

**THE MANITOBA SECURITIES COMMISSION
MSC RULE 2003-3**

(Section 149.1, *The Securities Act*)

**MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTIONS**

Part	Title	Page
Part 1	Definitions	1
1.1	Definitions	1
1.2	Persons or companies deemed to be purchasing as principal	5
Part 2	Private issuer exemption	6
2.1	Private issuer exemption	6
2.2	Restrictions on commissions	6
Part 3	Family, friends and business associates exemption	7
3.1	Family, friends and business associates exemption	7
3.2	Restrictions on commissions	7
3.3	Saskatchewan risk acknowledgement	8
Part 4	Offering memorandum exemption	8
4.1	Offering memorandum exemption	8
4.2	Required form of offering memorandum	9
4.3	Purchasers' rights	9
4.4	Certificate	10
4.5	Risk acknowledgement	11
4.6	Consideration to be held in trust	11
4.7	Filing of offering memorandum	11
4.8	Exemption for filing of technical reports for mineral projects	11
Part 5	Accredited investor exemption	12
5.1	Accredited investor exemption	12
Part 6	Resale of securities	12
6.1	Private issuer exemption	12
6.2	Other exemptions	12
6.3	Convertible securities	12
6.4	Manitoba resale restrictions	12
Part 7	Reporting requirements	13
7.1	Report of exempt distribution	13
7.2	Required form of report	13

Part 8	Required forms	13
8.1	Required forms of offering memorandum	13
8.2	Required forms of risk acknowledgement	14
8.3	Required form of report of exempt distribution	14
8.4	Required forms in British Columbia	14
Part 9	Exemption from instrument	14
9.1	Grant of an exemption	14

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PART 1 – DEFINITIONS

Definitions

1.1 In this Instrument

"**accredited investor**" means

- (a) a Canadian financial institution, or an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada),
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) an association under the *Cooperative Credit Associations Act* (Canada) located in Canada or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act,
- (d) a subsidiary of any person or company referred to in paragraphs (a) to (c), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (e) a person or company registered under the securities legislation of a jurisdiction of Canada, as an adviser or dealer, other than a limited market dealer registered under the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
- (f) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada, as a representative of a person or company referred to in paragraph (e),
- (g) 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,
- (h) a municipality, public board or commission in Canada,
- (i) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,

(j) 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,

(k) 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,

(l) an individual whose net income before taxes exceeded \$200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the two most recent years and who, in either case, reasonably expects to exceed that net income level in the current year,

(m) a person or company, other than a mutual fund or non-redeemable investment fund, that, either alone or with a spouse, has net assets of at least \$5,000,000, and unless the person or company is an individual, that amount is shown on its most recently prepared financial statements,

(n) a mutual fund or non-redeemable investment fund that, in the local jurisdiction, distributes its securities only to persons or companies that are accredited investors,

(o) a mutual fund or non-redeemable investment fund that, in the local jurisdiction, is distributing or has distributed its securities under one or more prospectuses for which the regulator has issued receipts,

(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, trading as a trustee or agent on behalf of a fully managed account,

(q) a person or company trading as agent on behalf of a fully managed account if that person or company is registered or authorized to carry on business under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction as a portfolio manager or under an equivalent category of adviser or is exempt from registration as a portfolio manager or the equivalent category of adviser,

(r) a registered charity under the Income Tax Act (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or other adviser registered to provide 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) through (e) and paragraph (j) in form and function, or

(t) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, except the voting securities required by law to be owned by directors, are persons or companies that are accredited investors;

"**control person**" has the meaning ascribed to that term in securities legislation except in Manitoba, Northwest Territories, Nova Scotia, Nunavut and Prince Edward Island, where "control person" means any person or company that holds or is one of a combination of persons or companies 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 that issuer;

"**designated securities**" means

- (a) voting securities,
- (b) securities that are not debt securities and that carry a residual right to participate in the earnings of the issuer or, on the liquidation or winding up of the issuer, in its assets, or
- (c) securities convertible, directly or indirectly, into securities described in paragraph (a) or (b);

