 37, 38 if not included in Appendix F, 46 and 45-503 if not included in Appendix F, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

- Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (**Nunavut**), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- Clauses 13(1)(e) if not included in Appendix D or F of this Instrument, (f) if not included in Appendix F, (h) and (k) of the *Securities Act* (**Prince Edward Island**) or section 3.1 or 3.2 of Rule 45-501, section 1.1 of Prince Edward Island Rule 45-502, section 2.1 or 2.2 of Prince Edward Island Rule 45-506 or section 2.1 or 2.2 of Prince Edward Island Rule 45-510, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102
- Clauses 81(1)(a.1), (e) if not included in Appendix D of this Instrument, (f) if not included in Appendix D or F of this Instrument, (f.1), (g), (h), (i) if not included in Appendix F, (i.1), (j), (k), (o), (cc) and (dd) of *The Securities Act, 1988* (**Saskatchewan**), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

2. Québec Provisions

- Sections 50 and 52 of the *Securities Act* (Québec) as they read prior to their repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*
- Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act* (Québec) before March 30, 2004 if the exemption included as a condition a seasoning period of 12 months

3. Ontario provisions

Definitions

In this Appendix

“**1998 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

“**2001 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

“**2004 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

“**2005 OSC Rule 45-501**” means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on September 14, 2005;

“**convertible security**” means, in Ontario, a security of an issuer that is convertible into, or carries the right of the holder to purchase, or of the issuer to cause the purchase of, a security of the same issuer;

“**exchangeable security**” means, in Ontario, a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or the right of the issuer to cause the purchase of, a security of another issuer;

“**exchange issuer**” means, in Ontario, an issuer that distributes securities of a reporting issuer held by it in accordance with the terms of an exchangeable security of its own issue;

“**multiple convertible security**” means, in Ontario, a security of an issuer that is convertible into or exchangeable for, or carries the right of the holder to purchase, or of the issuer or exchange issuer to cause the purchase of, a convertible security, an exchangeable security or another multiple convertible security;

“**OSC Rule 45-502**” means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

“**OSC Rule 45-503**” means Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants*;

“**Type 1 trade**” means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

“**Type 2 trade**” means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(f) of the *Securities Act* (Ontario) other than a distribution to an associated consultant or investor consultant as defined in OSC Rule 45-503 or a distribution to an associated consultant or investor relations person as defined in MI 45-105;
- (b) clause 72(1)(h), (i), (j), (k) or (n) of the *Securities Act* (Ontario); or
- (c) section 2.5, 2.8 or 2.15 of the 2001 OSC Rule 45-501; or
- (d) section 2.5, 2.8 or 2.15 of the 2004 OSC Rule 45-501; and

“**underlying security**” means, in Ontario, a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

(a) Securities Act (Ontario)

Clauses 72(1)(f), (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Ontario), except for a trade made under 72(1)(f)(iii) of the *Securities Act* (Ontario) that is:

- (i) included in Appendix D or F of this Instrument, or
- (ii) contemplated by section 6.5 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*; and
- (iii) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

Clause 72(1)(h) of the *Securities Act* (Ontario) except for a distribution under clause 72(1)(h) of the *Securities Act* (Ontario) of an underlying security that was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade

(b) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.1 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501

Section 2.5 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501.

Section 2.6 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.6 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105.

Section 2.7 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.7 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;

- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105.

Section 2.8 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501.

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.6 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501.

Section 2.15 of the 2004 OSC Rule 45-501

(c) 1998 OSC Rule 45-501

Section 2.7 of the 1998 OSC Rule 45-501

Section 2.8 of the 1998 OSC Rule 45-501

Section 2.9 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.9 of the 1998 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade

Section 2.10 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.10 of the 1998 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade

Section 2.17 of the 1998 OSC Rule 45-501

Subsection 2.18(1) of the 1998 OSC Rule 45-501 after the issuer had ceased to be a private issuer for the purposes of the *Securities Act* (British Columbia)

(d) Other

Sections 2.1 and 3.1 of Ontario Securities Commission Rule 45-502.

**APPENDIX F
TO
NATIONAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**UNDERWRITERS
(Section 2.13)**

Subsection 2.33(2) [Acting as underwriter] of NI 45-106 and subsection 2.11(2) [Business combination and reorganization] or 2.42 (3) [Conversion, exchange or exercise] of NI 45-106, if the original security was acquired under subsection 2.33(2) of NI 45-106 or one of the underwriter exemptions in the transitional provisions listed below

Transitional Provisions:

An exemption from the prospectus requirement listed in Appendix F of MI 45-102 as Appendix F read on March 30, 2004. Exemptions listed in Appendix F of MI 45-102 on March 30, 2004 were:

- Section 74(2)(15) of the *Securities Act* (**British Columbia**) and section 74(2)(8) or 74(2)(11)(iii) of the *Securities Act* (British Columbia) if the original security was acquired under section 74(2)(15) of the *Securities Act* (British Columbia)
- Clause 73(1)(r) of the *Securities Act* (**Newfoundland and Labrador**) and section 73(1)(i) or 73(1)(f)(iii) of the *Securities Act* (Newfoundland and Labrador) if the original security was acquired under section 73(1)(r) of the *Securities Act* (Newfoundland and Labrador)
- Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (**Northwest Territories**) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories)
- Clause 77(1)(r) of the *Securities Act* (**Nova Scotia**) and clause 77(1)(i) or 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) or Blanket Order No. 38 or 45-503 if the original security was acquired under clause 77(1)(r) of the *Securities Act* (Nova Scotia)
- Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (**Nunavut**) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut)
- Clause 72(1)(f)(iii) of the *Securities Act* (**Ontario**) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario)
- Clause 72(1)(i) of the *Securities Act* (**Ontario**) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario)
- Clause 72(1)(r) of the *Securities Act* (Ontario)
- Section 2.1 of Prince Edward Island Rule 45-509 and subclause 13(1)(e) (iii) or clause 13(1)(f) of the *Securities Act* (**Prince Edward Island**) or section 1.1 of Prince Edward Island Rule 45-502 if the original security was acquired under section 2.1 of Prince Edward Island Rule 45-509
- Section 55 of the *Securities Act* (Québec) as it read prior to its repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*
- Clause 81(1)(u) of *The Securities Act, 1988* (**Saskatchewan**) and clause 81(1)(i) or subclause 81(1)(f)(iii) of *The Securities Act, 1988* (Saskatchewan) if the original security was acquired under clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan)

SCHEDULE 6

AMENDMENTS TO COMPANION POLICY 45-102CP TO

MULTILATERAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

PART 1 AMENDMENTS TO COMPANION POLICY 45-102CP

1.1 Amendment - Companion Policy 45-102CP to Multilateral Instrument 45-102 *Resale of Securities* (the Companion Policy) is amended by:

- (a) in the Companion Policy, striking “Multilateral Instrument 45-102” and substituting “National Instrument 45-102” as follows:
 - (i) in the title of the Companion Policy, and
 - (ii) in subsection 1.1(1) of the Companion Policy;
- (b) amending section 1.1 by
 - (i) striking “MI 45-102” wherever it appears and substituting “NI 45-102”,
 - (ii) in subsection (1), striking “except Québec”, and
 - (iii) in subsection (2); striking “Manitoba, New Brunswick and the Yukon Territory” and substituting “Manitoba and Yukon”,
- (c) amending section 1.2 by
 - (i) in subsections (1) and (3), striking “MI 45-102” wherever it appears and substituting “NI 45-102”,
 - (ii) repealing and replacing subsection (2) with:

(1) Appendices D and E to NI 45-102 list the new harmonized exemptions in National Instrument 45-106 *Registration and Prospectus Exemptions* (NI 45-106) and local exemptions that are subject to the resale restrictions under section 2.5 or 2.6 of NI 45-102, while Appendix F lists the new harmonized exemptions in NI 45-106 applicable to underwriters. Each of these appendices also contains transitional provisions applicable to securities acquired under exemptions listed in the Appendices to MI 45-102 as Appendices D, E and F read on March 30, 2004. For all local exemptions that come into effect after September 14, 2004, you should look to the local instrument itself to see if it specifies that the securities acquired are subject to section 2.5 or 2.6 of NI 45-102 as well as to Appendix D and E to NI 45-102. You may also wish to consult the CSA Notice listing local registration and prospectus exemptions in place in each jurisdiction of Canada, which the CSA will update periodically.

- (d) repealing and replacing section 1.3 with:

1.3 Transition

- (1) When Multilateral Instrument 45-102 *Resale of Securities* (“former MI 45-102”) came into force on November 30, 2001, that instrument imposed harmonized resale restrictions on the first trade of securities made on or after that date, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to November 30, 2001. These securities were subject to prescribed restricted periods and seasoning periods of either four or twelve months. When MI 45-102 was implemented on March 30, 2004, the securities of all reporting issuers became subject to four month restricted and seasoning periods under section 2.5 and 2.8 or four month seasoning periods under section 2.6 of MI 45-102. This meant that any existing restricted period or seasoning period imposed under Part 2 of former MI 45-102 that exceeded four months was reduced to four months under MI 45-102. Under NI 45-102, securities

of all reporting issuers continue to be subject to a four month restricted period under subsection 2.5(2) or 2.8(2) of the Instrument.

- (2) Item 3. of subsection 2.5(2) of MI 45-102 required that the certificate or the ownership statement evidencing a security that is the subject of the first trade carry either a legend or a legend restriction notation disclosing the resale restrictions. This legend requirement applied only to securities distributed on or after MI 45-102 comes into effect on March 30, 2004 in all jurisdictions except Québec. We have added language to Item 3. of subsection 2.5(2) of NI 45-102 to clarify that the legend requirement in NI 45-106 will only apply to securities distributed in Québec on or after NI 45-106 comes into effect on September 14, 2005.
 - (3) Issuers may continue to replace those certificates that are legended in accordance with former MI 45-102 with a certificate (or an acceptable electronic alternative) carrying the legend (or legend restriction notation) specified in item 3. of subsection 2.5(2) of NI 45-102. As was the case under former MI 45-102, certificates representing securities distributed prior to November 30, 2001 do not have to be legended.
- (e) amending section 1.4 by
 - (i) striking “MI 45-102” and substituting “NI 45-102”, and
 - (ii) striking “Manitoba, New Brunswick and the Yukon Territory” and substituting “Manitoba and Yukon”;
 - (f) amending sections 1.5 and 1.6 by striking “MI 45-102” wherever it appears and substituting “NI 45-102”;
 - (g) repealing and replacing section 1.7 with:

1.7 Legending of Securities - Item 3. of subsection 2.5(2) of NI 45-102 imposes a legend requirement for securities distributed under any of the provisions listed in Appendix D to NI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of NI 45-102. Beneficial security holders must receive either a paper certificate representing their security or an electronic alternative such as an ownership statement under a direct registration system, scheduled to be phased into operation during 2005. If a paper certificate is issued, the certificate must carry the legend specified in item 3 that notifies the beneficial security holder of the applicable resale restrictions. Similarly, an ownership statement must carry a restricted legend notation that notifies the beneficial security holder of the applicable resale restrictions. Issuers may add additional wording to that found in item 3. of subsection 2.5(2) of NI 45-102. If you supplement the specified text of the legend on the certificate or the restricted legend notation on the ownership statement, that additional wording cannot alter the meaning of the specified wording. You should also look to section 1.10 for further guidance on the legending of convertible and underlying securities.
 - (h) amending section 1.8 by:
 - (i) in subsection (1) striking “MI 45-102” and substituting “NI 45-102”, and
 - (ii) repealing subsection (2);
 - (i) amending sections 1.9, 1.11, 1.12, 1.13, 1.14 and 1.15 by striking “MI 45-102” wherever it appears and substituting “NI 45-102”;
 - (j) amending section 1.16 by:
 - (i) striking “MI 45-102” wherever it appears and substituting “NI 45-102”, and
 - (ii) striking the last sentence.

PART 2 EFFECTIVE DATE

2.1 **Effective Date** - These amendments are effective September 14, 2005.

ATTACHMENT C**NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS**

Text boxes in this Instrument refer to National Instrument 45-102 Resale of Securities. These text boxes are located above sections 2.1 to 2.5, 2.7 to 2.21, 2.24 to 2.27, and 2.30 to 2.42. These text boxes do not form part of this Instrument.

PART 1: DEFINITIONS AND INTERPRETATION

- 1.1 Definitions
- 1.2 Affiliate
- 1.3 Control
- 1.4 Registration requirement
- 1.5 Definition of distribution - Manitoba and Yukon
- 1.6 Definition of trade - Québec

PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS¹¹**Division 1: Capital Raising Exemptions**

- 2.1 Rights offering
- 2.2 Reinvestment plan
- 2.3 Accredited investor
- 2.4 Private issuer
- 2.5 Family, friends and business associates
- 2.6 Family, friends and business associates - Saskatchewan
- 2.7 Founder, control person and family- Ontario
- 2.8 Affiliates
- 2.9 Offering memorandum
- 2.10 Minimum amount investment

Division 2: Transaction Exemptions

- 2.11 Business combination and reorganization
- 2.12 Asset acquisition
- 2.13 Petroleum, natural gas and mining properties
- 2.14 Securities for debt
- 2.15 Issuer acquisition or redemption
- 2.16 Take-over bid and issuer bid
- 2.17 Offer to acquire to security holder outside local jurisdiction

Division 3: Investment Fund Exemptions

- 2.18 Investment fund reinvestment
- 2.19 Additional investment in investment funds
- 2.20 Private investment club
- 2.21 Private investment fund - loan and trust pools

Division 4: Employee, Executive Officer, Director and Consultant Exemptions

- 2.22 Definitions
- 2.23 Interpretation
- 2.24 Employee, executive officer, director and consultant
- 2.25 Unlisted reporting issuer exception
- 2.26 Trades among current or former employees, executive officers, directors, or consultants of non-reporting issuer
- 2.27 Permitted transferees
- 2.28 Resale - non-reporting issuer
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Division 5: Miscellaneous Exemptions

- 2.30 Isolated trade by issuer
- 2.31 Dividends and distributions
- 2.32 Trade to lender by control person for collateral
- 2.33 Acting as underwriter
- 2.34 Guaranteed debt
- 2.35 Short-term debt
- 2.36 Mortgages
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- 2.39 Variable insurance contract
- 2.40 RRSP/RRIF
- 2.41 Schedule III banks and cooperative associations - evidence of deposit
- 2.42 Conversion, exchange, or exercise
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PART 3: REGISTRATION ONLY EXEMPTIONS

- 3.1 Registered dealer
- 3.2 Exchange contract
- 3.3 Isolated trade
- 3.4 Estates, bankruptcies, and liquidations
- 3.5 Employees of registered dealer
- 3.6 Small security holder selling and purchase arrangements
- 3.7 Adviser
- 3.8 Investment dealer acting as portfolio manager
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PART 4: CONTROL BLOCK DISTRIBUTIONS

- 4.1 Control block distributions
- 4.2 Trades by a control person after a take-over bid

PART 5: OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT

- 5.1 Application and interpretation
- 5.2 TSX Venture Exchange offering
- 5.3 Underwriter obligations

PART 6: REPORTING REQUIREMENTS

- 6.1 Report of exempt distribution
- 6.2 When report not required
- 6.3 Required form of report of exempt distribution
- 6.4 Required form of offering memorandum
- 6.5 Required form of risk acknowledgement
- 6.6 Required forms in British Columbia

PART 7: EXEMPTION

- 7.1 Exemption

PART 8: TRANSITIONAL, COMING INTO FORCE

- 8.1 Additional investment - investment funds
- 8.2 Definition of “accredited investor” - investment fund
- 8.3 Transition - MI 45-103/MI 45-105/ OSC Rule 45-501
- 8.4 Transition - Closely-held issuer
- 8.5 Coming into force

APPENDIX A - VARIABLE INSURANCE CONTRACT EXEMPTION

APPENDIX B – CONTROL BLOCK DISTRIBUTION

**NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS**

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument

“accredited investor” means

- (a) a Canadian financial institution, or a Schedule III bank,
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
- (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
- (f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
- (g) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada,
- (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1 000 000,
- (k) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
- (l) an individual who, either alone or with a spouse, has net assets of at least \$5 000 000,
- (m) a person, other than an individual or investment fund, that has net assets of at least \$5 000 000 as shown on its most recently prepared financial statements,
- (n) an investment fund that distributes or has distributed its securities only to
 - (i) a person that is or was an accredited investor at the time of the distribution,
 - (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 [*Minimum amount investment*], and 2.19 [*Additional investment in investment funds*], or
 - (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 [*Investment fund reinvestment*],
- (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,

- (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,
- (q) a person acting on behalf of a fully managed account managed by that person, if that person
 - (i) is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, and
 - (ii) in Ontario, is purchasing a security that is not a security of an investment fund;
- (r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,
- (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,
- (t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,
- (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser, or
- (v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as
 - (i) an accredited investor, or
 - (ii) an exempt purchaser in Alberta or British Columbia after this Instrument comes into force;

“AIF” means

- (a) for financial years starting before January 1, 2004, a current AIF as defined in Multilateral Instrument 45-102 *Resale of Securities* that came into force on November 30, 2001, and
- (b) for financial years starting on or after January 1, 2004,
 - (i) an AIF as defined in NI 51-102,
 - (ii) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not filed or been required to file an AIF or annual financial statements under NI 51-102, or
 - (iii) a QT circular if the issuer has not filed or been required to file annual financial statements under NI 51-102 subsequent to filing its QT circular;

“approved credit rating” has the same meaning as in National Instrument 81-102 *Mutual Funds*;

“approved credit rating organization” has the same meaning as in National Instrument 81-102 *Mutual Funds*;

“bank” means a bank named in Schedule I or II of the *Bank Act* (Canada);

“Canadian financial institution” means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

“control person” has the same meaning as in securities legislation except in Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Québec where control person means any person that holds or is one of a combination of persons that holds

- (a) a sufficient number of any of the securities of an issuer so as to affect materially the control of the issuer, or
- (b) more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holding of those securities does not affect materially the control of the issuer;

“CPC instrument” means a rule or regulation of a jurisdiction of Canada or a rule, regulation or policy of an exchange in Canada that applies only to capital pool companies;

“debt security” means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;

“director” means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

“eligibility adviser” means

- (a) a person that is registered as an investment dealer or in an equivalent category of registration under the securities legislation of the jurisdiction of a purchaser and authorized to give advice with respect to the type of security being distributed, and
- (b) in Saskatchewan or Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not
 - (i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons, and
 - (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months;

“eligible investor” means

- (a) a person whose
 - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
 - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
 - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (b) a person of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are eligible investors,

- (f) an accredited investor,
- (g) a person described in section 2.5 [*Family, friends and business associates*], or
- (h) a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production,
- (c) an officer of the issuer or any of its subsidiaries and who performs a policy-making function in respect of the issuer, or
- (d) performing a policy-making function in respect of the issuer;

“financial assets” means

- (a) cash,
- (b) securities, or
- (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

“founder” means, in respect of an issuer, a person who,

- (a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and
- (b) at the time of the trade is actively involved in the business of the issuer;

“fully managed account” means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client’s express consent to a transaction;

“investment fund” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“marketplace” has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

“MD&A” has the same meaning as in NI 51-102;

“NI 45-102” means National Instrument 45-102 *Resale of Securities*;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“non-redeemable investment fund” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“person” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person’s capacity as a trustee, executor, administrator or personal or other legal representative;

“**QT circular**” means an information circular or filing statement in respect of a qualifying transaction for a capital pool company under a CPC instrument;

“**qualifying issuer**” means a reporting issuer in a jurisdiction of Canada that

- (a) is a SEDAR filer,
- (b) has filed all documents required to be filed under the securities legislation of that jurisdiction, and
- (c) if not required to file an AIF, has filed in the jurisdiction,
 - (i) an AIF for its most recently completed financial year for which annual statements are required to be filed, and
 - (ii) copies of all material incorporated by reference in the AIF not previously filed;

“**related liabilities**” means

- (a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or
- (b) liabilities that are secured by financial assets;

“**reporting issuer**” means, in Northwest Territories, Nunavut and Prince Edward Island, an issuer that is a reporting issuer in a jurisdiction of Canada;

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

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

“**Schedule III bank**” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“**SEDAR filer**” means an issuer that is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“**spouse**” means, an individual who,

- (a) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), from the other individual,
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or
- (c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

“**subsidiary**” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

Affiliate

1.2 For the purpose of this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.3 Except in Part 2, Division 4, for the purpose of this Instrument, a person (first person) is considered to control another person (second person) if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Registration requirement

1.4 (1) An exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.

