

MSC NOTICE 2003-34

MANITOBA SECURITIES COMMISSION

NOTICE

Publication for Comment of Proposed Consequential Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions*

July 25, 2003

Publication for Comment

The Commission and the securities regulatory authorities in each of Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, New Brunswick, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and the Yukon Territory are publishing for a 60-day comment period proposed amendments (collectively, the "Proposed Amendments") to

- Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103"),
- Form 45-103F1 *Offering Memorandum for Non-Qualifying Issuers*,
- Form 45-103F2 *Offering Memorandum for Qualifying Issuers*, and
- 45-103 CP *Companion Policy*.

The Proposed Amendments will be required when the following proposals made by the Canadian Securities Administrators (the "CSA Proposals") are implemented:

- Repeal and replacement of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102"). Published for comment on January 31, 2003; comment period expired on May 2, 2003.
- Proposed National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102"). Published for comment on June 20, 2003; comment period expires on August 19, 2003.
- Proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("NI 52-107"). Published for comment on May 16, 2003; comment period expires on August 14, 2003.

The CSA Proposals can be found on the MSC website at www.msc.gov.mb.ca.

Summary of Proposed Amendments

Definition of "Qualifying Issuer"

MI 45-103 currently permits "qualifying issuers", as defined in current MI 45-102, to use a shorter form of offering memorandum because those issuers have filed an annual information form (an "AIF"). Under proposed MI 45-102, the concept of "qualifying issuer" will be removed and reporting issuers will not be required to file an AIF to rely on the four-month hold period.

Instead, proposed MI 45-102 will rely on the continuous disclosure regime set out in proposed NI 51-102 as a basis for reducing all hold periods to four months.

As a result, the definition of “qualifying issuer” in MI 45-103 must be amended to refer to AIFs filed under NI 51-102 rather than under MI 45-102. The proposed amended definition of “qualifying issuer” would require an issuer to be a reporting issuer and SEDAR filer, to have filed an AIF, management’s discussion and analysis (“MD&A”) and annual financial statements under NI 51-102, and to have complied with any applicable continuous disclosure obligations under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

If a reporting issuer has filed a prospectus but has not yet filed or been required to file its AIF, MD&A and annual financial statements under NI 51-102, the issuer can use its prospectus as the base disclosure document for the shorter form of offering memorandum until it files its AIF, MD&A and annual financial statements under NI 51-102.

Venture Issuers

Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use the shorter form of offering memorandum, the venture issuer must voluntarily file an AIF under NI 51-102 so that it can incorporate that AIF into its offering memorandum.

The venture issuer’s prospectus (and for a venture issuer that is a capital pool company, the information circular or filing statement that it has filed for its qualifying transaction) can serve as a base disclosure document for the shorter form of offering memorandum until the venture issuer has filed, or has been required to file, its annual financial statements under NI 51-102. After that time, the venture issuer must file an AIF to continue to be able to use the shorter form of offering memorandum.

Offering Memorandum Exemption in Newfoundland and Labrador

The proposed amendment to section 4.1 of MI 45-103 moves “Newfoundland and Labrador” to subsections (1) and (2) from subsections (3) and (4). The jurisdictions of Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan require, among other conditions, that either a purchaser is an eligible investor as defined in the Instrument, or the aggregate acquisition cost to the purchaser not exceed \$10,000. If the proposed amendment to section 4.1 is made, purchasers in Newfoundland and Labrador (like purchasers in British Columbia and Nova Scotia) will not be subject to those conditions.

Manitoba Resale Restrictions

The proposed amendment to section 6.4 of MI 45-103 will mirror similar changes to the resale restrictions made in proposed MI 45-102, namely that an issuer be a reporting issuer in a jurisdiction of Canada, not just those jurisdictions previously listed in Appendix B of MI 45-102. Also some language has been added to the end of paragraph (d) to clarify that an exemption from the prospectus requirement is only necessary if a trade would be subject to a prospectus requirement.

Amendments to Offering Memorandum Forms

Significance Tests

Section C.2 of Form 45-103F1 sets out two tests that issuers must use to determine if they have to include in an offering memorandum the financial statements of a business that the issuer has acquired during the past two years, or that the issuer proposes to acquire (the “Significance

Tests”). The Proposed Amendments will decrease the level of the Significance Tests from 50% to 40% to reflect the same level in proposed NI 51-102 for venture issuers that have acquired a business. This would result in a lower threshold for all issuers who want to use a non-qualifying issuer offering memorandum, whether or not an issuer is a reporting issuer, and whether or not the issuer has acquired the business or is proposing to acquire a business.

We also propose other consequential amendments to Form 45-103F1 and Form 45-103F2 as follows:

- revise the summary of the resale restrictions that issuers must state in their offering memorandum to reflect the resale restrictions in proposed MI 45-102,
- require that financial statements included in the offering memorandum comply with NI 52-107, whether or not an issuer is a reporting issuer,
- require incorporation by reference of business acquisition reports filed under NI 51-102 into the shorter form of offering memorandum, and
- amend the provision concerning acceptable alternative disclosure for an acquisition of a business that is an interest in an oil and gas property to mirror the similar provision in NI 51-102.