"**eligible investor**" means

- (a) a person or company whose
 - (i) net assets, alone or with a spouse, exceed \$400,000,
 - (ii) net income before taxes exceeded \$75,000 in each of the two most recent years and who reasonably expects to exceed that income level in the current year, or
 - (iii) net income before taxes combined with that of a spouse exceeded \$125,000 in each of the two most recent years and who reasonably expects to exceed that income level in the current year,
- (b) a person or company 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 are eligible investors,

(f) an accredited investor,

(g) a person or company described in section 3.1, or

(h) a person or company that has obtained advice regarding the suitability of the investment and, if the person or company is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

"eligibility adviser" means

(a) an investment dealer or equivalent category of registration, registered 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 practising 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 management accountants in a jurisdiction of Canada provided that the lawyer or public accountant :

(i) does not have a professional, business or personal relationship with the issuer, or any of its directors, senior officers, founders or control persons, and

(ii) has not acted for or been retained personally or otherwise as an employee, senior officer, director, associate or partner of a person or company that has acted for or been retained by the issuer or any of its directors, senior officers, founders or control persons within the previous year;

"financial assets" means cash and securities;

"founder", in respect of an issuer, means a person or company who,

(a) acting alone, in conjunction or in concert with one or more other persons or companies, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and

(b) at the time of the proposed trade, is actively involved in the business of the issuer;

"fully managed account" means an account for which a person or company makes the investment decisions if that person or company has full discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"non-redeemable investment fund" means an issuer

(a) whose primary purpose is to invest money provided by its security holders,

(b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control or being actively involved in the management of the issuers in which it invests, other than mutual funds or other non-redeemable investment funds, and

(c) that is not a mutual fund;

"MI 45-102" means Multilateral Instrument 45-102 *Resale of Securities*;

"private issuer" means an issuer

(a) that is not a reporting issuer, a mutual fund or a non-redeemable investment fund,

(b) whose designated 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 or companies, counting any 2 or more joint registered owners as one beneficial owner, and not counting employees and former employees of the issuer or its affiliates, and

(c) that has distributed designated securities only to persons or companies described in section 2.1(1);

"qualifying issuer" means a qualifying issuer as defined in MI 45-102;

"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; and

"reporting issuer" in Northwest Territories, Nunavut and Prince Edward Island means a reporting issuer in a jurisdiction of Canada.

Persons or companies deemed to be purchasing as principal

1.2(1) Subject to subsection (2), a trust company or trust corporation described in paragraph (p) of the definition of "accredited investor" is deemed to be purchasing as principal.

1.2(2) Subsection (1) does not apply to 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.

1.2(3) A person or company described in paragraph (q) of the definition of accredited investor is deemed to be purchasing as principal.

PART 2 – PRIVATE ISSUER EXEMPTION

Private issuer exemption

2.1(1) The dealer registration requirement does not apply to a person or company with respect to a trade in a security of a private issuer if the purchaser 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, senior officer, founder or control person of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, senior officer, founder or control person of the issuer,
- (d) a close personal friend of a director, senior officer, founder or control person of the issuer,
- (e) a close business associate of a director, senior 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 current holder of designated securities of the issuer,
- (h) an accredited investor,
- (i) a person or company of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons or companies described in paragraphs (a) to (h),
- (j) a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs (a) to (h), or
- (k) a person or company that is not the public.

2.1(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Restrictions on commissions

2.2 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 section 2.1 except a trade to an accredited investor.

PART 3 – FAMILY, FRIENDS AND BUSINESS ASSOCIATES EXEMPTION

Family, friends and business associates exemption

3.1(1) Subject to section 3.3, the dealer registration requirement does not apply to a person or company with respect to a trade in a security of an issuer if the purchaser purchases the security as principal and is

- (a) a director, senior 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, senior 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, senior officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, senior 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 the spouse of a founder of the issuer,
- (h) a person or company of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons or companies described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs (a) to (g).