(2) An exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

Definition of distribution - Manitoba and Yukon

1.5 For the purpose of this Instrument, in Manitoba and Yukon, “distribution” means a primary distribution to the public.

Definition of trade - Québec

1.6 For the purpose of this Instrument, in Québec, “trade” includes any of the following activities:

- (a) any of the activities referred to in the definition of “dealer” in section 5 of the *Securities Act* (Québec);
- (b) the sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise, but does not include,
 - (i) except as provided in paragraph (e), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith, or
 - (ii) the purchase of a security;
- (c) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
- (d) receipt by a registrant of an order to buy or sell a security;
- (e) a transfer, pledge or encumbering of securities of an issuer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith;
- (f) entering into a derivative;
- (g) any activity, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities referred to in paragraphs (a) to (f).

PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS

Division1: Capital Raising Exemptions

Rights offering

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

- (a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up,
 - (b) except in British Columbia, the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the trade within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the trade, the issuer has delivered to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority, and
 - (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Reinvestment plan

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.2 (1) Subject to subsections (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:

- (a) 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 that is 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, and
 - (b) subject to subsection (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 is of the same class or series of securities described in paragraph (a) that trade on a marketplace.
- (2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) 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 subsection (1) must be available to every security holder in Canada to which the dividend or distribution is available.
- (4) Subject to subsections (3) and (5), the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).
- (5) This section does not apply to a trade in a security of an investment fund.

Accredited investor

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

- 2.3 (1)** The dealer registration requirement does not apply in respect of a trade in a security if the purchaser purchases the security as principal and is an accredited investor.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).
- (3) Subject to subsection (4), for the purpose of this section, a trust company or trust corporation described in paragraph (p) of the definition of "accredited investor" in section 1.1 [*Definitions*] is deemed to be purchasing as principal.
- (4) Subsection (3) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(5) For the purpose of this section, a person described in paragraph (q) of the definition of “accredited investor” in section 1.1 [Definitions] is deemed to be purchasing as principal.

(6) This section does not apply to a trade in a security to a person if that person is created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of “accredited investor” in section 1.1 [Definitions].

Private issuer

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.4 (1) In this section, “private issuer” means an issuer

- (a) that is not a reporting issuer or an investment fund,
- (b) whose securities, other than non-convertible debt securities,
 - (i) are subject to restrictions on transfer that are contained in the issuer’s constating documents or security holders’ agreements, and
 - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and
- (c) that has distributed securities only to persons described in this section.

(2) The dealer registration requirement does not apply in respect of a trade in a security of a private issuer to a person who purchases the security as principal and is

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer, founder or control person of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer, founder or control person of the issuer,
- (d) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (e) a close business associate of a director, executive officer, founder or control person of the issuer,
- (f) a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder’s spouse,
- (g) a security holder of the issuer,
- (h) an accredited investor,
- (i) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
- (j) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (k) a person that is not the public.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

(4) Except for a trade to an accredited investor, no commission or finder’s fee may be paid to any director, officer, founder or control person of an issuer in connection with a trade under subsection (2) or (3).

Family, friends and business associates

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.5 (1) Except in Ontario and subject to section 2.6 [*Family, friends and business associates - Saskatchewan*], the dealer registration requirement does not apply in respect of a trade in a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister or child of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) Except in Ontario and subject to section 2.6 [*Family, friends and business associates - Saskatchewan*], the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

(3) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a trade under subsection (1) or (2).

Family, friends and business associates - Saskatchewan

2.6 (1) In Saskatchewan, section 2.5 [*Family, friends and business associates*] does not apply unless the person making the trade obtains a signed risk acknowledgement from the purchaser in the required form for a trade to

- (a) a person described in section 2.5(1) (d) or (e) [*Family, friends and business associates*],
- (b) a close personal friend or close business associate of a founder of the issuer, or
- (c) a person described in section 2.5(1)(h) or (i) [*Family, friends and business associates*] if the trade is based in whole or in part on a close personal friendship or close business association.

(2) The person making the trade must retain the required form referred to in subsection (1) for 8 years after the trade.

Founder, control person and family- Ontario

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.7 (1) In Ontario, the dealer registration requirement does not apply in respect of a trade in a security to a person who purchases the security as principal and is

- (a) a founder of the issuer,

- (b) an affiliate of a founder of the issuer,
- (c) a spouse, parent, brother, sister, grandparent or child of an executive officer, director or founder of the issuer, or
- (d) a person that is a control person of the issuer.

(2) In Ontario, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Affiliates

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.8 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to an affiliate of the issuer that is purchasing as principal.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Offering memorandum

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.9 (1) In British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador, the dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (7) to (13), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (14).

(2) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, the dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (7) to (13), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (14),

and

- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is
 - (A) a reporting issuer, and
 - (B) in Manitoba, Québec and Saskatchewan, is an issuer listed for trading on an exchange or quoted on an over-the-counter market.

- (3) In British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).
- (4) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).
- (5) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, this section does not apply to a trade in a security to a person described in paragraph (a) of the definition of “eligible investor” in section 1.1 [Definitions] if that person is created or used solely to purchase or hold securities in reliance on an exemption from the dealer registration requirement or the prospectus requirement set out in subsections (2) and (4).
- (6) No commission or finder’s fee may be paid to any person, other than a registered dealer, in connection with a trade to a purchaser in
- (a) Northwest Territories, Nunavut and Saskatchewan under subsections (2) and (4), or
 - (b) New Brunswick under subsections (1) and (3).
- (7) An offering memorandum delivered under this section must be in the required form.
- (8) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.
- (9) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that
- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
 - (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of
 - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - (B) 3 years after the date the purchaser signs the agreement to purchase the security,
 - (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
 - (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
 - (e) is in addition to, and does not detract from, any other right of the purchaser.
- (10) An offering memorandum delivered under this section must contain a certificate that states the following:
- “This offering memorandum does not contain a misrepresentation.”
- (11) A certificate under subsection (10) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, a person acting in that capacity,
 - (b) on behalf of the directors of the issuer,
 - (i) by any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) by all the directors of the issuer, and
 - (c) by each promoter of the issuer.
- (12) A certificate under subsection (10) must be true
- (a) at the date the certificate is signed, and
 - (b) at the date the offering memorandum is delivered to the purchaser.
- (13) If a certificate under subsection (10) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless
- (a) the purchaser receives an update of the offering memorandum,
 - (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (11), and
 - (c) the purchaser re-signs the agreement to purchase the security.
- (14) A risk acknowledgement under subsection (1), (2), (3) or (4) must be in the required form and an issuer relying on subsection (1), (2) (3) or (4) must retain the signed risk acknowledgment for 8 years after the distribution.
- (15) The issuer must
- (a) hold in trust all consideration received from the purchaser in connection with a trade in a security under subsection (1), (2), (3) or (4) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
 - (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (8).
- (16) The issuer must file a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.
- (17) If a qualifying issuer uses a form of offering memorandum that allows the qualifying issuer to incorporate previously filed information into the offering memorandum by reference, the qualifying issuer is exempt from the requirement under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* to file a technical report to support scientific or technical information about the qualifying issuer's mineral project in the offering memorandum or incorporated by reference into the offering memorandum if the information about the mineral project is contained in a previously filed technical report under National Instrument 43-101 **Standards of Disclosure for Mineral Projects**.

Minimum amount investment

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

- 2.10 (1) The dealer registration requirement does not apply in respect of a trade in a security to a person if
- (a) that person purchases as principal,
 - (b) the security has an acquisition cost to the purchaser of not less than \$150 000 paid in cash at the time of the trade, and
 - (c) the trade is in a security of a single issuer.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

(3) This section does not apply to a trade in a security to a person if that person is created or used solely to purchase or hold securities in reliance on this exemption from the dealer registration requirement or the prospectus requirement.

Divisions 2: Transaction Exemptions

Business combination and reorganization

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.11 (1) The dealer registration requirement does not apply in respect of a trade in a security in connection with

- (a) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,
- (b) an amalgamation, merger, reorganization or arrangement that
 - (i) is described in an information circular made pursuant to NI 51-102 or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and
 - (ii) is approved by the security holders referred to in subparagraph (i),

or

- (c) a dissolution or winding-up of the issuer.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Asset acquisition

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.12 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a person as consideration for the assets of the person, if those assets have a fair value of not less than \$150 000.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Petroleum, natural gas and mining properties

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.13 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue as consideration for the acquisition of petroleum, natural gas or mining properties or any interest in them.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Securities for debt

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.14 (1) The dealer registration requirement does not apply in respect of a trade by a reporting issuer in a security of its own issue to a creditor to settle a bona fide debt of that reporting issuer.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Issuer acquisition or redemption

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*.

2.15 (1) The dealer registration requirement does not apply in respect of a trade in a security to the issuer of the security.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Take-over bid and issuer bid

Refer to section 2.11 or Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale unless the requirements of section 2.11 of NI 45-102 are met.

2.16 (1) The dealer registration requirement does not apply in respect of a trade in a security in connection with a take-over bid or issuer bid.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Offer to acquire to security holder outside local jurisdiction

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.17 (1) The dealer registration requirement does not apply in respect of a trade by a security holder outside the local jurisdiction to a person in the local jurisdiction if the trade would have been in connection with a take-over bid or issuer bid made by that person were it not for the fact that the security holder is outside of the local jurisdiction.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Division 3: Investment Fund Exemptions**Investment fund reinvestment**

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.18 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an investment fund to a security holder of the investment fund if the trades are permitted by a plan of the investment fund:

- (a)** a trade in a security of the investment fund's own issue if dividends or distributions out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities are applied to the purchase of the security that is of the same class or series as the securities to which the dividends or distributions out of earnings, surplus, capital or other sources are attributable, and
- (b)** subject to subsection (2), a trade in a security of the investment fund's own issue if the security holder makes optional cash payments to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

- (2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund 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 subsection (1) must be available to every security holder in Canada to which the dividend or distribution is available.
- (4) No sales charge is payable on a trade described in subsection (1).
- (5) The most recent prospectus of the investment fund, if any, must set out
- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
 - (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund, and
 - (c) instructions on how the right referred to in paragraph (b) can be exercised.
- (6) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Additional investment in investment funds

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.19 (1) The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a security holder of the issuer if

- (a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than \$150 000 paid in cash at the time of the trade,
 - (b) the subsequent trade is for a security of the same class or series as the initial trade, and
 - (c) the security holder, as at the date of the subsequent trade, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than \$150 000, or
 - (ii) a net asset value of not less than \$150 000.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Private investment club

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.20 (1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not and has never distributed its securities to the public,
- (d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires security holders to make contributions in proportion to the value of the securities held by them.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Private investment fund - loan and trust pools

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.21 (1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

- (a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,
- (b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of subsection (1)(a).

(3) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Division 4: Employee, Executive Officer, Director and Consultant Exemptions

Definitions

2.22 In this Division

“**associate**”, when used to indicate a relationship with a person, means

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding voting securities of the issuer,
- (b) any partner of the person,
- (c) any trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or executor or in a similar capacity, or
- (d) in the case of an individual, a relative of that individual, including
 - (i) a spouse of that individual, or
 - (ii) a relative of that individual's spouse

if the relative has the same home as that individual;

“**associated consultant**” means, for an issuer, a consultant of the issuer or of a related entity of the issuer if

- (a) the consultant is an associate of the issuer or of a related entity of the issuer, or
- (b) the issuer or a related entity of the issuer is an associate of the consultant;

“**compensation**” means an issuance of securities in exchange for services provided or to be provided and includes an issuance of securities for the purpose of providing an incentive;

“**consultant**” means, for an issuer, a person, other than an employee, executive officer, or director of the issuer or of a related entity of the issuer, that

- (a) is engaged to provide services to the issuer or a related entity of the issuer, other than services provided in relation to a distribution,

- (b) provides the services under a written contract with the issuer or a related entity of the issuer, and
- (c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer

and includes, for an individual consultant, a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner;

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

“investor relations activities” means activities or communications, by or on behalf of an 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 issuerthat cannot reasonably be considered to promote the purchase or sale of securities of the issuer,
- (b) activities or communications necessary to comply with the requirements of
 - (i) securities legislation of any jurisdiction of Canada,
 - (ii) the securities laws of any foreign jurisdiction governing the issuer, or
 - (iii) any exchange or market on which the issuer’s securities trade,

or

- (c) activities or communications necessary to follow securities directions of any jurisdiction of Canada;

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

“issuer bid requirements” means the requirements under securities legislation that apply to an issuer bid;

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

- (a) are listed and not suspended, or the equivalent, from trading on
 - (i) the Toronto Stock Exchange,
 - (ii) TSX Venture Exchange Inc.,
 - (iii) the American Stock Exchange LLC,
 - (iv) The New York Stock Exchange, Inc.,
 - (v) the London Stock Exchange Limited, or
- (b) are quoted on the Nasdaq Stock Market;

“permitted assign” means, for a person that is an employee, executive officer, director or consultant of an issuer or of a related entity of the issuer,

- (a) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the person,
- (b) a holding entity of the person,

- (c) an RRSP or a RRIF of the person,
- (d) a spouse of the person,
- (e) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the spouse of the person,
- (f) a holding entity of the spouse of the person, or
- (g) an RRSP or a RRIF of the spouse of the person;

“**plan**” means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by persons described in section 2.24(1) [*Employee, executive officer, director and consultant*] as compensation;

“**related entity**” means, for an issuer, a person that controls or is controlled by the issuer or that is controlled by the same person that controls the issuer;

“**related person**” means, for an issuer,

- (a) a director or executive officer of the issuer or of a related entity of the issuer,
- (b) an associate of a director or executive officer of the issuer or of a related entity of the issuer, or
- (c) a permitted assign of a director or executive officer of the issuer or of a related entity of the issuer;

“**security holder approval**” means an approval for the issuance of securities of an issuer as compensation or under a plan

- (a) given by a majority of the votes cast at a meeting of security holders of the issuer other than votes attaching to securities beneficially owned by related persons to whom securities may be issued as compensation or under that plan, or
- (b) evidenced by a resolution signed by all the security holders entitled to vote at a meeting, if the issuer is not required to hold a meeting;

“**support agreement**” includes an agreement to provide assistance in the maintenance or servicing of indebtedness of the borrower and an agreement to provide consideration for the purpose of maintaining or servicing indebtedness of the borrower.

Interpretation

2.23 (1) In this Division, a person (first person) is considered to control another person (second person) if the first person, directly or indirectly, has the power to direct the management and policies of the second person by virtue of

- (a) ownership of or direction over voting securities in the second person,
- (b) a written agreement or indenture,
- (c) being the general partner or controlling the general partner of the second person, or
- (d) being a trustee of the second person.

(2) In this Division, participation in a trade is considered voluntary if

- (a) in the case of an employee or the employee’s permitted assign, the employee or the employee’s permitted assign is not induced to participate in the trade by expectation of employment or continued employment of the employee with the issuer or a related entity of the issuer,
- (b) in the case of an executive officer or the executive officer’s permitted assign, the executive officer or the executive officer’s permitted assign is not induced to participate in the trade by expectation of appointment, employment, continued appointment or continued employment of the executive officer with the issuer or a related entity of the issuer, and
- (c) in the case of a consultant or the consultant’s permitted assign, the consultant or the consultant’s permitted assign is not induced to participate in the trade by expectation of engagement of the consultant to provide

services or continued engagement of the consultant to provide services to the issuer or a related entity of the issuer.

Employee, executive officer, director and consultant

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.24 (1) Subject to section 2.25 [Unlisted reporting issuer exception], the dealer registration requirement does not apply in respect of

- (a) a trade by an issuer in a security of its own issue, or
- (b) a trade by a control person of an issuer in a security of the issuer or in an option to acquire a security of the issuer,

with

- (c) an employee, executive officer, director or consultant of the issuer,
- (d) an employee, executive officer, director or consultant of a related entity of the issuer, or
- (e) a permitted assign of a person referred to in paragraphs (c) or (d)

if participation in the trade is voluntary.

(2) For the purposes of subsection (1), a person referred to in paragraph (c), (d) or (e) includes a trustee, custodian or administrator acting as agent for that person for the purpose of facilitating a trade.

(3) The dealer registration requirement does not apply in respect of an act by a related entity of an issuer in furtherance of a trade referred to in subsection (1).

(4) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Unlisted reporting issuer exception

2.25 (1) For the purpose of this section, “unlisted reporting issuer” means a reporting issuer in a jurisdiction of Canada that is not a listed issuer.

(2) Subject to subsection (3), section 2.24 [Employee, executive officer, director and consultant] does not apply to a trade to an employee or consultant of the unlisted reporting issuer who is an investor relations person of the issuer, an associated consultant of the issuer, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the trade,

- (a) the number of securities, calculated on a fully diluted basis, reserved for issuance under options granted to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person, exceeds 5% of the outstanding securities of the issuer, or
- (b) the number of securities, calculated on a fully diluted basis, issued within 12 months to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person and the associates of the related person, exceeds 5% of the outstanding securities of the issuer.

(3) Subsection (2) does not apply to a trade if the unlisted reporting issuer

- (a) obtains security holder approval, and

- (b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:
- (i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;
 - (ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;
 - (iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
 - (iv) in the case of options, the maximum term and the basis for the determination of the exercise price;
 - (v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability;
 - (vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

Trades among current or former employees, executive officers, directors, or consultants of non-reporting issuer

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.26 (1) Subject to subsection (2), the dealer registration requirement does not apply in respect of a trade in a security of an issuer by

- (a) a current or former employee, executive officer, director, or consultant of the issuer or related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

to

- (c) an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or
- (d) a permitted assign of the employee, executive officer, director, or consultant.

(2) The exemption in subsection (1) is only available if

- (a) participation in the trade is voluntary,
- (b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and
- (c) the price of the security being traded is established by a generally applicable formula contained in a written agreement among some or all of the security holders of the issuer to which the transferee is or will become a party.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Permitted transferees

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.27 (1) he dealer registration requirement does not apply in respect of a trade in a security of an issuer acquired by a person described in section 2.24(1) [*Employee, executive officer, director and consultant*] under a plan of the issuer if the trade

- (a) is between
 - (i) a person who is an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, and
 - (ii) the permitted assign of that person,
- or
- (b) is between permitted assigns of that person.

