

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2004-5
(Section 149.1, The Securities Act)

AMENDMENT TO
MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTIONS

PART 1 – AMENDMENTS

Amendments

1.1(1) Multilateral Instrument 45-103 *Capital Raising Exemptions* is amended by this Instrument.

1.1(2) Section 1.1 is amended by

(a) adding the following after the definition of “accredited investor”:

"**AIF**" has the meaning ascribed to that term under NI 51-102;

"**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;

(b) adding “, Newfoundland and Labrador” after “Nunavut” in the definition of “control person”;

(c) adding the following after the definition of “fully managed account”:

"**MD&A**" has the meaning ascribed to that term under NI 51-102;

(d) adding the following after the definition of “MI 45-102”:

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

(e) moving the definition of “non-redeemable investment fund” to before “private issuer”

(f) repealing the definition of “non-redeemable investment fund” and substituting the following

"**non-redeemable investment fund**" means an issuer

(a) where contributions of security holders are pooled for investment,

(b) where security holders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions, and

(c) whose securities do not entitle the security holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer;

(g) repealing the definition of “qualifying issuer” and substituting the following:

“qualifying issuer” means an issuer that

(a) is a reporting issuer in a jurisdiction,

(b) is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*,

(c) has filed all documents that it is required to file under 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*,

(d) if not a venture issuer, has filed in a jurisdiction

(i) a prospectus (other than a prospectus filed under a CPC instrument) but, since becoming a reporting issuer, has not yet filed or been required to file an AIF or annual financial statements under NI 51-102, or

(ii) an AIF, MD&A and annual financial statements under NI 51-102, and

(e) if a venture issuer

(i) has filed in a jurisdiction a prospectus, other than a prospectus filed under a CPC instrument, but since becoming a reporting issuer has not yet filed, or been required to file, annual financial statements under NI 51-102,

(ii) has filed in a jurisdiction an information circular or filing statement in respect of a qualifying transaction for a capital pool company under a CPC instrument, but has not, subsequently filed, or been required to file, annual financial statements under NI 51-102, or

(iii) has filed in a jurisdiction

(A) MD&A and annual financial statements under NI 51-102, and

(B) an AIF in the form required by Form 51-102F2 with copies of all material incorporated by reference in the AIF and not previously filed.

(h) by adding the following after the definition of “reporting issuer”:

“**venture issuer**” has the meaning ascribed to that term in NI 51-102.

1.1(3) Section 4.1 is amended:

(a) in subsections (1) and (2), by striking out “British Columbia and Nova Scotia” and substituting “British Columbia, Nova Scotia, and Newfoundland and Labrador”, and

(b) in subsections (3) and (4), by striking out “Newfoundland and Labrador”.

1.1(4) Subsection 6.4(1) is amended

(a) in paragraph (a), by striking out “listed in Appendix B of MI 45-102” and substituting “of Canada”

(b) by striking out paragraph (b) and substituting “if the issuer was not a reporting issuer in any jurisdiction of Canada at the time the security was acquired, the security has been held for at least 12 months,”

(c) by striking out paragraph (c) and substituting “the issuer of the security subsequently has filed a prospectus with the securities regulatory authority in Manitoba with respect to the security and has obtained a receipt for that prospectus, or”, and

(d) in paragraph (d) by

(i) striking out “prospectus and”, and

(ii) adding after “dealer registration requirements”, and in the case of a trade that would be subject to the prospectus requirement, is made under an exemption from the prospectus requirements.”.

1.1(5) The following is added after Part 9:

PART 10 – TRANSITIONAL PERIOD

Transitional period

10.1(1) In this Part, “original MI 45-102” means Multilateral Instrument 45-102 *Resale of Securities* as it existed immediately before its repeal on March 30, 2004

10.1(2) Despite the definition of qualifying issuer in section 1.1 of this instrument, an issuer that was a qualifying issuer as that term was defined in original MI 45-102 on March 29, 2004 will be considered to be a qualifying issuer under this instrument until

(a) in the case of a venture issuer, the date following March 29, 2004 on which it first files or is required to file under NI 51-102, whichever is earlier, MD&A and annual financial statements, and

(b) in the case of an issuer other than a venture issuer, the date following March 29, 2004 that it first files or is required to file an AIF, MD&A and annual financial statements under NI 51-102.

PART 2 – EFFECTIVE DATE AND CITATION

Effective date

2.1 This Instrument comes into force on March 30, 2004.

Citation

2.2 These Amendments may be cited as MSC Rule 2004-5.