3.1(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Restrictions on commissions

3.2(1) 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 section 3.1.

3.2(2) In Saskatchewan, no commission or finder's fee may be paid to any person or company, in connection with a trade to a purchaser in Saskatchewan under section 3.1.

Saskatchewan risk acknowledgement

3.3(1) In Saskatchewan, the exemptions in section 3.1 are not available in relation to a trade to

- (a) a person or company described in paragraph 3.1(1)(d) or (e),
- (b) a close personal friend or close business associate of a founder of the issuer, or
- (c) a person or company described in paragraph 3.1(1)(h) or (i) if the exempt trade is based in whole or in part on a close personal friendship or close business association,

unless the seller obtains from each close personal friend and close business associate a signed risk acknowledgement in the required form.

3.3(2) The seller must retain the signed risk acknowledgement for 8 years after the distribution.

PART 4 – OFFERING MEMORANDUM EXEMPTION

Offering memorandum exemption

4.1(1) In British Columbia and Nova Scotia, the dealer registration requirement does not apply to a person or company with respect to a trade by an issuer in a security of its own issue if the purchaser purchases the security as principal and, at the same time or before the purchaser signs the agreement to purchase the security, the issuer

- (a) delivers an offering memorandum to the purchaser in compliance with sections 4.2 to 4.4, and
- (b) obtains a signed risk acknowledgement from the purchaser in compliance with section 4.5(1).

4.1(2) In British Columbia and Nova Scotia, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

4.1(3) In Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan, the dealer registration requirement does not apply to a person or company with respect to a trade by an issuer in a security of its own issue if

- (a) the purchaser purchases the security as principal,
- (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 sections 4.2 to 4.4, and

(ii) obtains a signed risk acknowledgement form from the purchaser in compliance with section 4.5(1),

(c) either

(i) the purchaser is an eligible investor, or

(ii) the aggregate acquisition cost to the purchaser does not exceed \$10,000, and

(d) in the case of an issuer that is a mutual fund, it is one referred to in section 1.3 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

4.1(4) In Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (3).

4.1(5) In Northwest Territories, Nunavut and Saskatchewan, no commission or finder's fee may be paid to any person or company, other than a registered dealer, in connection with a trade to a purchaser in that jurisdiction under subsections (3) and (4).

Required form of offering memorandum

4.2 An offering memorandum delivered under section 4.1 must be in the required form.

Purchasers' rights

4.3(1) If securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under section 4.1 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.

4.3(2) If 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 section 4.1, 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 record 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.

Certificate

4.4(1) An offering memorandum delivered under section 4.1 must contain a certificate that states the following:

“This offering memorandum does not contain a misrepresentation.”

4.4(2) A certificate under subsection (1) 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 a 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.

4.4(3) A certificate under subsection (1) must be true

(a) at the date the certificate is signed, and

(b) at the date the offering memorandum is delivered to the purchaser.

4.4(4) If a certificate under subsection (1) 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 (2), and

(c) the purchaser re-signs the agreement to purchase the security.

Risk acknowledgement

4.5(1) A risk acknowledgement under section 4.1 must be in the required form.

4.5(2) An issuer relying on section 4.1 must retain the signed risk acknowledgement for 8 years after the distribution.

Consideration to be held in trust

4.6(1) The issuer must hold in trust all consideration received from the purchaser in connection with a trade in a security under section 4.1 until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

4.6(2) The issuer must return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under section 4.3(1).

Filing of offering memorandum

4.7 The issuer must file a copy of an offering memorandum delivered under section 4.1 and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10th day after each distribution under the offering memorandum or update of the offering memorandum.

Exemption for filing of technical reports for mineral projects

4.8 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) an annual information form, prospectus, material change report or annual financial statement filed under securities legislation with a securities regulatory authority before February 1, 2001,

(b) a previously filed technical report under NI 43-101, or

(c) a report prepared in accordance with former National Policy 2-A, *Guide for Mining Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators* and filed with a securities regulatory authority before February 1, 2001.