(2) The dealer registration requirement does not apply in respect of a trade in a security of an issuer by a trustee, custodian or administrator acting on behalf, or for the benefit, of employees, executive officers, directors or consultants of the issuer or a related entity of the issuer, to

- (a) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

if the security was acquired from

- (c) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (d) the permitted assign of a person referred to in paragraph (c).

(3) For the purposes of the exemption in subsections (1) and (2) (c) and (d), all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

(4) The prospectus requirement does not apply to a distribution in the circumstances referred to in subsection (1) or (2), if the security was acquired

- (a) by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] under any exemption that makes the resale of the security subject to section 2.6 of NI 45-102, or
- (b) in Manitoba, and the Yukon, by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*].

Resale - non-reporting issuer

2.28 The dealer registration requirement does not apply in respect of the resale of a security that was acquired under this Division or by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] if the conditions in section 2.14 of NI 45-102 are satisfied.

Issuer bid

2.29 The issuer bid requirements do not apply to the acquisition by an issuer of a security of its own issue that was acquired by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] if

- (a) the purpose of the acquisition by the issuer is to
 - (i) fulfill withholding tax obligations, or
 - (ii) provide payment of the exercise price of a stock option,
- (b) the acquisition by the issuer is made in accordance with the terms of a plan that specifies how the value of the securities acquired by the issuer is determined,
- (c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder, and
- (d) the aggregate number of securities acquired by the issuer within a 12 month period under this section does not exceed 5% of the outstanding securities of the class or series at the beginning of the period.

Division 5: Miscellaneous Exemptions**Isolated trade by issuer**

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period.

2.30 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue if the trade is an isolated trade and is not made

- (a) in the course of continued and successive transactions of a like nature, and
- (b) by a person whose usual business is trading in securities.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Dividends and distributions

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.31 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a security holder of the issuer as a dividend or distribution out of earnings, surplus, capital or other sources.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer to a security holder of the issuer in a security of a reporting issuer as an in specie dividend or distribution out of earnings or surplus.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1) or (2).

Trade to lender by control person for collateral

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. Trades by a lender, pledgee, mortgagee or other encumbrancer to realize on a debt are regulated by section 2.8 of NI 45-102.

2.32 (1) The dealer registration requirement does not apply in respect of a trade in a security of an issuer to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person of the issuer for the purpose of giving collateral for a bona fide debt of the control person.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Acting as underwriter

Refer to Appendix F of NI 45-102 *Resale of Securities*. First trades are a distribution.

2.33 (1) The dealer registration requirement does not apply in respect of a trade in a security between a person and a purchaser acting as an underwriter or between or among persons acting as underwriters.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Guaranteed debt

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

2.34 (1) In this section

- (a) **“Asian Development Bank”** means a bank established pursuant to a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;
 - (b) **“Inter-American Development Bank”** means a bank established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, of which Canada is a member;
 - (c) **“International Bank for Reconstruction and Development”** means the bank established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada);
 - (d) **“International Finance Corporation”** means the corporation established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada);
 - (e) **“permitted supranational agency”** means the Asian Development Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank and the International Finance Corporation.
- (2) The dealer registration requirement does not apply in respect of a trade in a debt security
- (a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,
 - (b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,
 - (c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
 - (d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
 - (e) in Ontario, of any school board in Ontario or of a corporation established under section 248(1) of the Education Act (Ontario),
 - (f) of the Comité de gestion de la taxe scolaire de l’île de Montréal, or
 - (g) of or guaranteed by a permitted supranational agency if
 - (i) the debt securities are payable in the currency of Canada or the United States of America, and
 - (ii) with respect to those securities, all documents or other information required by the regulator, or in British Columbia, Ontario and in Québec, the securities regulatory authority, are filed with the regulator or securities regulatory authority, as the case may be.
- (3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

Short-term debt

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- 2.35 (1)** The dealer registration requirement does not apply in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper traded
- (a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section, and
 - (b) has an approved credit rating from an approved credit rating organization.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Mortgages

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

2.36 (1) In this section, “syndicated mortgage” means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by a mortgage.

(2) Subject to subsection (4), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

(4) In British Columbia, Manitoba, Québec and Saskatchewan, subsections (2) and (3) do not apply to a syndicated mortgage.

Personal Property Security Act

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

2.37 (1) The dealer registration requirement does not apply in respect of a trade in a security evidencing indebtedness secured by or under a security agreement provided for under personal property security legislation of a jurisdiction providing for the acquisition of personal property if the security is not offered for sale to an individual.

The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Not for profit issuer

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

2.38 (1) The dealer registration requirement does not apply in respect of a trade by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if

- (a) no part of the net earnings benefit any security holder of the issuer, and
- (b) no commission or other remuneration is paid in connection with the sale of the security.

(2) Subsection (1) does not apply to a trade in British Columbia unless the issuer has delivered an information statement in the form prescribed by the regulator in British Columbia to the purchaser before the purchaser agrees in writing to purchase the security.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Variable insurance contract

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

2.39 (1) In this section,

- (a) “contract” “group insurance”, “insurance company”, “life insurance” and “policy” have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.

- (b) “variable insurance contract” means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract is

- (a) a contract of group insurance,
- (b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,
- (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or
- (d) a variable life annuity.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

RRSP/RRIF

These securities will be cited in Appendix D and Appendix E of NI 45-102 *Resale of Securities*. The resale restriction is determined by the exemption under which the security was first acquired.

2.40 (1) The dealer registration requirement does not apply in respect of a trade in a security between

- (a) an individual or an associate of the individual, and
- (b) an RRSP or RRIF
- (i) established for or by the individual, or
- (ii) under which the individual is a beneficiary.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Schedule III banks and cooperative associations - evidence of deposit

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

2.41 (1) The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Conversion, exchange, or exercise

Subsection (1)(a) will be cited in Appendix D and Appendix E of NI 45-102 *Resale of Securities*. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

Subsection (1)(b) will be cited in Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.42 (1) The dealer registration requirement does not apply in respect of a trade by an issuer if

- (a) the issuer trades a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or

- (b) subject to subsection (2), the issuer trades a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.
- (2) For a trade under subsection (1)(b),
- (a) the issuer must give the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the trade, and
 - (b) except in British Columbia, the regulator or, in Québec the securities regulatory authority, must not object in writing to the trade within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the trade, the issuer must deliver to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority.
- (3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Removal of exemptions – market intermediaries

2.43 (1) Subject to subsection (2), in Ontario and Newfoundland and Labrador, the exemptions from the dealer registration requirement under the following sections are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:

- (a) section 2.1 [*Rights offering*];
- (b) section 2.3 [*Accredited investor*];
- (c) section 2.4 [*Private issuer*];
- (d) section 2.7 [*Founder, control person and family - Ontario*];
- (e) section 2.10 [*Minimum amount investment*];
- (f) section 2.11 [*Business combination and reorganization*];
- (g) section 2.12 [*Asset acquisition*];
- (h) section 2.14 [*Securities for debt*];
- (i) section 2.15 [*Issuer acquisition or redemption*];
- (j) section 2.16 [*Take-over bid and issuer bid*];
- (k) section 2.17 [*Offer to acquire to security holder outside local jurisdiction*];
- (l) section 2.19 [*Additional investment in investment funds*];
- (m) section 2.21 [*Private investment fund - loan and trust pools*];
- (n) section 2.30 [*Isolated trade by issuer*];
- (o) section 2.31 [*Dividends and distributions*];
- (p) section 2.33 [*Acting as underwriter*];
- (q) section 2.34 [*Guaranteed debt*];
- (r) section 2.35 [*Short-term debt*];
- (s) section 2.39 [*Variable insurance contract*];
- (t) section 2.42 [*Conversion, exchange, or exercise*].

(2) Subsection (1) does not apply to a trade in a security by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant.

PART 3: REGISTRATION ONLY EXEMPTIONS

Registered dealer

3.1 The dealer registration requirement does not apply in respect of a trade by a person acting solely through an agent who is a registered dealer.

Exchange contract

3.2 (1) In Alberta, British Columbia, Québec and Saskatchewan, the dealer registration requirement does not apply in respect of the following trades in exchange contracts:

- (a) a trade by a person acting solely through a registered dealer;
- (b) subject to subsection (2) and (3), a trade resulting from an unsolicited order placed with an individual who is not a resident of and does not carry on business in the jurisdiction;
- (c) a trade that may occasionally be transacted by employees of a registered dealer if the employees
 - (i) do not usually trade in exchange contracts, and
 - (ii) have been designated by the regulator or, in Québec, the securities regulatory authority, as “non-trading” employees, either individually or as a class.

(2) An individual referred to in subsection (1)(b) must not

- (a) advertise or engage in promotional activity that is directed to persons in the jurisdiction during the 6 months preceding the trade, and
- (b) pay any commission or finder’s fee to any person in the jurisdiction in connection with the trade.

(3) Subsection (1)(b) does not apply in Saskatchewan.

Isolated trade

3.3 The dealer registration requirement does not apply in respect of a trade in a security by a person if the trade is an isolated trade and is not made

- (a) by the issuer of the security,
- (b) in the course of continued and successive transactions of a like nature, and
- (c) by a person whose usual business is trading in securities.

Estates, bankruptcies, and liquidations

3.4 The dealer registration requirement does not apply in respect of a trade by a person acting under the authority of

- (a) a direction, order or judgment of a court,
- (b) a will, or
- (c) any law of a jurisdiction

in the course of enforcing legal obligations or administering the affairs of another person.

Employees of registered dealer

3.5 The dealer registration requirement does not apply in respect of a trade by an employee of a registered dealer in a security if the employee does not usually trade in securities and has been designated by the regulator or, in Québec, the securities regulatory authority, as a “non-trading” employee, either individually or as a class.

Small security holder selling and purchase arrangements

3.6 For the purposes of this section

“exchange” means

- (a) the Toronto Stock Exchange,
- (b) the TSX Venture Exchange Inc., or
- (c) an exchange that
 - (i) has a policy that is substantially similar to the policy of the Toronto Stock Exchange, and
 - (ii) is designated by the securities regulatory authority for the purpose of this section;

“policy” means

- (a) in the case of the Toronto Stock Exchange, *Policy Statement on Small Shareholder Selling and Purchase Arrangements* as amended from time to time,
- (b) in the case of the TSX Venture Exchange Inc., *Policy 5.7 Small Shareholder Selling and Purchase Arrangements* as amended from time to time, or
- (c) in the case of an exchange referred to in paragraph (c) of the definition of “exchange”, the rule, policy or other similar instrument of the exchange on small shareholder selling and purchase arrangements and every successor to that rule, policy or other similar instrument published by that exchange as amended from time to time.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer or its agent, in securities of the issuer that are listed on an exchange if

- (a) the trade is an act in furtherance of participation by the holders of the securities in an arrangement that is in accordance with the policy of that exchange,
- (b) the issuer and its agent do not provide advice to a security holder about the security holder’s participation in the arrangement referred to in paragraph (a), other than a description of the arrangement’s operation, procedures for participation in the arrangement, or both,
- (c) the trade is made in accordance with the policy of that exchange, without resort to an exemption from, or variation of, the significant subject matter of the policy, and
- (d) at the time of the trade after giving effect to a purchase under the arrangement, the market value of the maximum number of securities that a security holder is permitted to hold in order to be eligible to participate in the arrangement is not more than \$25 000.

(3) For the purposes of subsection (2)(c), an exemption from, or variation of, the maximum number of securities that a security holder is permitted to hold under a policy in order to be eligible to participate in the arrangement provided for in the policy is not an exemption from, or variation of, the significant subject matter of the policy.

Adviser

3.7 The adviser registration requirement does not apply to

- (a) the following persons if performance of services as an adviser are incidental to their principal business or occupation:

- (i) a Canadian financial institution and a Schedule III bank;
- (ii) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
- (iii) a société d'entraide économique or the Fédération des sociétés d'entraide économique du Québec governed by the Act respecting the sociétés d'entraide économique (Québec);
- (iv) a lawyer, accountant, engineer or teacher, or, in Québec, a notary, if that individual
 - (A) does not recommend securities of an issuer in which that individual has an interest, and
 - (B) does not receive remuneration for the performance of services as an adviser separate from remuneration received by that individual for practicing in their professions;
- (v) a registered dealer or any partner, officer or employee of a registered dealer;

or

- (b) a publisher or a writer for a newspaper, news magazine or business or financial journal or periodical, however delivered, that is of general and regular paid circulation, and only available to subscribers for value, or purchasers of it, if the publisher or writer
 - (i) gives advice only through the written publication,
 - (ii) has no interest either directly or indirectly in any of the securities on which that individual gives advice, and
 - (iii) receives no commission or other consideration for giving the advice other than for acting in that person's capacity as a publisher or writer.

Investment dealer acting as portfolio manager

3.8 (1) Subject to subsection (2) and, in Ontario, subsections (2) and (3), the adviser registration requirement does not apply to a registered investment dealer who manages the investment portfolios of its clients through discretionary authority granted by the clients if

- (a) the investment dealer follows the rules, policies or other similar instruments made by the Investment Dealers Association of Canada for portfolio managers, and
- (b) in British Columbia, those rules, policies or other similar instruments
 - (i) have been filed with the securities regulatory authority before they take effect, and
 - (ii) have not been objected to in writing by the securities regulatory authority within 30 days after filing.

(2) Any partner, director, officer or employee of a registered investment dealer referred to in subsection (1) who manages an investment portfolio for the registered investment dealer must be registered under the securities legislation of the jurisdiction to trade in securities.

(3) In Ontario, the registered investment dealer must provide the securities regulatory authority with

- (a) the names of any partner, director, officer or employee of the investment dealer designated and approved by the Investment Dealers Association of Canada pursuant to the rules, policies or other similar instruments referred to in subsection (1) to make investment decisions on behalf of or to offer advice to clients, and
- (b) any changes made from time to time in the designation and approval of any partner, director, officer or employee referred to in paragraph (a).

Removal of exemptions – market intermediaries

3.9 (1) Subject to subsection (2), in Ontario and Newfoundland and Labrador, the exemptions from the dealer registration requirements under the following sections are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:

- (a) section 3.1 [*Registered dealer*];
- (b) section 3.3 [*Isolated trade*].

(2) Subsection (1) does not apply in respect of a trade in a security by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant.

PART 4: CONTROL BLOCK DISTRIBUTIONS

Control block distributions

4.1 (1) In this Part

“**control block distribution**” means a trade to which the provisions of securities legislation listed in Appendix B apply;

“**NI 62-103**” means National Instrument 62-103 The Early Warning System and Related Take-over Bid and Insider Reporting Issues.

(2) Terms defined or interpreted in NI 62-103 and used in this Part have the same meaning as is assigned to them in that Instrument.

(3) The prospectus requirement does not apply to a control block distribution by an eligible institutional investor of a reporting issuer’s securities if

- (a) the eligible institutional investor
 - (i) has filed the reports required under the early warning requirements or files the reports required under Part 4 of NI 62-103,
 - (ii) does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed,
 - (iii) does not receive in the ordinary course of its business and investment activities knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed, and
 - (iv) either alone or together with any joint actors, does not possess effective control of the reporting issuer,
- (b) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor,
- (c) the control block distribution is made in the ordinary course of business or investment activity of the eligible institutional investor,
- (d) securities legislation would not require the securities to be held for a specified period of time if the trade was not a control block distribution,
- (e) no unusual effort is made to prepare the market or to create a demand for the securities, and
- (f) no extraordinary commission or consideration is paid in respect of the control block distribution.

(4) An eligible institutional investor that makes a distribution in reliance on subsection (3) must file a letter within 10 days after the distribution that describes the date and size of the distribution, the market on which it was made and the price at which t

Trades by a control person after a take-over bid

4.2 (1) Subject to subsection (2), the prospectus requirement does not apply to a trade in a security from the holdings of a control person acquired under a take-over bid for which a take-over bid circular was issued and filed if

- (a) the issuer whose securities are being acquired under the take-over bid has been a reporting issuer for at least 4 months at the date of the take-over bid,
- (b) the intention to make the trade is disclosed in the take-over bid circular issued in respect of the take-over bid,
- (c) the trade is made within the period beginning on the date of the expiry of the bid and ending 20 days after that date,
- (d) a notice of intention to distribute securities in Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities* under NI 45-102 is filed before the trade,
- (e) an insider report of the trade in Form 55-102F2 *Insider Report* or Form 55-102F6 *Insider Report*, as applicable, under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* is filed within 3 days after the completion of the trade,
- (f) no unusual effort is made to prepare the market or to create a demand for the security, and
- (g) no extraordinary commission or consideration is paid in respect of the trade.

(2) A control person referred to in subsection (1) is not required to comply with subsection (1) (b) if

- (a) another person makes a competing take-over bid for securities of the issuer for which the take-over bid circular is issued, and
- (b) the control person sells those securities to that other person for a consideration that is not greater than the consideration offered by that other person under its take-over bid.

PART 5: OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT**Application and interpretation**

5.1 (1) This Part does not apply in Ontario.

(2) In this Part

“**exchange policy**” means Exchange Policy 4.6 - *Public Offering by Short Form Offering Document* and Exchange Form 4H - *Short Form Offering Document*, of the TSX Venture Exchange as amended from time to time;

“**gross proceeds**” means the gross proceeds that are required to be paid to the issuer for listed securities distributed under a TSX Venture exchange offering document;

“**listed security**” means a security of a class listed on the TSX Venture Exchange;

“**NI 43-101**” means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

“**NI 51-101**” means National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

“**prior exchange offering**” means a distribution of securities by an issuer under a TSX Venture exchange offering document that was completed during the 12-month period immediately preceding the date of the TSX Venture exchange offering document;

“**subsequently triggered report**” means a material change report that must be filed no later than 10 days after a material change under securities legislation as a result of a material change that occurs after the date the TSX Venture exchange offering document is certified but before a purchaser enters into an agreement of purchase and sale;

“**TSX Venture Exchange**” means the TSX Venture Exchange Inc.;

“**TSX Venture exchange offering document**” means an offering document that complies with the exchange policy;

“**warrant**” means a warrant of an issuer distributed under a TSX Venture exchange offering document that entitles the holder to acquire a listed security or a portion of a listed security of the same issuer.

TSX Venture Exchange offering

Refer to Appendix D of NI 45-102 *Resale of Securities*. These securities will be free trading unless

- (i) the purchaser who acquires the security was an insider, a promoter of the issuer, an underwriter of the issuer, or a member of the underwriter’s professional group at the time the security was acquired, or**
- (ii) any other purchaser who purchases securities in excess of \$40 000.**

The first trade by purchasers under (i) and (ii) are subject to a restricted period.

- 5.2** The prospectus requirement does not apply to a distribution by an issuer in a security of its own issue if
- (a) the issuer has filed an AIF in a jurisdiction of Canada,
 - (b) the issuer is a SEDAR filer,
 - (c) the issuer is a reporting issuer in a jurisdiction of Canada and has filed with the securities regulatory authority of that jurisdiction
 - (i) a TSX Venture exchange offering document,
 - (ii) all documents required to be filed under the securities legislation of that jurisdiction, and
 - (iii) any subsequently triggered report,
 - (d) the distribution is of listed securities or units consisting of listed securities and warrants,
 - (e) the issuer has filed with the TSX Venture Exchange a TSX Venture exchange offering document in respect of the distribution, that
 - (i) incorporates by reference the following documents of the issuer filed with the securities regulatory authority in any jurisdiction of Canada:
 - (A) the AIF,
 - (B) the most recent annual financial statements and, for financial years starting on or after January 1, 2004, the MD&A relating to those financial statements,
 - (C) all unaudited interim financial statements and, for financial years starting on or after January 1, 2004, the MD&A relating to those financial statements, filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document,
 - (D) all material change reports filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document, and
 - (E) all documents required under NI 43-101 and NI 51-101 filed on or after the date of the AIF but before or on the date of the TSX Venture exchange offering document,
 - (ii) deems any subsequently triggered report required to be delivered to a purchaser under this Part to be incorporated by reference,
 - (iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the exchange policy,
 - (iv) grants to purchasers contractual rights of withdrawal, as required by the exchange policy, and
 - (v) contains all the certificates required by the exchange policy,
 - (f) the distribution is conducted in accordance with the exchange policy,

- (g) the issuer or the underwriter delivers the TSX Venture exchange offering document and any subsequently triggered report to each purchaser
 - (i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the TSX Venture exchange offering document, or
 - (ii) not later than midnight on the 2nd business day after the agreement of purchase and sale is entered into,
- (h) the listed securities issued under the TSX Venture exchange offering document, when added to the listed securities of the same class issued under prior exchange offerings do not exceed,
 - (i) the number of securities of the same class outstanding immediately before the issuer distributes securities of the same class under the TSX Venture exchange offering document, or
 - (ii) the number of securities of the same class outstanding immediately before a prior exchange offering,
- (i) the gross proceeds under the TSX Venture exchange offering document, when added to the gross proceeds from prior exchange offerings do not exceed \$2 million,
- (j) no purchaser acquires more than 20% of the securities distributed under the TSX Venture exchange offering document, and
- (k) no more than 50% of the securities distributed under the TSX Venture exchange offering document are subject to section 2.5 of NI 45-102.

Underwriter obligations

5.3 An underwriter that qualifies as a “sponsor” under TSX Venture Exchange Policy 2.2 - *Sponsorship and Sponsorship Requirements* as amended from time to time must sign the TSX Venture exchange offering document and comply with TSX Venture Exchange Appendix 4A - *Due Diligence Report* in connection with the distribution.

PART 6: REPORTING REQUIREMENTS

Report of exempt distribution

6.1 Subject to section 6.2 [When report not required], if an issuer distributes a security of its own issue, the issuer must file a report in the local jurisdiction in which the distribution takes place on or before the 10th day after the distribution under the following exemptions:

- (a) section 2.3(2) [*Accredited investor*];
- (b) section 2.5(2) [*Family, friends and business associates*];
- (c) section 2.9 (3) and (4) [*Offering memorandum for Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Québec, and Saskatchewan*];
- (d) section 2.10 (2) [*Minimum amount investment*];
- (e) section 2.12 (2) [*Asset acquisition*];
- (f) section 2.13(2) [*Petroleum, natural gas and mining properties*];
- (g) section 2.14 (2) [*Securities for debt*];
- (h) section 2.19 (2) [*Additional investment in investment funds*];
- (i) section 2.30(2) [*Isolated trade by issuer*];
- (j) section 5.2 [*TSX Venture Exchange offering*].

When report not required

6.2 (1) An issuer is not required to file a report under section 6.1(a) [Report of exempt distribution] for a distribution of a debt security of its own issue or, concurrently with the distribution of the debt security, an equity security of its own issue, to a Canadian financial institution or a Schedule III bank.

(2) An investment fund is not required to file a report under section 6.1 [Report of exempt distribution] for a distribution under sections 2.3 (2) [Accredited investor], 2.10 (2) [Minimum amount] and 2.19 (2) [Additional investment in investment funds] if the investment fund files the report not later than 30 days after the financial year-end of the investment fund.

Required form of report of exempt distribution

6.3 (1) Except in British Columbia, the required form of report under section 6.1 [*Report of exempt distribution*] is Form 45-106F1.

(2) Except in Manitoba, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument is exempt from the requirements in securities legislation to file a report of exempt trade or exempt distribution in the required form, if the issuer files a report of exempt distribution in accordance with Form 45-106F1.

Required form of offering memorandum

6.4 (1) The required form of offering memorandum under section 2.9 [*Offering memorandum*] is Form 45-106F2.

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.

(3) Subsections (1) and (2) do not apply in British Columbia.

Required form of risk acknowledgement

6.5 (1) Except in British Columbia, the required form of risk acknowledgement under section 2.9(14) [*Offering memorandum*] is Form 45-106F4.

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6(1) [*Family, friends and business associates*] is Form 45-106F5.

Required forms in British Columbia

6.6 In British Columbia, the required forms are the forms specified by the regulator under section 182 of the *Securities Act* (British Columbia).

PART 7: EXEMPTION**Exemption**

7.1 (1) Subject to subsection (2), the regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) In Ontario, only the regulator may grant an exemption and only from Part 6, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(3) In Québec, the exemption in this section is granted pursuant to section 263 of the *Securities Act* (R.S.Q., c.V-V-1.1).

PART 8: TRANSITIONAL, COMING INTO FORCE**Additional investment - investment funds**

8.1 (1) The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a purchaser that initially acquired the security as principal before this Instrument came into force if

- (a) the security was initially acquired under any of the following provisions:

- (i) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
 - (ii) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
 - (iii) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;
 - (iv) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;
 - (v) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);
 - (vi) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
 - (vii) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 1;
 - (viii) in Nunavut, section 3(c) and (z) of Blanket Order No. 1;
 - (ix) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*;
 - (x) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 *-Exempt Distributions - Exemption for Purchase of Mutual Fund Securities*;
 - (xi) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);
 - (xii) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).
- (b) the trade is for a security of the same class or series as the initial trade, and
- (c) the security holder, as at the date of the trade, holds securities of the investment fund that have
- (i) an acquisition cost of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted, or
 - (ii) a net asset value of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Definition of “accredited investor” - investment fund

8.2 An investment fund that distributed its securities to persons pursuant to any of the following provisions is an investment fund under paragraph (n)(ii) of the definition of “accredited investor”:

- (a) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
- (b) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
- (c) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;
- (d) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;
- (e) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);

- (f) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
- (g) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 2;
- (h) in Nunavut, section 3(c) and (z) of Blanket Order No. 3;
- (i) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*;
- (j) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 *-Exempt Distributions - Exemption for Purchase of Mutual Fund Securities*;
- (k) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);
- (l) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).

Transition - MI 45-103/MI 45-105/ OSC Rule 45-501

8.3 (1) In this section,

“MI 45-103” means Multilateral Instrument 45-103 *Capital Raising Exemptions* that came into force on June 6, 2003;

“MI 45-105” means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* that came into force on August 15, 2003;

“2004 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004.

(2) The dealer registration requirement or the prospectus requirement does not apply in respect of a trade in a security if the trade complies with and is completed in accordance with the requirements of MI 45-103, MI 45-105, or 2004 OSC Rule 45-501 by November 30, 2005.

Transition - Closely-held issuer

8.4 (1) In this section,

“2001 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

“2004 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

“closely-held issuer” has the same meaning as in 2004 OSC Rule 45-501;

(2) The dealer registration requirement does not apply in respect of a trade in a security that was previously distributed by a closely-held issuer under section 2.1 of 2001 OSC Rule 45-501 or under section 2.1 of 2004 OSC Rule 45-501 to a person who purchases the security as principal and is

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer, founder or control person of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer, founder or control person of the issuer,
- (d) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (e) a close business associate of a director, executive officer, founder or control person of the issuer,
- (f) a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse,

- (g) a security holder of the issuer,
 - (h) an accredited investor,
 - (l) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
 - (j) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
 - (k) a person that is not the public.
- (3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

Coming into force

8.5 This Instrument comes into force on September 14, 2005.

APPENDIX A

TO

NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS

VARIABLE INSURANCE CONTRACT EXEMPTION
(section 2.39)

JURISDICTION	LEGISLATION REFERENCE
ALBERTA	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Alberta) and the regulations under that Act.</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (Alberta) that is licensed under that Act.</p>
BRITISH COLUMBIA	<p>“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (British Columbia) and the regulations under that Act.</p> <p>“insurance company” means an insurance company, or an extraprovincial insurance corporation, authorized to carry on insurance business under the <i>Financial Institutions Act</i> (British Columbia).</p>
MANITOBA	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Manitoba) and the regulations under that Act.</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (Manitoba) that is licensed under that Act.</p>
NEW BRUNSWICK	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (New Brunswick) and the regulations under that Act.</p> <p>“insurance company” means an insurer as defined in the <i>Insurance Act</i> (New Brunswick) that is licensed under that Act.</p>
NOVA SCOTIA	<p>“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Nova Scotia) and the regulations under that Act.</p> <p>“insurance company” has the same meaning as in section 3(1)(a) of the General Securities Rules (Nova Scotia).</p>
ONTARIO	<p>“contract”, “group insurance”, “life insurance” and “policy” have the respective meanings assigned to them in section 1 and 171 the <i>Insurance Act</i> (Ontario).</p> <p>“insurance company” has the same meaning as in section 1(2) of the General Regulation (Ont. Reg. 1015).</p>
QUÉBEC	<p>“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the Civil Code of Québec.</p> <p>“insurance company” means an insurer holding a license under the Act respecting insurance (R.S.Q., c. A-32).</p>
PRINCE EDWARD ISLAND	<p>“contract”, “group insurance”, “insurer”, “life insurance” and “policy” have the respective meanings assigned to them in sections 1 and 174 of the <i>Insurance Act</i> (Prince Edward Island)</p> <p>“insurance company” means an insurance company licensed under the <i>Insurance Act</i> (R.S.P.E.I. 1988, Cap. I-4),</p>
SASKATCHEWAN	<p>“contract”, “life insurance” and “policy” have the respective meanings assigned to them in section 2 of <i>The Saskatchewan Insurance Act</i> (Saskatchewan).</p>

“group insurance” has the respective meaning assigned to it in section 133 of *The Saskatchewan Insurance Act* (Saskatchewan).

“insurance company” means an issuer licensed under *The Saskatchewan Insurance Act* (Saskatchewan).

APPENDIX B
TO
NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS
CONTROL BLOCK DISTRIBUTIONS
(PART 4)

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Section 1(p)(iii) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of “distribution” contained in section 1 of the <i>Securities Act</i> (British Columbia)
MANITOBA	Section 1(b) of the definition of “primary distribution to the public” contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Paragraph (c) of the definition of “distribution” contained in section 1(1) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
NOVA SCOTIA	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Section 1(f)(iii) of the <i>Securities Act</i> (Prince Edward Island)
QUÉBEC	Paragraph 9 of the definition of “distribution” contained section 5 of the <i>Securities Act</i> (Québec)
SASKATCHEWAN	Section 2(1)(r)(iii) of The <i>Securities Act</i> , 1988 (Saskatchewan)

**FORM 45-106F1
REPORT OF EXEMPT DISTRIBUTION**

This is the form required under section 6.1 of National Instrument 45-106 for a report of exempt distribution.

Issuer information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address and telephone number of the head office of the manager. Include the former name of the issuer if its name has changed since last report.

Item 2: State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

Item 3: Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

- | | |
|---|--|
| <input type="checkbox"/> Bio-tech | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> exploration/development |
| <input type="checkbox"/> investment companies and funds | <input type="checkbox"/> production |
| <input type="checkbox"/> mortgage investment companies | <input type="checkbox"/> Oil and gas |
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Hi-tech | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Other (describe) |

Details of distribution

Item 4: Complete Schedule I to this report. Schedule I is designed to assist in completing the remainder of this report.

Item 5: State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.

Item 6: For each security distributed:

- (a) describe the type of security,
- (b) state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and
- (c) state the exemption(s) relied on.

Item 7: Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below.

Each jurisdiction where purchasers reside	Number of purchasers	Price per security (Canadian \$) ¹	Total dollar value raised from purchasers in the jurisdiction (Canadian \$)
Total number of Purchasers			
Total dollar value of distribution in all jurisdictions (Canadian \$)			

Note 1: If securities are issued at different prices list the highest and lowest price the securities were sold for.

Commissions and finder's fees

Item 8: Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar

nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

Full name and address of the person being compensated	Compensation paid or to be paid (cash and/or securities)				
	Cash (Canadian \$)	Securities			Total dollar value of compensation (Canadian \$)
		Number and type of securities issued	Price per security	Exemption relied on and date of distribution	

Item 9: If a distribution is made in Ontario, please include the attached “Authorization of Indirect Collection of Personal Information for Distributions in Ontario”. The “Authorization of Indirect Collection of Personal Information for Distributions in Ontario” is only required to be filed with the Ontario Securities Commission.

Certificate

On behalf of the issuer, I certify that the statements made in this report are true.

Date: _____

Name of issuer (please print)

Print name, title and telephone number of person signing

Signature

Item 10: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

The attached Schedule I contains personal information of purchasers and details of the distribution(s). The issuer hereby confirms that each purchaser listed in Schedule I of this report

- (a) has been notified by the issuer
 - (i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,
 - (ii) that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (iii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and
 - (iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

Schedule I

Complete the following table.

For reports filed under sub-section 6.1(1)(j) (TSX Venture Exchange offering) of National Instrument 45-106 the following table only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and telephone number of each purchaser.

Do not include in this table, securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

Full name, residential address and telephone number of purchaser	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of distribution

Instructions:

1. File this report and the applicable fee in each jurisdiction in which a distribution is made at the addresses listed at the end of this report. If the distribution is made in more than one jurisdiction, the issuer may complete a single report identifying all purchasers and file that report in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the report are not affected by identifying all purchasers in a single report.
2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report.
3. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.
4. In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.

Securities Regulatory Authorities and Regulators**British Columbia Securities Commission**

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: (604) 899-6854
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: (604) 899-6506

Alberta Securities Commission

4th Floor, 300 – 5th Avenue SW
Calgary, Alberta T2P 3C4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission

6th Floor, 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 3V7
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission

1130 – 405 Broadway Avenue
Winnipeg, Manitoba R3C 3L6
Telephone: (204) 945-2548
Facsimile: (204) 945-0330

Ontario Securities Commission

Suite 1903, Box 5520 Queen Street West
Toronto, Ontario M5H 3S8
Telephone: (416) 593-3682
Facsimile: (416) 593-8252
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone (416) 593-8086

Autorité des marchés financiers

800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337
Or 1877 525-0337
Facsimile: (514) 864-3681

New Brunswick Securities Commission

133 Prince William Street, Suite 606
Saint John, New Brunswick E2L 2B5
Telephone: (506) 658-3060
Facsimile: (506) 658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Prince Edward Island Securities Office

95 Rochford Street, P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283

Securities Commission of Newfoundland and Labrador

P.O. Box 8700 2nd Floor, West Block Confederation Building
St. John's, Newfoundland and Labrador A1B 4J6
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Government of Yukon

Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867) 393-6251

Government of Northwest Territories

Department of Justice
Securities Registry
1st Floor Stuart M. Hodgson Building
5009 – 49th Street
Yellowknife, Northwest Territories X1A 2L9
Telephone: (867) 920-3318
Facsimile: (867) 873-0243

Government of Nunavut

Department of Justice
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

FORM 45-106F2
OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office: Address:

Phone #:

E-mail address:

Fax #:

Currently listed or quoted? [If no, state: "These securities do not trade on any exchange or market". If yes, state where, e.g., TSX/TSX Venture Exchange.]

Reporting issuer? [Yes/No. If yes, state where.]

SEDAR filer? [Yes/No]

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state "\$0" as the minimum and also state: "You may be the only purchaser."]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 6. [If income tax consequences are not material, delete this item.]

Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]

Resale restrictions

State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 10."

Purchaser's rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have the right to sue either for damages or to cancel the agreement. See item 11."

State in bold type:

"No securities regulatory authority has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 8."

[All of the above information must appear on a single cover page.]

Item 1: Use of Net Proceeds

1.1 Net Proceeds - Using the following table, disclose the net proceeds of the offering. If there is no minimum offering, state "\$0" as the minimum.

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit.)	\$	\$
D	Net proceeds: $D = A - (B+C)$	\$	\$

1.2 Use of Net Proceeds - Using the following table, provide a detailed breakdown of how the issuer will use the net proceeds. If any of the net proceeds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the net proceeds to be applied against the working capital deficiency.

Description of intended use of net proceeds listed in order of priority	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$

1.3 Reallocation - The net proceeds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the net proceeds may be reallocated, include the following statement:

"We intend to spend the net proceeds as stated. We will reallocate funds only for sound business reasons."

1.4 Working Capital Deficiency - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of net proceeds, state how the issuer intends to eliminate or manage the deficiency.

Item 2: Business of [name of issuer or other term used to refer to issuer]

2.1 Structure - State the business structure (e.g., partnership, corporation or trust), the statute and the province, state or other jurisdiction under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

2.2 Our Business - Describe the issuer's business. For a non-resource issuer this may include principal products or services, operations, market and marketing plans and strategies. For a resource issuer this will require a description of principal properties (including interest held) and may include disclosure of the stage of development, reserves, geology, operations, production and mineral or resource being explored or developed. Generally, this description should not exceed 2 pages.

2.3 Development of Business - Describe (generally, in one or two paragraphs) the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include the major events that have occurred or conditions that have influenced (favourably or unfavourably) the development of the issuer.

2.4 Long Term Objectives - Disclose the issuer's long term objectives.

2.5 Short Term Objectives and How We Intend to Achieve Them

- (a) Disclose the issuer's objectives for the next 12 months.
- (b) Using the following table, disclose how the issuer intends to meet those objectives for the next 12 months.

What we must do and how we will do it	Target completion date or, if not known, number of months to complete	Our cost to complete
	\$	\$
	\$	\$

2.6 Insufficient Proceeds

If applicable, disclose that the proceeds of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and all outstanding conditions that must be satisfied.

2.7 Material Agreements - Disclose the key terms of all material agreements

- (a) to which the issuer is currently a party, or
- (b) with a related party

including the following information:

- (i) the agreement is with a related party, the name of the related party and the relationship,
- (ii) a description of any asset, property or interest acquired, disposed of, leased, under option, etc.,
- (iii) a description of any service provided,
- (iv) purchase price and payment terms (e.g., paid in instalments, cash, securities or work commitments),
- (v) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate,
- (vi) the date of the agreement,
- (vii) the amount of any finder's fee or commission paid or payable to a related party in connection with the agreement, and
- (viii) any material outstanding obligations under the agreement.

Item 3: Directors, Management, Promoters and Principal Holders

3.1 Compensation and Securities Held - Using the following table, provide the specified information about each director, officer and promoter of the issuer and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a "principal holder"). If the principal holder is not an individual, state in a note to the table the name of any person that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder. If the issuer has not completed its first financial year then include compensation paid since inception. Compensation includes any form of remuneration including cash, shares and options.

Name and municipality of principal residence	Positions held (e.g., director, officer, promoter and/or principal holder) and the date of obtaining that position	Compensation paid by issuer in the most recently completed financial year and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of min. offering	Number, type and percentage of securities of the issuer held after completion of max. offering

3.2 Management Experience - Using the following table, disclose the principal occupations of the directors and executive officers over the past five years. In addition, for each individual, describe any relevant experience in a business similar to the issuer's.