PART 5 – ACCREDITED INVESTOR EXEMPTION

Accredited investor exemption

5.1(1) The dealer registration requirement does not apply to a person or company with respect to a trade in a security of an issuer if the purchaser purchases the security as principal and is an accredited investor.

5.1(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

PART 6 – RESALE OF SECURITIES

Private issuer exemption

6.1 Except in Manitoba, the first trade of a security distributed under the exemption in subsection 2.1(2) is subject to section 2.6 of MI 45-102.

Other exemptions

6.2 Except in Manitoba, the first trade of a security distributed under an exemption in subsection 3.1(2), 4.1(2), 4.1(4) or 5.1(2) is subject to section 2.5 of MI 45-102 .

Convertible securities

6.3 Except in Manitoba, the first trade of a security distributed through the exercise of a right to acquire, purchase, convert or exchange previously acquired under an exemption in

(a) subsection 2.1(2) is subject to section 2.6 of MI 45-102, or

(b) subsection 3.1(2), 4.1(2), 4.1(4) or 5.1(2) is subject to section 2.5 of MI 45-102.

Manitoba resale restrictions

6.4(1) In Manitoba, a security acquired under an exemption in subsection 3.1(2), 4.1(4) or 5.1(2) or through the exercise of a right to acquire, purchase, convert or exchange previously acquired under one of those exemptions must not be traded without the prior written consent of the regulator, unless

(a) at the time the security was acquired the issuer was a reporting issuer in a jurisdiction listed in Appendix B of MI 45-102,

(b) 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,

(c) if the issuer was not a reporting issuer in Manitoba at the time the security was acquired, the security has been held for at least 12 months, or

(d) the trade is made under an exemption from the prospectus and dealer registration requirements.

6.4(2) The regulator will consent to a trade referred to in subsection (1) if the regulator is of the opinion that it would not be prejudicial to the public interest to do so.

PART 7 – REPORTING REQUIREMENTS

Report of exempt distribution

7.1(1) Subject to subsections (2) and (3), if an issuer distributes a security of its own issue under an exemption in subsection 3.1(2), 4.1(2), 4.1(4), or 5.1(2), 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.

7.1(2) An issuer is not required to file the report under subsection (1) for a distribution under subsection 5.1(2) of an evidence of indebtedness to a Canadian financial institution as security for a loan made by the Canadian financial institution to the person or company.

7.1(3) A mutual fund or non-redeemable investment fund is not required to file the report under subsection (1) for a distribution under subsection 5.1(2) provided the report is filed not later than 30 days after the financial year end of the mutual fund or non-redeemable investment fund.

Required form of report

7.2 A report filed under section 7.1 must be in the required form.

PART 8 – REQUIRED FORMS

Required forms of offering memorandum

8.1(1) Except in British Columbia, the required form of offering memorandum under section 4.2 is Form 45-103F1.

8.1(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-103F2.

Required forms of risk acknowledgement

8.2(1) Except in British Columbia, the required form of risk acknowledgement under section 4.5 is Form 45-103F3.

8.2(2) In Saskatchewan, the required form of risk acknowledgement under section 3.3 is Form 45-103F5.

Required form of report of exempt distribution

8.3(1) Except in British Columbia, the required form of report of exempt distribution is Form 45-103F4.

8.3(2) An issuer or vendor that makes a distribution under an exemption from a prospectus requirement not contained in this rule, is exempt from the requirement in securities legislation to prepare a report of exempt trade or exempt distribution in the form required, provided the issuer or vendor files a report of exempt distribution in accordance with Form 45-103F4.

Required forms in British Columbia

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

PART 9 – EXEMPTION FROM INSTRUMENT

Grant of exemptions

9.1 The regulator or the securities regulatory authority may grant an exemption from this instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.