Name	Principal occupation and related experience

3.3 Penalties, Sanctions and Bankruptcy

- (a) Disclose any penalty or sanction (including the reason for it and whether it is currently in effect) that has been in effect during the last 10 years against
- (i) a director, executive officer or control person of the issuer, or
 - (ii) an issuer of which a person referred to in (i) above was a director, executive officer or control person at the time.
- (b) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, that has been in effect during the last 10 years with regard to any
- (i) director, executive officer or control person of the issuer, or
 - (ii) issuer of which a person referred to in (i) above was a director, executive officer or control person at that time.

Item 4: Capital Structure

4.1 Share Capital - Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

4.2 Long Term Debt - Using the following table, provide the required information about outstanding long term debt of the issuer. If the securities being offered are debt securities, add a column to the table disclosing the amount of debt that will be outstanding after both the minimum and maximum offering. If the debt is owed to a related party, indicate that in a note to the table and identify the related party.

Description of long term debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at [a date not more than 30 days prior to the offering memorandum date]
			\$
			\$

4.3 Prior Sales - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the last 12 months, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

Item 5: Securities Offered

5.1 Terms of Securities- Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

5.2 Subscription Procedure

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).
- (c) Disclose any conditions to closing, e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

6.2 If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide

- (a) a summary of the significant income tax consequences to Canadian residents, and
- (b) the name of the person providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

- (a) a description of each type of compensation and the estimated amount to be paid for each type,
- (b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date), and

- (d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
- arbitrary determination of price,
 - no market or an illiquid market for the securities,
 - resale restrictions, and
 - subordination of debt securities.
- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
- insufficient funds to accomplish the issuer's business objectives,
 - no history or a limited history of sales or profits,
 - lack of specific management or technical expertise,
 - management's regulatory and business track record,
 - dependence on key employees, suppliers or agreements,
 - dependence on financial viability of guarantor,
 - pending and outstanding litigation, and
 - political risk factors.
- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
- environmental and industry regulation,
 - product obsolescence, and
 - competition.

Item 9: Reporting Obligations

9.1 Disclose the documents that will be sent to purchasers on an annual or on-going basis.

9.2 If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 10: Resale Restrictions

10.1 General Statement - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan, state:

"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation."

10.2 Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan state one of the following, as applicable:

- (a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

“Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer or other term used to refer to the issuer] becomes a reporting issuer in any province or territory of Canada.”

- (b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

“Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date.”

10.3 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

“Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

- (a) [name of issuer or other term used to refer to issuer] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or
- (b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest.”

Item 11: Purchasers' Rights

State the following:

“If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or
- (b) for damages against [state the name of issuer or other term used to refer to issuer and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation].

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer or other term used to refer to issuer]:

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities.”

Item 12: Financial Statements

Include all financial statements required in the offering memorandum immediately before the certificate page of the offering memorandum.

Item 13: Date and Certificate

State the following on the certificate page of the offering memorandum:

“Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation.”

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),
- (b) on behalf of the directors of the issuer
 - (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a),
or
 - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**Instructions for Completing
Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers**

A. General Instructions

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
3. The issuer may include additional information in the offering memorandum other than that specifically required by the form. However, the offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus.
4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
5. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
6. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about “directors”, provide disclosure for the general partner(s) of the limited partnership and the trustee(s) and manager of the trust. If a general partner, trustee or manager is a corporation, provide disclosure of the directors and executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.
7. When the term “related party” is used in this form, it refers to:
 - (a) a director, officer, promoter or control person of the issuer,
 - (b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence,
 - (c) in regard to a person referred to in (a) or (b), his or her spouse or a person with whom he or she is living in a marriage-like relationship,
 - (d) an insider of the issuer,
 - (e) a company controlled by one or more individuals referred to in (a) to (d), and
 - (f) in the case of an insider, promoter or control person that is not an individual, any person that controls that insider.

(If the issuer is not a reporting issuer, the reference to “insider” includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.)
8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
9. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.

10. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

B. Financial Statements - General

1. All financial statements included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), regardless of whether the issuer is a reporting issuer or not.
2. Include all financial statements required in the offering memorandum immediately prior to the certificate page of the offering memorandum.
3. If the issuer has not completed one financial year, include the following financial statements of the issuer in the offering memorandum:
 - (a) statements of income, retained earnings and cash flows for the period from inception to a date not more than 60 days before the date of the offering memorandum, and
 - (b) a balance sheet dated as at the ending date of the statements required by B.3(a).
4. If the issuer has completed one or more financial years, include the following financial statements of the issuer in the offering memorandum:
 - (a) statements of income, retained earnings and cash flows for the most recently completed financial year that ended more than 120 days before the date of the offering memorandum,
 - (b) a balance sheet as at the last day of the most recently completed financial year that ended more than 120 days before the date of the offering memorandum,
 - (c) statements of income, retained earnings and cash flows for the most recently completed interim period ending 9, 6, or 3 months before the end of the issuer's financial year, if that interim period ended more than 60 days before the date of the offering memorandum, and ended after the date of any financial statements required under B.4(a), and
 - (d) a balance sheet dated as at the ending date of the statements required by B.4(c).
5. If financial statements of the issuer for a more recent annual or interim period than those required by B.3 or B.4 have been prepared, include those more recent financial statements in the offering memorandum.
6. If the issuer has changed its year-end, refer to NI 51-102 for guidance concerning interim periods in a transition year. To satisfy B.4(c) in a transition year, provide financial statements for the most recently completed interim period that ended more than 60 days before the date of the offering memorandum and ended after the date of any financial statements required under B.4(a).
7. If the issuer has completed two or more financial years that ended more than 120 days from the date of the offering memorandum, the annual financial statements required under B.4(a) and (b) must include comparatives for the prior year. The interim financial statements required under B.4(c) and (d) may exclude comparatives if financial statements for the comparative periods were not previously prepared.
8. The annual financial statements required under B.4(a) and (b) must be audited in accordance with the requirements of NI 52-107. The audit report must be included in the offering memorandum. The financial statements required under B.3, B.4(c) and (d) and B.5 and the comparatives required by B.7 may be unaudited; however, if any of those financial statements have been audited, the audit report on them must be included in the offering memorandum. Refer to National Instrument 52-108 *Auditor Oversight* for requirements for auditors of reporting issuers.
9. All unaudited financial statements must indicate in bold that the financial statements have not been audited.
10. If the offering memorandum does not contain audited financial statements for the issuer's most recently completed financial year, update the offering memorandum to include the annual audited financial statements and the audit report

as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end.

11. The offering memorandum does not have to be updated to include interim financial statements for periods completed after the date 60 days prior to the date of the offering memorandum unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.
12. Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum,
13. If the issuer is a limited partnership, include in the offering memorandum the financial statements required by Part B of the general partner and, if the limited partnership has active operations, of the limited partnership.

C. Financial Statements - Business Acquisitions

1. If the issuer
 - (a) has acquired a business during the past two years and the audited and/or unaudited consolidated financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 12 consecutive months, or
 - (b) is proposing to acquire a business and either:
 - (i) is obligated to complete the acquisition, or
 - (ii) has the right to acquire the business and has decided to complete the acquisition,

include the financial statements specified in C.4 for the business if the test in C.2 is met, irrespective of how the issuer accounts for the acquisition.
2. Include the financial statements for a business referred to in C.1 if either:
 - (a) the issuer's proportionate share of the consolidated assets of the business exceeds 40% of the consolidated assets of the issuer calculated using the most recent annual financial statements of each of the issuer and the business before the date of the acquisition or proposed date of acquisition, or
 - (b) the issuer's consolidated investments in and advances to the business as at the date of the acquisition or the proposed date of acquisition exceeds 40% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the end of the issuer's most recently completed financial year that ended before the date of the acquisition or proposed date of acquisition.
3. Where an issuer or a business referred to in C.1 has not yet completed a financial year or has completed its first financial year that ended within 120 days of the offering memorandum date and financial statements for that year are not yet available, use the financial statements referred to in B.3(b) or B.4(d) to make the calculations in C.2.
4. If a business referred to in C.1 meets either of the threshold tests in C.2, include in the offering memorandum the following financial statements of the business:
 - (a) If the business has not completed one financial year include
 - (i) statements of income, retained earnings and cash flows for the period from inception to a date not more than 60 days before the date of the offering memorandum, and
 - (ii) a balance sheet dated as at the ending date of the statements required by C.4(a)(i).

However, if the date of acquisition for a business precedes the ending date of the period referred to in C.4(a)(i), then provide financial statements for the period from inception to the date of acquisition or a date not more than 30 days before the date of acquisition.
 - (b) If the business has completed one or more financial years include

- (i) statements of income, retained earnings and cash flows for the most recently completed financial year that ended before the date of acquisition and more than 120 days before the date of the offering memorandum,
 - (ii) a balance sheet dated as at the ending date of the statements required by C.4(b)(i),
 - (iii) statements of income, retained earnings and cash flows for either:
 - (A) the most recently completed 3, 6 or 9 month interim period that ended before the date of acquisition and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under C.4(b)(i), or
 - (B) the period from the first day after the financial year referred to in C.4(b)(i) to the date of acquisition or a date not more than 30 days before the date of acquisition, and
 - (iv) a balance sheet dated as at the ending date of the statements required by C.4(b)(iii).
5. The annual financial statements required under C.4(b)(i) and (ii) must be audited in accordance with the requirements of Part 6 of NI 52-107. The audit report must be included in the offering memorandum. The financial statements required under C.4(a) and C.4(b)(iii) and (iv) may be unaudited; however, if any of those financial statements have been audited, the audit report must be included in the offering memorandum.
6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business "most recently completed financial year that ended before the date of acquisition, update the offering memorandum to include those financial statements and the audit report when they are available, but in any event no later than the date 120 days following the year end.
7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:
 - (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and
 - (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.
8. If an acquisition or a proposed acquisition has been or will be accounted for as a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part B. The legal parent, as that term is defined in the CICA Handbook, is considered to be the business acquired. C.1 may require financial statements of the legal parent.
9. An issuer is exempt from the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. An issuer will satisfy the financial statement requirements of this form if it includes the financial statements required by securities legislation for a prospectus.
2. Notwithstanding the requirements in section 3.2(2)1 of NI 52-107, an audit report on financial statements contained in an offering memorandum of a non-reporting issuer may contain a reservation relating to opening inventory unless the issuer previously filed an audit report on financial statements for the same entity for a prior year in which there was a reservation relating to inventory.
3. If an acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the CICA Handbook, financial statements for a business required by C.4 are not required to be included in the offering memorandum if:

- (a) the offering memorandum includes disclosure for the periods for which financial statements are required under Part C that:
 - (i) summarizes the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
- (b) the financial information provided under D.3(a) for any completed financial year has been audited, or has been derived from audited financial statements of the business; and
- (c) the offering memorandum discloses that:
 - (i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the financial statements from which the financial information provided under D.3(a) has been derived; and
 - (ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was issued without a reservation of opinion.

If the financial information included in an offering memorandum under D.3(a) has been derived from financial statements of a business incorporated or organized in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information must be accompanied by a note that explains and quantifies the effect of material differences between Canadian GAAP and the foreign GAAP.

4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if:
- (a) the required financial statements do not exist or the reporting issuer does not have access to those financial statements,
 - (b) the acquisition was not or will not be accounted for as a "reverse take-over" as defined in the CICA Handbook,
 - (c) the property did not or does not constitute a "reportable segment" of the seller, as defined in section 1701 of the CICA Handbook, at the time of acquisition, and
 - (d) the offering memorandum contains alternative disclosure for the property which includes:
 - (i) an operating statement (which must be accompanied by an audit report if it is prepared as an alternative to audited annual financial statements) presenting for the business, at a minimum, the following line items:
 - (A) gross revenue,
 - (B) royalty expenses,
 - (C) production costs, and
 - (D) operating income,
 - (ii) information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates, and other relevant information regarding the property,
 - (iii) actual production volumes of the property for the most recently completed year, and
 - (iv) estimated production volumes of the property for the next year, based on information in the reserve report.
5. Financial statements for a business that is an interest in an oil and gas property or for the acquisition or proposed acquisition by an issuer of a property are not required to be audited if:

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- (a) the property was acquired prior to December 31, 2000, and the offering memorandum states that, despite making reasonable efforts, the issuer was unable to obtain audited operating statements because the seller refused to provide such audited statements or to permit access to the information necessary to audit the statements, or
- (b) during the 12 months preceding the date of the acquisition or the proposed date of an acquisition, the daily average production of the property on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil) is less than 20 per cent of the total daily average production of the seller for the same or similar periods and:
- (i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,
 - (ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and
 - (iii) the offering memorandum discloses
 - 1. that the issuer was unable to obtain an audited operating statement,
 - 2. the reasons for that inability,
 - 3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(b)(ii), and
 - 4. that the results presented in the operating statements may have been materially different if the statements had been audited.

FORM 45-106F3
OFFERING MEMORANDUM FOR QUALIFYING ISSUERS

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office:

Address:

Phone #:

E-mail address:

Fax #:

Where currently listed or quoted? [e.g., TSX/TSX Venture Exchange]

Jurisdictions in which the issuer is a reporting issuer:

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum state "\$0" as the minimum and also state: "You may be the only purchaser."]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income Tax consequences: "There are important tax consequences to these securities. See item 6." [If income tax consequences are not material, delete this item.]

Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]

Resale restrictions

State: "You will be restricted from selling your securities for 4 months and a day. See item 10".

Purchaser's rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have the right to sue either for damages or to cancel the agreement. See item 11."

State in bold type:

"No securities regulatory authority has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 8."

[All of the above information must appear on a single cover page.]

Item 1: Use of Net Proceeds

1.1 Net Proceeds - Using the following table, disclose the net proceeds of the offering. If there is no minimum offering, state "\$0" as the minimum.

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$
D	Net proceeds: $D = A - (B+C)$	\$	\$

1.2 Use of Net Proceeds - Using the following table, provide a detailed breakdown of how the issuer will use the net proceeds. If any of the net proceeds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the net proceeds to be applied against the working capital deficiency.

Description of intended use of net proceeds listed in order of priority.	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$

1.3 Reallocation - The net proceeds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the net proceeds may be reallocated, include the following statement:

"We intend to spend the net proceeds as stated. We will reallocate funds only for sound business reasons."

1.4 Working Capital Deficiency - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of net proceeds, state how the issuer intends to eliminate or manage the deficiency.

1.5 Insufficient Proceeds - If applicable, disclose that the proceeds of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and that there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and any outstanding conditions that must be satisfied.

Item 2: Information About [name of issuer or other term used to refer to issuer]

2.1 Business Summary - Briefly (in one or two paragraphs) describe the business intended to be carried on by the issuer over the next 12 months. State whether this represents a change of business. If the issuer is a non-resource issuer, describe the products that the issuer is or will be developing or producing and the stage of development of each of the products. If the issuer is a natural resource issuer, state: whether the issuer's principal properties are primarily in the exploration or in the development or production stage; what resources the issuer is engaged in exploring, developing or producing; and the locations of the issuer's principal properties.

2.2 Existing Documents Incorporated by Reference - State:

"Information has been incorporated by reference into this offering memorandum from documents listed in the table below, which have been filed with securities regulatory authorities in Canada. The documents incorporated by reference are available for viewing on the SEDAR website at www.sedar.com. In addition, copies of the documents may be obtained on request without charge from [insert complete address and telephone and the name of a contact person].

Documents listed in the table and information provided in those documents are not incorporated by reference to the extent that their contents are modified or superseded by a statement in this offering memorandum or in any other subsequently filed document that is also incorporated by reference in this offering memorandum."

Using the following table, list all of the documents incorporated by reference (as required by Instruction D.1):

Description of document (In the case of material change reports, provide a brief description of the nature of the material change)	Date of document

2.3 Existing Documents Not Incorporated by Reference - State:

“Other documents available on the SEDAR website (for example, most press releases, take-over bid circulars, prospectuses and rights offering circulars) are not incorporated by reference into this offering memorandum unless they are specifically referenced in the table above. Your rights as described in item 11 of this offering memorandum apply only in respect of information contained in this offering memorandum and documents or information incorporated by reference.”

2.4 Existing Information Not Incorporated by Reference - Certain specified information (as outlined in Instruction D.2) contained in the documents incorporated by reference may be, but is not required to be, incorporated by reference into the offering memorandum. If the issuer does not wish to incorporate that information into the offering memorandum, the issuer must state that and include a statement in the offering memorandum identifying:

- (a) the information that is not being incorporated by reference, and
- (b) the document in which the information is contained.

2.5 Future Documents Not Incorporated by Reference - State:

“Documents filed after the date of this offering memorandum are not deemed to be incorporated into this offering memorandum. However, if you subscribe for securities and an event occurs, or there is a change in our business or affairs, that makes the certificate to this offering memorandum no longer true, we will provide you with an update of this offering memorandum, including a newly dated and signed certificate, and will not accept your subscription until you have re-signed the agreement to purchase the securities.”

Item 3: Directors, Executive Officers, Promoters and Principal Holders

3.1 Using the following table, provide information about each director, executive officer, promoter and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a “principal holder”). If the principal holder is not an individual, state in a note to the table the name of any person or company that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

Name and municipality of principal residence	Position(s) with the issuer

3.2 State: “You can obtain further information about directors and executive officers from [insert the name and date of the document(s) with the most current information, e.g., management information circular, annual information form or material change report].”

3.3 State: “Current information regarding the securities held by directors, executive officers and principal holders can be obtained from [refer to the SEDI website at www.sedi.ca or, if information cannot be obtained from the SEDI website, refer to the securities regulatory authority(ies) from which the information can be obtained, including any website(s)]. [Name of issuer or other term used to refer to issuer] can not guarantee the accuracy of this information.”

Item 4: Capital Structure

Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Number outstanding as at[a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

Item 5: Securities Offered

5.1 Terms of Securities - Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

5.2 Subscription Procedure

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).
- (c) Disclose any conditions to closing e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you".

6.2 If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide

- (a) a summary of the significant income tax consequences to Canadian residents, and
- (b) the name of the person or company providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person or company providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person or company has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

- (a) a description of each type of compensation and the estimated amount to be paid for each type,
- (b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date), and

- (d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
- arbitrary determination of price,
 - no market or an illiquid market for the securities,
 - resale restrictions, and
 - subordination of debt securities.
- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
- insufficient funds to accomplish the issuer's business objectives,
 - no history or a limited history of sales or profits,
 - lack of specific management or technical expertise,
 - management's regulatory and business track record,
 - dependence on key employees, suppliers or agreements,
 - dependence on financial viability of guarantor,
 - pending and outstanding litigation, and
 - political risk factors.
- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
- environmental and industry regulation,
 - product obsolescence, and
 - competition.

Item 9: Reporting Obligations

9.1 Disclose the documents that will be sent to purchasers on an annual or on-going basis.

9.2 If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 10: Resale Restrictions

For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan, state:

"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation.

Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date.”

Item 11: Purchasers' Rights

State the following:

“If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two -Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or
- (b) for damages against [state the name of issuer or other term used to refer to issuer and the title of any other person or company against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation].

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer or other term used to refer to issuer]:

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities.”

Item 12: Date and Certificate

State the following on the certificate page of the offering memorandum:

“Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation.”

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),

- (b) on behalf of the directors of the issuer
 - (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a),
or
 - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**Instructions for Completing
Form 45-106F3
Offering Memorandum for Qualifying Issuers**

A. General Instructions

1. Only a “qualifying issuer” may use this form.
- i. An issuer using this form to draft an offering memorandum must incorporate by reference certain parts of its existing continuous disclosure base. An issuer that does not want to do this must use Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.
- ii. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
- iii. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
- iv. The issuer may include additional information in the offering memorandum other than that specifically required by the form. However, the offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus.
- v. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
- vi. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
- vii. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about “directors”, provide disclosure for the general partner(s) of the limited partnership and the trustee(s) and manager of the trust. If a general partner, trustee or manager is a corporation, provide disclosure of the directors and executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.
- viii. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
- ix. Securities legislation restricts what can be told to investors about the issuer’s intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
- x. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser’s rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

B. Financial Statements

2. Any financial statements incorporated by reference into the offering memorandum must comply with NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.
- xi. Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum.

C. Required Updates to the Offering Memorandum

3. If the offering memorandum does not incorporate by reference the issuer's AIF, and audited financial statements for its most recently completed financial year, update the offering memorandum to incorporate by reference the document as soon as the document is filed on SEDAR.
- xii. Except for documents referred to in C.1, the offering memorandum does not have to be updated to incorporate by reference interim financial statements or other documents referred to in D.1 unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.

D. Information about the Issuer

1. *Existing Documents Incorporated by Reference* - In addition to any other document that an issuer may choose to incorporate by reference, the issuer must incorporate the following documents:
- (a) the issuer's AIF reflecting the issuer's most recently completed financial year for which annual financial statements are required to be filed,
 - (b) material change reports, except confidential material change reports, filed after the commencement of the issuer's current financial year,
 - (c) the interim financial statements for the issuer's most recently completed financial period for which the issuer prepares interim financial statements that are required to be filed,
 - (d) the financial statements, together with the accompanying auditor's report, for the issuer's most recently completed financial year for which annual financial statements are required to be filed,
 - (e) if, before the offering memorandum is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under 2.2(c) and (d) is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication,
 - (f) management's discussion and analysis (MD&A) as required under NI 51-102,
 - (g) each business acquisition report required to be filed under NI 51-102,
 - (h) except as provided in D.2, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings that, in each case, are required to be filed after the commencement of the issuer's current financial year,
 - (i) if the issuer has a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, technical reports, certificates and consents required to be filed under NI 43-101 that, in each case, are required to be filed after the commencement of the issuer's current financial year, and
 - (j) if the issuer has oil and gas activities, as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, all documents that it is required to file under NI 51-101 after the commencement of the issuer's current financial year.

An issuer may incorporate any additional document provided that the document is available for viewing on the SEDAR website and that, on request by a purchaser, the issuer provides a copy of the document to the purchaser, without charge.

2. *Existing Information Not Incorporated by Reference* - An issuer is not required to incorporate by reference in an offering memorandum the disclosure required:
- (a) under securities legislation, in an information circular or annual filing of:
 - (i) the repricing downward of options or free standing stock appreciation rights,
 - (ii) the composition of the compensation committee of the board of directors of the issuer and its report on executive compensation, or

- (iii) a graph comparing the yearly percentage change in the issuer's cumulative total shareholder return on publicly traded securities with the cumulative total return of a broad equity market index of a published industry or line-of business index or other issuers, and
- (b) by an exchange or other market on which the issuer's securities trade, in the issuer's information circular regarding the issuer's corporate governance practices.

FORM 45-106F4

Risk Acknowledgement

- I acknowledge that this is a risky investment.
- I am investing entirely at my own risk.
- No securities regulatory authority has evaluated or endorsed the merits of these securities or the disclosure in the offering memorandum.
- The person selling me these securities is not registered with a securities regulatory authority and has no duty to tell me whether this investment is suitable for me. *[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- I will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting or if the purchaser is a Manitoba resident]*
- I could lose all the money I invest.

I am investing \$ _____ [total consideration] in total; this includes any amount I am obliged to pay in future. _____ [name of issuer] will pay \$ _____ [amount of fee or commission] of this to _____ [name of person selling the securities] as a fee or commission.

I acknowledge that this is a risky investment and that I could lose all the money I invest.

_____ Date

_____ Signature of Purchaser

_____ Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

WARNING

You have 2 business days to cancel your purchase *[Instruction: The issuer must complete this section before giving the form to the purchaser.]*

To do so, send a notice to [name of issuer] stating that you want to cancel your purchase. You must send the notice before midnight on the 2nd business day after you sign the agreement to purchase the securities. You can send the notice by fax or email or deliver it in person to [name of issuer] at its business address. Keep a copy of the notice for your records.

Issuer Name and Address:

Fax:

E-mail:

You are buying Exempt Market Securities

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority.

There are restrictions on your ability to resell *exempt market securities*. *Exempt market securities* are more risky than other securities.

You will receive an offering memorandum Read the offering memorandum carefully because it has important information about the issuer and its securities. Keep the offering memorandum because you have rights based on it. Talk to a lawyer for details about these rights.

You will not receive advice *[Instruction: Delete if sold by registrant]*

You will not get professional advice about whether the investment is suitable for you. But you can still seek that advice from a registered adviser or investment dealer. In Alberta, Manitoba, Northwest Territories, Prince Edward Island, Québec and Saskatchewan to qualify as an eligible investor, you may be required to obtain that advice. Contact the Investment Dealers Association of Canada (website at www.ida.ca) for a list of registered investment dealers in your area.

The securities you are buying are not listed *[Instruction: Delete if securities are listed or quoted]*

The securities you are buying are not listed on any stock exchange, and they may never be listed. You may never be able to sell these securities.

The issuer of your securities is a non-reporting issuer *[Instruction: Delete if issuer is reporting]*

A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer.

For more information on the exempt market, call your local securities regulatory authority. *[Instruction: Insert the name, telephone number and website address of the securities regulatory authority in the jurisdiction in which you are selling these securities.]*

[Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.]

FORM 45-106F5

**Risk Acknowledgement
Saskatchewan Close Personal Friends and Close Business Associates**

I acknowledge that this is a risky investment:

- I am investing entirely at my own risk.
- No securities regulatory authority has evaluated or endorsed the merits of these securities.
- The person selling me these securities is not registered with a securities regulatory authority and has no duty to tell me whether this investment is suitable for me. *[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- I will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting]*
- I could lose all the money I invest.
- I do not have a 2-day right to cancel my purchase of these securities or the statutory rights of action for misrepresentation I would have if I were purchasing the securities under a prospectus.

I am investing \$_____ [total consideration] in total; this includes any amount I am obliged to pay in future.

I am a **close** personal friend or **close** business associate of _____ [state name], who is a _____ [state title - founder, director, executive officer or control person] of _____ [state name of issuer or its affiliate – if an affiliate state “an affiliate of the issuer” and give the issuer’s name].

I acknowledge that I am purchasing based on my close relationship with _____ [state name of founder, director, executive officer or control person] whom I know well enough and for a sufficient period of time to be able to assess her/his capabilities and trustworthiness.

I acknowledge that this is a risky investment and that I could lose all the money I invest.

_____ Date

_____ Signature of Purchaser

_____ Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

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You are buying Exempt Market Securities

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority.

There are restrictions on your ability to resell *exempt market securities*. Exempt market securities are more risky than other securities.

You may not receive any written information about the issuer or its business

If you have any questions about the issuer or its business, ask for written clarification before you purchase the securities. You should consult your own professional advisers before investing in the securities.

You will not receive advice *[Instruction: Delete if sold by registrant]*

Unless you consult your own professional advisers, you will not get professional advice about whether the investment is suitable for you.

The issuer of your securities is a non-reporting issuer *[Instruction: Delete if issuer is reporting]*

A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer. You can only sell the securities of a non-reporting issuer in very limited circumstances. You may never be able to sell these securities.

The securities you are buying are not listed *[Instruction: Delete if securities are listed or quoted]*

The securities you are buying are not listed on any stock exchange, and they may never be listed. There may be no market for these securities. You may never be able to sell these securities.

For more information on the exempt market, refer to the Saskatchewan Financial Services Commission's website at <http://www.sfsc.gov.sk.ca>.

[Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.]

COMPANION POLICY 45-106CP
Prospectus and Registration Exemptions

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**COMPANION POLICY 45-106CP
PROSPECTUS AND REGISTRATION EXEMPTIONS
PART 1 – INTRODUCTION**

National Instrument 45-106 *Prospectus and Registration Exemptions* (“NI 45-106”) provides exemptions from the prospectus and registration requirements and one exemption from the issuer bid requirement.

1.1 Purpose

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of various parts of NI 45-106.

1.2 Status in Yukon

Until such time as the Government of Yukon adopts NI 45-106 as a rule, it will consider applications for exemptions on a case-by-case basis and it will consider the provisions of NI 45-106 in exercising its discretionary authority.

1.3 All trades are subject to securities legislation

Market participants are reminded that the securities legislation of a local jurisdiction applies to any trade in a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of “trade” in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person, who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade occurs.

If a trade is exempted from the dealer registration requirement, so too is any act, solicitation or conduct in furtherance of that trade.

1.4 Multi-jurisdictional trades

Market participants are further reminded that a trade can occur in more than one jurisdiction. If it does, the person conducting the trade must comply with the securities legislation of each jurisdiction in which the trade occurs. For example, a trade from a person in Alberta to a purchaser in British Columbia may be considered a trade in both jurisdictions.

1.5 Other exemptions

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. The Canadian Securities Administrators (“CSA”) has issued a notice that lists other exemptions available under securities legislation.

1.6 Discretionary relief

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement and the registration requirement.

1.7 Advisers

Subsection 1.4(2) of NI 45-106 provides that an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under NI 45-106.

1.8 Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the exemption from the dealer registration requirement and the prospectus requirement in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where an underwriter purchases securities under an exemption from the dealer registration requirement and prospectus requirement other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the underwriter purchases the securities with investment intent and not with a view to distribution.

Where an underwriter purchases securities through a series of exempt trades in order to avoid the obligation to deliver a prospectus, the transactions will be looked at as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

1.9 Persons created to use exemptions (“syndication”)

Sections 2.3(6), 2.4(1), 2.9(5) and 2.10(3) of NI 45-106 specifically prohibit syndications. A distribution of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing \$150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes \$10 000. In this situation the shareholders of the newly formed company are indirectly investing \$10 000 when the exemption requires that they each invest \$150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute securities when the exemption is not available to directly distribute securities to each person in the syndicate.

1.10 Responsibility for compliance

A person trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.

For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement describing the purchaser’s relationship with the director. On the basis of that factual information, the issuer could determine whether the purchaser is a close personal friend of the director for the purposes of the exemption. The issuer should not rely merely on a representation: “I am a close personal friend of a director”. Likewise, under the accredited investor exemption, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of “accredited investor”. Prior to discussing the particulars of the investment with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.

It is not appropriate for a person to assume an exemption is available. For instance an seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.

1.11 Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

PART 2– INTERPRETATION**2.1 Definitions**

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 Definitions.

2.2 Executive officer (“policy making function”)

The definition of “executive officer” in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”).

The definition includes someone who “performs a policy-making function” in respect of the issuer. The CSA is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

Paragraph (d) of the definition of “executive officer” includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

2.3 Directors, executive officers and officers of non-corporate issuers

The term “director” is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to trade securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

2.4 Founder

The definition of “founder” includes a requirement that, at the time of the trade, the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of NI 45-106, regardless of its degree of prior involvement with the issuer or the extent of its continued ownership interest in the issuer.

2.5 Investment fund

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

2.6 Affiliate, control and related entity**(1) Affiliate**

Section 1.2 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in section 2.23(1). For the purposes of the rest of NI 45-106 the interpretation of control is found at section 1.3 of NI 45-106. The reason for having two

different interpretations of control is that the exemption for trades to employees, executive officers, directors and consultants requires a broader concept of control to accommodate the issuance of compensation securities in a wide variety of business structures than is considered necessary for the rest of NI 45-106.

2.7 Close personal friend

For the purposes of both the private issuer exemption and the family, friends and business associates exemption, a “close personal friend” of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The term “close personal friend” can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same organization, association or religious group, or
- (c) a client, customer, former client or former customer.

2.8 Close business associate

For the purposes of both the private issuer exemption and the family, friends and business associates exemption, a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness. An individual is not a close business associate solely because the individual is a client, customer, former client or former customer of the issuer.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available for a close business associate of a close business associate of a director of the issuer.

PART 3– CAPITAL RAISING EXEMPTIONS

3.1 Soliciting purchasers

Part 2, Division 1, capital raising exemptions in NI 45-106 does not prohibit the use of registrants, finders, or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under sections 2.4 or 2.5 (respectively, the private issuer exemption or the family, friends and business associates exemption) may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder’s fee to a third party to find purchasers under the family, friends and business associates exemption, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on the exemption.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemption, provided that all of the other conditions to that exemption are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

3.2 Soliciting purchasers – Newfoundland and Labrador and Ontario

In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement set out in sections 2.43 and 3.9 of NI 45-106 are not available to a “market intermediary”. A person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario the term “market intermediary” is defined in Ontario Securities Commission Rule 14-501 *Definitions*.

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer’s securities; the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer

and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

3.3 Advertising

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

3.4 Restrictions on finder's fees or commissions

The following restrictions apply with respect to certain exemptions under NI 45-106:

- (1) no commissions or finder's fees may be paid to directors, officers, founders and control persons in connection with a trade made under the private issuer exemption or the family, friends and business associates exemption, except in connection with a trade to an accredited investor under the private issuer exemption; and
- (2) in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a trade to a purchaser in one of those jurisdictions under the offering memorandum exemption.

3.5 Accredited investor

- (1) Individual qualification – financial tests

An individual is an "accredited investor" for the purposes of NI 45-106 if he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the "accredited investor" definition in section 1.1 of NI 45-106.

These branches of the definition are designed to treat spouses as a single investing unit, so that either spouse qualifies as an "accredited investor" if the combined financial assets, net income or net assets of both spouses exceed the \$1 000 000, \$300 000 or \$5 000 000 thresholds.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

- (2) Bright-line standards – individuals

The monetary thresholds in the "accredited investor" definition are intended to create "bright-line" standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

- (3) Beneficial ownership of financial assets

Paragraph (j) of the "accredited investor" definition refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 000 000. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual's spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The following factors are indicative of beneficial ownership of financial assets:

- (a) physical or constructive possession of evidence of ownership of the financial asset;
- (b) entitlement to receipt of any income generated by the financial asset;
- (c) risk of loss of the value of the financial asset; and
- (d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the threshold test because paragraph (j) takes into account financial assets owned beneficially by a spouse. However, financial assets held in a group

RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet these beneficial ownership requirements.

(4) Calculation of purchaser's net assets

To calculate a purchaser's net assets under paragraph (l) of the "accredited investor" definition, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the trade.

(5) Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

(6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the trade. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the trade is completed.

(7) Recognition or Designation as an Accredited Investor

Paragraph (v) of the "accredited investor" definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators will consider applications for accredited investor recognition or designation submitted by or on behalf of persons that do not meet any of the other criteria for accredited investor status but nevertheless have the requisite sophistication or financial resources.

The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants as the securities regulatory authorities or regulators believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement and dealer registration requirement. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

Securities legislation in British Columbia and Alberta does not contemplate recognition or designation as an accredited investor. Therefore, until changes are made to the securities legislation of these jurisdictions, applicants in British Columbia and Alberta should apply for designation or recognition as an exempt purchaser.

3.6 Private issuer

(1) Meaning of "the public"

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted "the public" very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to trade securities in reliance upon the private issuer exemption in section 2.4(2) of NI 45-106 to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the trade is not to the public.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(3) Business combination of private issuers

Securities distributed in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers to holders of securities of those issuers is not a trade to the public provided that the resulting issuer is a private issuer.

Similarly, securities distributed by a private issuer in connection with a share exchange take-over bid for another private issuer is not a trade to the public provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on the private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the trade will not be considered to have been to the public.

(5) Ceasing to be a private issuer

The term "private issuer" is defined in section 2.4(1) of NI 45-106. A private issuer can distribute securities only to the persons listed in section 2.4(2) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer exemption. For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers will still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates exemption (except in Ontario) or the accredited investor exemption. However, issuers that rely on these exemptions must file a report of exempt distribution with the securities regulatory authority in each jurisdiction in which the distribution took place.

3.7 Family, friends and business associates

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemption in section 2.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(3) Risk acknowledgement – Saskatchewan

Under section 2.6(1) of NI 45-106, the family, friends and business associates exemption in section 2.5 of NI 45-106 cannot be relied upon in Saskatchewan for a trade based on close personal friendship or close business association unless the person obtains a signed "risk acknowledgement" in the required form from the purchaser and retains the form for eight years after the trade.

3.8 Offering memorandum

(1) Eligibility criteria - Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan

Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan impose eligibility criteria on persons investing under the offering memorandum exemption. In these jurisdictions, anyone can purchase up to \$10 000 worth of securities under the offering memorandum exemption. However, the purchaser must be an eligible investor if the purchaser's acquisition cost is more than \$10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The \$10 000 maximum acquisition cost is calculated per distribution.

Nevertheless, concurrent and consecutive closely timed offerings to the same purchaser will usually constitute one distribution. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the \$10 000 threshold by dividing a subscription in excess of \$10 000 by one purchaser into a number of smaller subscriptions of \$10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or has \$400 000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the trade.

Another way a purchaser can qualify, as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser's jurisdiction) that is authorized to give advice with respect to the type of security being distributed. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(2) Use of offering memorandum exemption by investment funds

In British Columbia, New Brunswick, Newfoundland and Labrador and Nova Scotia, investment funds can use the offering memorandum exemption.

In Alberta, Northwest Territories, Nunavut and Prince Edward Island, investment funds must be reporting issuers to use the offering memorandum exemption. In Manitoba, Québec and Saskatchewan in addition to being a reporting issuer, an investment fund must be listed on a stock exchange or quoted on an over the counter market.

(3) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management's discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

(4) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in subsection 2.9(11) of NI 45-106.

The certificate must be signed by each of the following: the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or chief financial officer, persons acting in those capacities), by all promoters of the issuer, and any two directors of the issuer. If the issuer has more than two directors, any two directors who are authorized to sign the certificate, other than the chief executive officer and chief financial officer, may sign on behalf of all of the directors. If the issuer does not have at least two directors other than the chief executive officer and chief financial officer, then all directors must sign the certificate.

"Promoter" is defined differently in provincial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under this exemption.

In the case of an exempt distribution by a limited partnership where the general partner is a corporation, the general partner is expected to sign as promoter and the chief executive officer, chief financial officer and directors of the general partner to sign in those capacities on behalf of the issuer.

(5) Consideration to be held in trust

The purchaser has the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser's cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer's responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(6) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority in each of the jurisdictions in which the issuer distributes securities under the offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(7) Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

3.9 Minimum amount investment

An issuer may wish to trade more than one kind of security of its own issue, such as shares and debt, in a single transaction under the minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the trade, the exemption can be used notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

PART 4- OTHER EXEMPTIONS**4.1 Employee, executive officer, director and consultant exemptions**

Trustees, custodians or administrators who engage in activities contemplated by subsection 2.27(2) of NI 45-106 that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting “marketplaces” and “alternative trading systems”.

4.2 Business combination and reorganization**(1) Statutory procedure**

The securities regulatory authorities interpret the phrase “statutory procedure” broadly and are of the view that the exemption can be used for all trades in securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the trades occur.

Section 2.11 of NI 45-106 exempts trades in securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done “under a statutory procedure”. The securities regulatory authorities are of the view that the references to statutory procedure in section 2.11 of NI 45-106 are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the *Companies’ Creditors Arrangement Act* (Canada).

(2) Three-cornered amalgamations

Certain corporate statutes permit a so-called “three-cornered merger or amalgamation” under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. Section 2.11 of NI 45-106 exempts these trades as the exemption applies to any trade made in connection with an amalgamation or merger done under a statutory procedure.

(4) Exchangeable shares

A transaction involving a procedure described in section 2.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly the Canadian shareholders receive: shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder's choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the exemption in section 2.11 of NI 45-106 was available for all trades necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being “in connection with” the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities have taken the position that the statutory procedure exemption in section 2.11 of NI 45-106 is available for all trades of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section 2.11, even where such trades occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement ultimately represented a decision to exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in these circumstances.

4.3 Asset acquisition - character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or

resource properties and to retain records to demonstrate how that fair market value was determined. In some situations cash assets that make up working capital could be considered in the total calculation of the fair market value.

4.4 Securities for debt - *bona fide debt*

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt exemption may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

4.5 Take-over bid and issuer bid

(1) Exempt bids

Issuers are reminded that the terms take-over bid and issuer bid, for the purposes of section 2.16 of NI 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid exemption is available for trades necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such trades may occur several months or even years after the bid is completed.

4.6 Isolated trade

The isolated trade exemption in section 2.31 of NI 45-106 is limited to trades made by an issuer in a security of its own issue. A comparable exemption from the dealer registration requirement is available under section 3.3 of NI 45-106. The latter exemption is available for trades in any security but it is not available to issuers to trade a security of its own issue.

It is intended that the isolated trade exemptions will only be used rarely and are not available for registrants or others whose business is trading in securities. Reliance upon this exemption might be appropriate, for example, when a person who is not involved in the business of trading securities wishes to make a single trade of a security that person owns to another person. The exemption would not be available to a person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.

4.7 Mortgages

In British Columbia, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage exemption in section 2.36. In determining what constitutes a syndicated mortgage issuers will need to refer to the definition provided in section 2.36(1) of NI 45-106.

The mortgage exemption does not apply to securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage exemption also does not apply to a trade in a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

4.8 Not for profit issuer

This exemption allows trades in securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit ("not for profit issuer"). To use this exemption, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised under this exemption for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for the issuer may no longer be able to rely on the exemption. For example, an issuer that is organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer may be deemed unable to rely on this exemption. The same would also be true if one of an issuer's mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use this exemption, because no part of the issuer's net earnings can go to any security holder.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec). However, not for profit issuers that distribute outside of Québec must rely on the exemption in section 2.38 of NI 45-106.

4.9 Exchange contracts

The dealer registration exemption for exchange contracts in section 3.2 of NI 45-106 is only available in Alberta, British Columbia, Québec and Saskatchewan. In Manitoba and Ontario exchange contracts are governed by commodity futures legislation.

Except in Saskatchewan the dealer registration exemption for exchange contracts in section 3.2(1)(b) of NI 45-106 allows for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, while an unsolicited trade does not require registration, if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.

PART 5 – FORMS

5.1 Report of Exempt Distribution

An issuer that has distributed a security of its own issue under any of the exemptions listed in section 6.1 of NI 45-106 is required to file Form 45-106F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution. In determining if it is required to file a report in a particular jurisdiction, the issuer should consider the following questions:

- (a) is there a distribution in the jurisdiction? Please refer to the securities legislation of the jurisdiction for guidance on when a distribution occurs in the jurisdiction;
- (b) if there is a distribution in the jurisdiction, what exemption from the dealer registration requirement and the prospectus requirement is the issuer relying on for the distribution of the security? and
- (c) does the exemption referred to in paragraph (b) trigger a reporting requirement? Reports of exempt distribution are required for distributions made in reliance on the exemptions listed in section 6.1 of NI 45-106.

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, or
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or the regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I ("Schedule I") discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently the information listed in Schedule I will not be made publicly available.

5.2 Forms required under the offering memorandum exemption

NI 45-106 designates two forms of offering memorandum the first, Form 45-106F2 is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under section 2.9(1) or 2.9(2) of NI 45-106 is Form 45-106F4.

The British Columbia regulator has specified the same offering memorandum forms (Form 45-106F2 and Form 45-106F3) and risk acknowledgment form (Form 45-106F4) for use in that jurisdiction under B.C. Policy 13-601 *Required Forms*.

5.3 Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

5.4 Risk Acknowledgement Form Respecting Close Personal Friends and Close Business Associates – Saskatchewan

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 if the person intends to rely upon the “family, friends and business associates exemption” in section 2.5 of NI 45-106 based on a relationship of close personal friendship or close business association. The form of risk acknowledgment required in these circumstances is Form 45-106F5.

PART 6– RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1 Resale restrictions

In most jurisdictions, securities distributed under an exemption may be subject to restrictions on their resale. The particular resale, or “first trade”, restrictions depend on the parties to the trade and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt trade will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 Resale of Securities (“NI 45-102”). While NI 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be traded under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

ATTACHMENT D**ONTARIO SECURITIES COMMISSION RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

Text boxes in this Rule refer to National Instrument 45-102 *Resale of Securities*. These text boxes are located above sections 2.1 to 2.7 and sections 3.1 and 3.2. These text boxes do not form part of this Rule.

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Repeal of former instrument
Effective date

FORM

Form 45-501F1 - Report of exempt distribution

PART 1: DEFINITIONS AND INTERPRETATION**1.1 Definitions** - In this Rule

“**bank**” means a bank named in Schedule I or II of the *Bank Act* (Canada);

“**Canadian financial institution**” means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

“**director**” means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

“**entity**” means a company, syndicate, partnership, trust or unincorporated organization;

“**executive officer**” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production,
- (c) an officer of the issuer or any of its subsidiaries who performs a policy-making function in respect of the issuer, or
- (d) performing a policy-making function in respect of the issuer;

“**government incentive security**” means

- (a) a security, or unit or interest in a partnership that invests in a security, that is issued by a company and for which the company has agreed to renounce in favour of the holder of the security, unit or interest, amounts that will constitute Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA, or
- (b) a unit or interest in a partnership or joint venture that is issued in order to fund Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA;

“**NI 45-106**” means National Instrument 45-106 *Prospectus and Registration Exemptions*;

“**person**” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

- (d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

“**Schedule III bank**” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“**self-directed RESP**” means an RESP

- (a) that is structured so that contributions by a subscriber to the plan are deposited directly into an account in the name of the subscriber, and
- (b) under which the subscriber maintains control and direction over the plan that enables the subscriber to direct how the assets of the plan are to be held, invested or reinvested subject to compliance with the ITA;

“**spouse**” means an individual who

- (a) is married to another individual and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other individual, or
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender;

“**subscriber**” means an individual who signs an application form for a self-directed RESP and makes a contribution under that self-directed RESP; and

“**subsidiary**” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

1.2 **Affiliate** - For the purpose of this Rule, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

1.3 **Control** - For the purpose of this Rule, a person (first person) is considered to control another person (second person) if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

1.4 **Registration requirement** –

- (1) An exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.
- (2) An exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS**2.1 Government incentive security -**

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

- (1) The dealer registration requirement does not apply to a trade by an issuer or a promoter of an issuer in a security of the issuer that is a government incentive security, if
 - (a) in the aggregate in all jurisdictions in Canada, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers,
 - (b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information
 - (i) identifying every officer and director of the issuer,
 - (ii) identifying every promoter of the issuer,
 - (iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,
 - (iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and
 - (v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum,
 - (c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and,
 - (i) because of net worth and investment experience or because of consultation with or advice from a person that is not a promoter of the issuer and that is an adviser or dealer registered under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling security holder, or
 - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate of the issuer,
 - (d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale except for professional services or for services performed by a dealer registered under the Act, and
 - (e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.
- (2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity is counted as one purchaser or prospective purchaser unless the entity has been created, or is being used, primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.
- (3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

2.2 Government incentive security traded under section 2.1 -

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

- (1) The dealer registration requirement does not apply to a trade in a security that was previously traded under the exemption in section 2.1 if each of the parties to the trade is one of the not more than 50 purchasers.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

2.3 Commodity futures option or contract -

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The dealer registration requirement does not apply to a trade in a commodity futures option or commodity futures contract by a hedger through a dealer, within the meaning of the CFA.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

2.4 Security of a co-operative -

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The dealer registration requirement does not apply to a trade in a security issued by a corporation to which the *Co-operative Corporations Act* applies.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

2.5 Membership share of a credit union -

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The dealer registration requirement does not apply to a trade in a membership share of a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

2.6 Security of a credit union -

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The dealer registration requirement does not apply to a trade in a security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- (2) The dealer registration requirement does not apply to a security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- (3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1) or (2).

2.7 Self-directed RESP -

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The dealer registration requirement does not apply to a trade in a security to or from a self-directed RESP if
 - (a) the trade is made by
 - (i) a mutual fund dealer or a person who is registered as a salesperson, partner or officer of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or
 - (ii) a financial intermediary or a person who is an officer, salesperson or employee of a financial intermediary and who is acting on behalf of the financial intermediary, and

- (b) the self-directed RESP restricts its investments in securities to securities in which the person who traded the self-directed RESP is permitted to trade.
- (2) The prospectus requirement does not apply to a distribution of a self-directed RESP if the application form provided to a subscriber for purposes of establishing the self-directed RESP includes, or is accompanied by, a copy of the provisions of the self-directed RESP and any additional documentation that may be necessary to provide disclosure of the following:
- (a) the income tax consequences of investing in a self-directed RESP,
 - (b) the responsibilities of the trustee under the self-directed RESP,
 - (c) the refund provisions,
 - (d) the types of investments in which the assets of the self-directed RESP may be invested or reinvested,
 - (e) the persons who may be designated as, and the procedures for designation of, a beneficiary under the self-directed RESP,
 - (f) the nature of any payments that may be made by the self-directed RESP to a beneficiary under the self-directed RESP, and
 - (g) any fees and charges associated with participation in the self-directed RESP.
- 2.8 **Filing requirement under section 2.34 of NI 45-106** – For the purpose of subparagraph 2.34(2)(g)(ii) and subsection 2.34(3) of NI 45-106 [*Guaranteed debt*], the Asian Development Bank and the Inter-American Development Bank must
- (a) file a copy of its annual report to its Board of Governors and a copy of its charter documents and any material modifications and amendments thereto,
 - (b) file, before the initial trade of securities in Ontario under subparagraph 2.34(2)(g)(ii) or subsection 2.34(3) of NI 45-106 and following the trade, the material that it would be required to file with the SEC if the trade made by it in Ontario had been made in the United States of America, and
 - (c) advise the Commission in writing if its filing requirements with, or exemptions from legislation administered by, the SEC are suspended, revoked or substantially amended.

PART 3: PROSPECTUS ONLY EXEMPTIONS

3.1 Execution Act –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The prospectus requirement does not apply to a distribution of a security by a sheriff under the *Execution Act* if
- (a) there is no published market in respect of the security,
 - (b) the aggregate acquisition cost to the purchaser is not more than \$25,000, and
 - (c) each written notice to the public soliciting offers for the security, or giving notice of the intended auction of the security, is accompanied by a statement substantially as follows:

These securities are speculative. No representations are made concerning the securities, or the issuer of the securities. No prospectus is available and the protections, rights and remedies arising out of the prospectus provisions of the *Securities Act* (Ontario) including statutory rights of rescission and damages, will not be available to the purchaser of these securities.
- (2) For the purposes of subsection (1), “published market” means, for a security, any market on which the security is traded if the prices at which it has been traded on the market are regularly published in a newspaper or a business or financial publication of general and regular circulation.

3.2 Trades in mutual fund securities to corporate sponsored plans –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

The prospectus requirement does not apply to a distribution by a person of

- (a) a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
 - (i) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or
 - (ii) the decision to purchase the security is not made by or at the direction of the employee; and
- (c) a security of a mutual fund that
 - (i) is administered by a trust corporation registered under the *Loan and Trust Corporations Act*,
 - (ii) consists of a pool of funds that
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the ITA, and
 - (B) is established by or related to persons that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund except the trust corporation that administers the fund, and
 - (iii) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act.

PART 4: REGISTRATION ONLY EXEMPTIONS

4.1 Certain trades by financial intermediaries and Schedule III banks –

- (1) Subject to subsection (2), the registration requirement does not apply to a trade by a financial intermediary or a Schedule III bank
 - (a) of a type described in any section of Part 2 of NI 45-106 [*Prospectus and Registration Exemptions*] except the following:
 - (i) section 2.5 [*Family, friends and business associates*],
 - (ii) section 2.6 [*Family, friends and business associates – Saskatchewan*],
 - (iii) section 2.9 [*Offering memorandum*],
 - (iv) section 2.14 [*Securities for debt*],
 - (v) section 2.17 [*Offer to acquire to security holder outside local jurisdiction*],
 - (vi) section 2.18 [*Investment fund reinvestment*],
 - (vii) section 2.19 [*Additional investment in investment funds*] or
 - (viii) section 2.40 [*RRSP/RRIF*];
 - (b) of a type described in the following sections of NI 45-106:
 - (i) section 3.1 [*Registered dealer*],
 - (ii) section 3.3 [*Isolated trade*],

- (iii) section 3.4 [*Estates, bankruptcies, and liquidations*], and
 - (iv) section 3.5 [*Employees of registered dealer*];
 - (c) of a type described in the following sections:
 - (i) section 2.3 [*Commodity futures option or contract*],
 - (ii) section 2.4 [*Security of a co-operative*],
 - (iii) section 2.5 [*Membership share of a credit union*], and
 - (iv) section 2.6 [*Security of a credit union*];
 - (d) in a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
 - (i) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or
 - (ii) the decision to purchase the security is not made by or at the direction of the employee; and
 - (e) in a security of a mutual fund that
 - (i) is administered by a trust corporation registered under the *Loan and Trust Corporations Act*,
 - (ii) consists of a pool of funds that,
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the ITA, and
 - (B) is established by or related to persons that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund except the trust corporation that administers the fund, and
 - (iii) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act.
- (2) The exemptions contained in paragraphs (1)(a), (b) and (c) do not apply to a trade in a security of a mutual fund.
- 4.2 **Adviser** – The adviser registration requirement does not apply to

- (a) a financial intermediary that is regulated by the federal Office of the Superintendent of Financial Institutions if the financial intermediary is acting as an adviser in accordance with the legislation of the Parliament of Canada governing the financial intermediary, or
- (b) a Schedule III bank if the Schedule III bank is acting as an adviser in accordance with the *Bank Act* (Canada).

PART 5: REMOVAL OF EXEMPTIONS

5.1 Removal of exemptions -

- (1) The exemptions from the adviser registration requirement in subsection 34(1) of the Act are not available to a person or company.
- (2) The exemptions from the dealer registration requirement in subsections 35(1) and (2) of the Act are not available for a trade in a security.
- (3) The exemptions from the prospectus requirement in subsection 72(1) and clauses 73(1)(a), (b) and (c) of the Act are not available for a distribution of a security.

5.2 Removal of registration exemptions - market intermediaries -

- (1) Subject to subsection (2), the exemptions from the dealer registration requirement under the following sections are not available to a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:
- (a) section 2.1 [*Government incentive security*],
 - (b) section 2.2 [*Government incentive security traded under section 2.1*],
 - (c) section 2.4 [*Security of a co-operative*],
 - (d) section 2.5 [*Membership share of a credit union*], and
 - (e) section 2.6 [*Security of a credit union*].
- (2) Subsection (1) does not apply to a trade in a security by a lawyer or accountant that is solely incidental to his or her principal business.

PART 6: OFFERING MEMORANDUM

6.1 **Application** - This Part only applies to a distribution made in reliance on an exemption from the prospectus requirement in

- (a) section 2.3 of NI 45-106 [*Accredited investor*],
- (b) section 2.4 of NI 45-106 [*Private issuer*],
- (c) section 2.7 of NI 45-106 [*Founder, control person and family - Ontario*],
- (d) section 2.8 of NI 45-106 [*Affiliates*],
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], and
- (g) section 2.1 [*Government incentive security*].

6.2 Right of action for damages and right of rescission -

- (1) The rights referred to in section 130.1 of the Act apply in respect of an offering memorandum delivered to a prospective purchaser.
- (2) Despite subsection (1), the rights referred to in section 130.1 of the Act do not apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a distribution made in reliance on the exemption from the prospectus requirement in section 2.3 of NI 45-106 [*Accredited investor*] if the prospective purchaser is
- (a) a Canadian financial institution or a Schedule III bank,
 - (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada), or
 - (c) a subsidiary of any person referred to in paragraphs (a) and (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary.

6.3 **Description of rights in offering memorandum** - If a selling security holder delivers an offering memorandum to a prospective purchaser in connection with a distribution to which the rights referred to in section 130.1 of the Act apply, the rights must be described in the offering memorandum.

6.4 **Delivery of offering memorandum** - If an offering memorandum is provided to a prospective purchaser, the seller must deliver to the Commission a copy of the offering memorandum or any amendment to a previously delivered offering memorandum within 10 days of the date of the distribution.

PART 7: REPORTING REQUIREMENTS

7.1 **Report of exempt distribution** – If an issuer distributes a security of its own issue under section 2.1 [Government incentive security], the issuer must file a report on or before the 10th day after the distribution.

7.2 **Required form of report of exempt distribution** – The required form of report under section 7.1 [Report of exempt distribution] is Form 45-501F1.

PART 8: EXEMPTION

8.1 **Exemption** - The Director may grant an exemption to Part 7 of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 9: TRANSITION AND EFFECTIVE DATE

9.1 **Revocation of former rule** – Ontario Securities Commission Rule 45-501 Exempt Distributions that came into force on January 12, 2004 is revoked.

9.2 **Effective date** - This Rule comes into force on September 14, 2005.

**FORM 45-501F1
REPORT OF EXEMPT DISTRIBUTION**

This is the form required under section 7.1 of Ontario Securities Commission Rule 45-501 for a report of exempt distribution.

Issuer information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address and telephone number of the head office of the manager. Include the former name of the issuer if its name has changed since last report.

Item 2: State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

Item 3: Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

- | | |
|---|--|
| <input type="checkbox"/> Bio-tech | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> exploration/development |
| <input type="checkbox"/> investment companies and funds | <input type="checkbox"/> production |
| <input type="checkbox"/> mortgage investment companies | <input type="checkbox"/> Oil and gas |
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Hi-tech | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Other (describe) |

Details of distribution

Item 4: Complete Schedule I to this report. Schedule I is designed to assist in completing the remainder of this report.

Item 5: State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.

Item 6: For each security distributed:

- (a) describe the type of security,
- (b) state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and
- (c) state the exemption(s) relied on.

Item 7: Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below.

Each jurisdiction where purchasers reside	Number of purchasers	Price per security (Canadian \$) ¹	Total dollar value raised from purchasers in the jurisdiction (Canadian \$)
Total number of Purchasers			
Total dollar value of distribution in all jurisdictions (Canadian \$)			

Note 1: If securities are issued at different prices list the highest and lowest price the securities were sold for.

Commissions and finder's fees

Item 8: Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

<i>Full name and address of the person being compensated</i>	Compensation paid or to be paid (cash and/or securities)				
	Cash (Canadian \$)	Securities			Total dollar value of compensation (Canadian \$)
		Number and type of securities issued	Price per security	Exemption relied on and date of distribution	

Item 9: Please include the attached "Authorization of Indirect Collection of Personal Information for Distributions in Ontario".

Certificate

On behalf of the issuer, I certify that the statements made in this report are true.

Date:

Name of issuer (please print)

Print name, title and telephone number of person signing

Signature

Item 10: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the Ontario Securities Commission under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the following address:

Ontario Securities Commission
Suite 1903, Box 55, 20 Queen Street West
Toronto, Ontario M5H 3S8
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone (416) 593-8086

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

The attached Schedule I contains personal information of purchasers and details of the distribution(s). The issuer hereby confirms that each purchaser listed in Schedule I of this report

- (a) has been notified by the issuer
 - (i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,
 - (ii) that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (iii) that this information is being collected for the purposes of the administration and enforcement of Ontario securities legislation, and
 - (iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

Schedule I

Complete the following table.

Do not include in this table, securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

The information in this schedule will not be placed on the public file of the Ontario Securities Commission. However, freedom of information legislation in Ontario may require the Ontario Securities Commission to make this information available if requested.

Full name, residential address and telephone number of purchaser	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of distribution

Instructions:

1. File this report and the applicable fee at the following address:

Ontario Securities Commission
Suite 1900, Box 55, 20 Queen Street West
Toronto, Ontario M5H 3S8
Telephone: (416) 593-3682
Facsimile: (416) 593-8252
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone (416) 593-8086
2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report.
3. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.
4. In order to determine the applicable fee, consult Ontario securities legislation.

**COMPANION POLICY 45-501CP
TO ONTARIO SECURITIES COMMISSION RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

PART 1: INTRODUCTION

- 1.1 Introduction
- 1.2 Purpose

PART 2: OTHER EXEMPTIONS AND DISCRETIONARY RELIEF

- 2.1 Other exemptions
- 2.2 Discretionary relief

PART 3: GENERAL

- 3.1 All trades are subject to securities legislation
- 3.2 Multi-jurisdictional trades
- 3.3 Responsibility for compliance
- 3.4 Advisers
- 3.5 Underwriters
- 3.6 Soliciting purchasers

PART 4: INTERPRETATION

- 4.1 Definitions
- 4.2 Executive officer
- 4.3 Directors, executive officers and officers of non-corporate issuers
- 4.4 Investment fund

PART 5: OFFERING MEMORANDUM

- 5.1 Definition of offering memorandum
- 5.2 Mandatory and voluntary use of offering memorandum
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- 5.5 Review of offering memorandum
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- 5.7 Availability of offering memorandum

PART 6: REPORTING REQUIREMENTS

- 6.1 Report of exempt distribution

PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

- 7.1 Resale restrictions

PART 1: INTRODUCTION

- 1.1 **Introduction** - Ontario Securities Commission Rule 45-501 *Ontario Registration and Prospectus Exemptions* (the Rule) provides exemptions from the dealer registration requirement and the prospectus requirement.
- 1.2 **Purpose** – The purpose of this companion policy (the Policy) is to help users understand how the Commission interprets or applies certain provisions of the Rule. The Policy includes explanations, discussion and examples of various parts of the Rule.
- 1.3

PART 2: OTHER EXEMPTIONS AND DISCRETIONARY RELIEF

- 2.1 **Other exemptions** – In addition to the exemptions in the Rule, exemptions may also be available to persons under National Instrument 45-106 *Prospectus and Registration Exemptions* and other provisions of Ontario securities legislation.
- 2.2 **Discretionary relief** – In addition to the exemptions contained in the Rule and those available under other provisions of Ontario securities legislation, the Commission has the discretion to grant exemptions from the prospectus requirement and the dealer registration requirement.

PART 3: GENERAL**3.1 All trades are subject to securities legislation –**

- (1) Market participants are reminded that Ontario securities legislation applies to any trade in a security in Ontario, whether or not the issuer of the security is a reporting issuer in Ontario.
- (2) The definition of “trade” includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, in Ontario must comply with Ontario securities legislation.
- (3) If a trade is exempted from the dealer registration requirement, so too is any act, solicitation or conduct in furtherance of that trade.

3.2 **Multi-jurisdictional trades** - Market participants are reminded that a trade can occur in more than one jurisdiction. If it does, the person conducting the trade must comply with the securities legislation of each jurisdiction in which the trade occurs.

3.3 **Responsibility for compliance** – A person trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally a person trading securities under an exemption should retain all necessary documents that show that the person properly relied on the exemption. It is not appropriate for a person to assume an exemption is available.

3.4 **Advisers** - Subsection 1.4(2) of the Rule provides that an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are required to be registered, or exempted from registration, under Ontario securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under the Rule.

3.5 Underwriters -

- (1) Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the exemption from the dealer registration requirement and the prospectus requirement in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

- (2) There may be legitimate transactions where an underwriter purchases securities under an exemption from the dealer registration requirement and prospectus requirement other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the underwriter purchases the securities with investment intent and not with a view to distribution.
- (3) Where an underwriter purchases securities through a series of exempt trades in order to avoid the obligation to deliver a prospectus, the transactions will be looked at as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106 or the Rule.

3.6 **Soliciting purchasers -**

- (1) The exemptions from the dealer registration requirement set out in section 5.2 of the Rule are not available to a “market intermediary”. A person is a market intermediary if the person is in the business of trading in securities as principal or agent. The term “market intermediary” is defined in Ontario Securities Commission Rule 14-501 *Definitions*.
- (2) The Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employees are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities, the Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with Ontario securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

PART 4: INTERPRETATION

- 4.1 **Definitions** - Unless defined in the Rule, terms used in the Rule have the meaning given to them in Ontario securities legislation, including National Instrument 14-101 *Definitions*.
- 4.2 **Executive officer –**
 - (1) The definition of “executive officer” in the Rule is based on the definition of the same term in National Instrument 51-102 *Continuous Disclosure Obligations*.
 - (2) The definition includes someone who “performs a policy-making function” in respect of an issuer. We are of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.
 - (3) Paragraph (d) of the definition of “executive officer” includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.
- 4.3 **Directors, executive officers and officers of non-corporate issuers –**
 - (1) Non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers for the purpose of complying with the Rule.
 - (2) The term “director” is defined in the Rule and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.
 - (3) When the term “officer” is used in the Rule, a non-corporate issuer should refer to the definition in the Act, which defines the term to include any individual acting in a capacity similar to that of an officer of a company.
- 4.4 **Investment fund** - Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by
 - (a) an underlying business owned by the trust or other entity, or
 - (b) the income-producing properties owned by the trust or other entity.

Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

PART 5: OFFERING MEMORANDUM

5.1 Definition of offering memorandum -

- (1) "Offering memorandum" is defined in Ontario Securities Commission Rule 14-501.
- (2) In our view, the phrase "prepared primarily for delivery to and review by a prospective purchaser" in the definition of offering memorandum means the document is prepared in contemplation of soliciting an investment from the prospective purchaser.

5.2 Mandatory and voluntary use of offering memorandum -

- (1) An issuer must prepare an offering memorandum for use in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule [*Government incentive security*].
- (2) There is no obligation to prepare an offering memorandum for use in connection with a distribution made in reliance on an exemption in:
 - (a) section 2.3 of NI 45-106 [*Accredited investor*],
 - (b) section 2.4 of NI 45-106 [*Private issuer*],
 - (c) section 2.7 of NI 45-106 [*Family, founder and control person - Ontario*],
 - (d) section 2.8 of NI 45-106 [*Affiliates*],
 - (e) section 2.10 of NI 45-106 [*Minimum amount investment*], or
 - (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*].

Business practice may dictate the preparation of offering material that is delivered voluntarily to a prospective purchaser in connection with a distribution made in reliance on an exemption in section 2.3, 2.4, 2.7, 2.8, 2.10 or 2.19 of NI 45-106. This offering material may constitute an "offering memorandum" as defined in OSC Rule 14-501 *Definitions*.

5.3 Right of action for damages and right of rescission -

- (1) Part 6 of the Rule provides for the application of the rights referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective purchaser in connection with a distribution made in reliance on an exemption in:
 - (a) section 2.3 of NI 45-106 (subject to the provisions of subsection 4.2(3) of the Rule) [*Accredited investor*],
 - (b) section 2.4 of NI 45-106 [*Private issuer*],
 - (c) section 2.7 of NI 45-106 [*Family, founder and control person - Ontario*],
 - (d) section 2.8 of NI 45-106 [*Affiliates*],
 - (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
 - (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], or
 - (f) section 2.1 of the Rule [*Government incentive security*].

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule, or voluntarily in connection with a distribution made in reliance on an exemption in section 2.3, 2.4, 2.7, 2.8, 2.10 or 2.19 of NI 45-106.

- (2) A document delivered in connection with a distribution in a security made otherwise than in reliance on the exemptions referred to in subsection (1) does not give rise to the rights referred to in section 130.1 of the Act or subject the selling security holder to the requirements of Part 6 of the Rule.

5.4 Content of offering memorandum –

- (1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.
- (2) Under section 6.3 of the Rule, the rights referred to in section 130.1 of the Act must be described in an offering memorandum delivered in connection with a distribution to which the rights apply.

5.5 Review of offering memorandum –

- (1) An offering memorandum or any amendment to a previously delivered offering memorandum delivered to the Commission under section 6.4 of the Rule is not generally reviewed or commented on by Commission staff.
- (2) If Commission staff becomes aware that an offering memorandum fails to disclose material information relating to a security that is the subject of a distribution, staff may seek to effect remedial action.

5.6 Preliminary offering material -

- (1) The Commission cautions against the practice of providing preliminary offering material to a prospective purchaser before furnishing a “final” offering memorandum unless the offering material contains a description of the rights referred to in section 130.1 of the Act in situations when the rights apply.
- (2) The only material delivered to a prospective purchaser in connection with a distribution made in reliance on an exemption referred to in section 6.1 of the Rule should be:
- (a) a “term sheet” (representing a skeletal outline of the features of a distribution without dealing extensively with the business and affairs of the issuer of the securities being distributed), and
 - (b) an offering memorandum describing the rights referred to in section 130.1 of the Act available to purchasers and complying in all other respects with Ontario securities legislation.

- 5.7 **Availability of offering memorandum –** Subject to *Freedom of Information and Protection of Privacy Act* requests, it is the Commission’s policy that an offering memorandum delivered to the Commission under section 6.4 of the Rule will not be made available to the public.

PART 6: REPORTING REQUIREMENTS

6.1 Report of exempt distribution -

- (1) Section 7.1 of the Rule requires an issuer that has distributed a security of its own issue under section 2.1 of the Rule [*Government incentive security*] to file Form 45-501F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution.
- (2) In determining if it is required to file a report in Ontario, an issuer should consider the following questions:
- (d) is there a distribution in Ontario?

Please refer to Ontario securities legislation for guidance on when a distribution occurs in Ontario;
 - (e) if there is a distribution in Ontario, what exemption from the dealer registration requirement and the prospectus requirement is the issuer relying on for the distribution of the security?
 - (f) does the exemption referred to in paragraph (b) trigger a reporting requirement?

Reports of exempt distribution are required for distributions made in reliance on the exemptions listed in section 6.1 of NI 45-106 and section 7.1 of the Rule.

- (3) Section 140 of the Act requires that information filed with the Commission be made available for public inspection during normal business hours except for information that the Commission believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the Commission be available to the public for inspection.

Based on these provisions of Ontario securities legislation, the Commission has determined that the information listed in Form 45-501F1 *Report of Exempt Distribution*, Schedule I discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection.

PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

7.1 Resale restrictions –

- (1) A security distributed under an exemption may be subject to restrictions on its resale. The particular resale – or “first trade” – restrictions depend on the parties to the trade and the particular exemption that was relied on to distribute the security. In certain circumstances, no resale restrictions will apply and the security acquired under an exempt distribution will be freely tradable.
- (2) Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities*. While the Rule contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in National Instrument 45-102 *Resale of Securities* to determine what resale restrictions, if any, apply to the security in question.
- (3) The resale restrictions operate by triggering the prospectus requirement unless certain conditions are satisfied. A security that is subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be traded in reliance on an exemption from the prospectus requirement in the Rule, NI 45-106 or another provision in Ontario securities legislation.

SUMMARY OF ONTARIO-SPECIFIC COMMENTS AND RESPONSES

Commenter	Subject	Summary of Comment	Ontario Response
Osler, Hoskin & Harcourt LLP	6.2 of 45-501 [removal of the requirement to provide a statutory right of action for certain sophisticated purchasers]	One commenter questioned the utility of subsection 6.2(2) of Proposed OSC Rule 45-501 <i>Prospectus and Registration Exemptions</i> which provides that section 130.1 of the Act does not apply to offering memorandums provided to certain prospective purchasers in connection with distributions made in reliance on the accredited investor exemption in section 2.3 of NI 45-106. The commenter was of the view that while the entities listed in subsection 6.2(2) are undoubtedly sophisticated enough to not require statutory rights of action, they will still insist on having the same rights as other investors participating in the same offering that are not included in subsection 6.2(2).	This provision was introduced in response to a comment received by a stakeholder that the application of section 130.1 to offering memorandums provided to certain sophisticated entities in connection with distributions made in reliance on the accredited investor exemption results in unnecessary transaction costs. We are of the view that subsection 6.2(2) reduces transaction costs in circumstances where the investor does not require the protection of a statutory right of action. Parties are always free to negotiate a 130.1 remedy into their transaction.
Stikeman Elliot	s.152 of the Regulation	One commenter noted that while the Ontario Notice and Request for Comments refers to the term "COATS security" found in section 152 of the Regulation, no reference has been made to the definition of "COATS security" in the draft instruments/rules prepared in connection with this initiative.	The legislative reference in the definition of "COATS security" will need to be amended to refer to NI 45-106 rather than OSC Rule 45-501. This amendment was not reflected in the instruments attached to the Ontario Notice and Request for Comment in that this change will be made by way of an amendment to the Regulation under the Act rather than by way of an amendment to an instrument/rule prepared in connection with this initiative.

ATTACHMENT E

**ONTARIO SECURITIES COMMISSION
RULE 45-802
IMPLEMENTING NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS
AND
ONTARIO SECURITIES COMMISSION RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

- 1.1 **OSC Rule 32-502** – Ontario Securities Commission Rule 32-502 – *Registration Exemption for Certain Trades by Financial Intermediaries* is revoked.
- 1.2 **OSC Rule 32-503** – Ontario Securities Commission Rule 32-503 – *Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans* is revoked.
- 1.3 **OSC Rule 45-502** - Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans* is revoked.
- 1.4 **OSC Rule 46-501** – Ontario Securities Commission Rule 46-501 – *Self-Directed Registered Education Savings Plans* is revoked.
- 1.5 **OSC Rule 81-501** - Ontario Securities Commission Rule 81-501 *Mutual Fund Reinvestment Plans* is revoked.
- 1.6 **Effective Date** - This Rule comes into force on September 14, 2005.

ATTACHMENT F

**ONTARIO SECURITIES COMMISSION RULE 13-502
FEES
AMENDMENT INSTRUMENT**

1. Ontario Securities Commission Rule 13-502 *Fees* is amended by this Instrument.
2. Subsection 2.8(5) is revoked and the following substituted:

This section does not apply to a reporting issuer formed from a statutory amalgamation or arrangement, or a person or company continuing from a transaction to which paragraph 2.11(1)(a) or (b) of National Instrument 45-106 *Prospectus and Registration Exemptions* applies.

3. Appendix C is amended by
 - (i) revoking the title "Fees relating to Rule 45-501 Exempt Distributions" to item B and substituting the following:

Fees relating to exempt distributions under Rule 45-501 *Ontario Prospectus and Registration Exemptions* and National Instrument 45-106 *Prospectus and Registration Exemptions*
 - (ii) adding "or Form 45-106F1" after "Form 45-501F1" in item B(2);
 - (iii) revoking the title "Provision of Notice under section 72(1)(h)(ii) of the Act" to item D and substituting the following:

Provision of Notice under paragraph 2.42(2)(a) of National Instrument 45-106 *Prospectus and Registration Exemptions*
 - (iv) striking out "clause 72(1)(m)", "Rule 45-502", "Rule 45-503" and "National Instrument 62-101" in item F(1);
 - (v) adding "National Instrument 45-106," before "Rule 45-501" in item F(1); and
 - (vi) adding "or Form 45-106F1" after "Form 45-501F1" in item N(1)(c).
4. This Instrument comes into force on September 14, 2005.

ATTACHMENT G**ONTARIO SECURITIES COMMISSION RULE 31-503
LIMITED MARKET DEALERS
AMENDMENT INSTRUMENT**

1. Ontario Securities Commission Rule 31-503 *Limited Market Dealers* is amended by this Instrument.
2. Section 1.1 is revoked.
3. Section 2.1 is revoked and the following substituted:
 - 2.1 Restricted trading activities – A limited market dealer is registered for the purpose of the following trades:
 - (a) trades for which the exemptions from the dealer registration requirement are not available to a market intermediary because of subsections 2.43(1) and 3.9(1) of National Instrument 45-106 *Prospectus and Registration Exemptions*, and
 - (b) trades for which the exemptions from the dealer registration requirement are not available to a market intermediary because of subsection 5.2(1) of Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.
4. Section 2.2 is revoked and the following substituted:
 - 2.2 Financial intermediary and Schedule III bank – Neither a financial intermediary nor an authorized foreign bank named in Schedule III of the *Bank Act* (Canada) shall be registered as a limited market dealer.
5. This Instrument comes into force on September 14, 2005.

ATTACHMENT H**ONTARIO SECURITIES COMMISSION RULE 91-501
STRIP BONDS
AMENDMENT INSTRUMENT**

1. Ontario Securities Commission Rule 91-501 *Strip Bonds* is amended by this Instrument.
2. The definition of “qualified market intermediary” in section 1.1 is revoked and the following substituted:

“qualified market intermediary” means, for a trade of a strip bond, a market intermediary that, absent this Rule, would be permitted under Ontario securities legislation to make the trade if the strip bond is a security described in paragraphs 2.34(2)(a) or (b) of National Instrument 45-106 *Prospectus and Registration Exemptions*;
3. Section 2.1 is revoked and the following substituted:

2.1 Removal of Exemptions - The exemptions in paragraphs 2.34(2)(a) and (b) and subsection 2.34(3) of National Instrument 45-106 *Prospectus and Registration Exemptions* are not available for a trade in a strip bond.
4. This Instrument comes into force on September 14, 2005.

ATTACHMENT I

**ONTARIO SECURITIES COMMISSION RULE 91-502
TRADES IN RECOGNIZED OPTIONS
AMENDMENT INSTRUMENT**

1. Ontario Securities Commission Rule 91-502 *Trades in Recognized Options* is amended by this Instrument.
2. Subsection 2.2(1) is revoked and the following substituted:
 - (1) The exemption from the dealer registration requirement in section 3.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* is not available for a trade in a recognized option that is a non-equity accepted option.
3. This Instrument comes into force on September 14, 2005.

ATTACHMENT J

**ONTARIO SECURITIES COMMISSION RULE 32-504
(Under the Commodity Futures Act)
ADVISER REGISTRATION EXEMPTION****PART 1: DEFINITION**

- 1.1 **Definition** - In this Rule "Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada).

PART 2: ADVISER REGISTRATION EXEMPTION

- 2.1 **Exemption for Schedule III bank** – Registration as an adviser under the Act is not required to be obtained by a Schedule III bank where the performance of the services as an adviser is solely incidental to its principal business.

PART 3: EFFECTIVE DATE

- 3.1 **Effective date** - This Rule comes into force on September 14, 2005.

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