Specific Request for Comment:

Do you agree that we should lower the threshold for the Significance Tests from 50% to 40%? If not, why not?

How long of a transition period should we provide to allow issuers to continue to use their offering memorandum without including the financial statements of an acquired business or a business to be acquired that did not meet the Significance Test at 50% but would meet it at 40%?

Attachments

The Proposed Amendments and blacklines showing the amended documents are attached to this memo as follows:

- Appendix A: Amendments to MI 45-103
- Appendix B: Amendments to Forms 45-103F1 and 45-103F2
- Appendix C: Amendments to the Companion Policy.

Submissions

Comments submitted prior to **Wednesday, 24 September 2003** will be considered. Comment letters can be delivered in hard copy, by fax or by e-mail. Please address your submission to:

Chris Besko
 Legal Counsel
 Manitoba Securities Commission
 1130 – 405 Broadway
 Winnipeg, Manitoba R3C 3L6
 Fax: (204) 945-0330
 E-mail: cbesko@gov.mb.ca

We will be sharing comment letters with the other participating jurisdictions listed above and therefore cannot maintain confidentiality of submissions.

APPENDIX A
AMENDMENT TO
MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTIONS

PART 1 AMENDMENTS

1.1. Amendments

- (1) Multilateral Instrument 45-103 *Capital Raising Exemptions* is amended by this Instrument.
- (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 “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, 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 annual financial statements under NI 51-102,
 - (ii) an information circular or filing statement in respect of a qualifying transaction for a capital pool company under a CPC instrument, but has not, since then, filed, or been required to file annual financial statements under NI 51-102, or
 - (iii) an AIF, MD&A and annual financial statements under NI 51-102;

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

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

(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”.

(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” and
- (b) 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.”.

(5) The following is added after Part 9:

Part 10 Transitional period

10.1 Transitional period

- (1) In this Part, “original MI 45-102” means Multilateral Instrument 45-102 *Resale of Securities* as it existed immediately before its repeal •[date of repeal]
- (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 • [insert the date that is the last day before original MI 45-

102 was repealed] will be considered to be a qualifying issuer under this instrument until

- (a) in the case of a venture issuer, the date following • that 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 • 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

2.1 Effective Date

This Instrument comes into force on •, 200•.

– BLACKLINE –

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

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

Part 1 Definitions

1.1 Definitions

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;

"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;

"control person" has the meaning ascribed to that term in securities legislation except in Manitoba, Northwest Territories, Nova Scotia, Nunavut, **Newfoundland and Labrador** 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;

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

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

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

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

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

"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, and

"venture issuer" has the meaning ascribed to that term in NI 51-102.

1.2 Persons or companies deemed to be purchasing as principal

- (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.
- (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.
- (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

2.1 Private issuer exemption

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

2.2 Restrictions on commissions

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

3.1 Family, friends and business associates exemption

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

3.2 Restrictions on commissions

- (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.
- (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.

3.3 Saskatchewan risk acknowledgement

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

Part 4 Offering memorandum exemption

4.1 Offering memorandum exemption

- (1) In British Columbia ~~and~~, Nova Scotia and Newfoundland and Labrador, 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).
- (2) In British Columbia ~~and~~, 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).
- (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) 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).
- (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).

4.2 Required form of offering memorandum

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

4.3 Purchasers' rights

- (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.
- (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.

4.4 Certificate

- (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.””
- (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.
- (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) 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.

4.5 Risk acknowledgement

- (1) A risk acknowledgement under section 4.1 must be in the required form.
- (2) An issuer relying on section 4.1 must retain the signed risk acknowledgement for 8 years after the distribution.

4.6 Consideration to be held in trust

- (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.
- (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).

4.7 Filing of offering memorandum

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.

4.8 Exemption for filing of technical reports for mineral projects

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

5.1 Accredited investor exemption

- (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.

- (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

6.1 Private issuer exemption

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.

6.2 Other exemptions

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~~-102.

6.3 Convertible securities

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.

6.4 Manitoba resale restrictions

(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~~, of Canada,
(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, and in the case of a trade that would be subject to the prospectus requirement, is made under an exemption from the prospectus requirement.

(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

7.1 Report of exempt distribution

- (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.
- (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.
- (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.

7.2 Required form of report

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

Part 8 Required forms

8.1 Required forms of offering memorandum

- (1) Except in British Columbia, the required form of offering memorandum under section 4.2 is Form 45-103F1.
- (2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-103F2.

8.2 Required forms of risk acknowledgement

- (1) Except in British Columbia, the required form of risk acknowledgement under section 4.5 is Form 45-103F3.
- (2) In Saskatchewan, the required form of risk acknowledgement under section 3.3 is Form 45-103F5.

8.3 Required form of report of exempt distribution

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

8.4 Required forms in British Columbia

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

9.1 Grant of exemptions

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.

Part 10 Transitional period

10.1 Transitional period

- (1) In this Part, “original MI 45-102” means Multilateral Instrument 45-102 Resale of Securities as it existed immediately before its repeal •[date of repeal]
- (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 • [insert the date that is the last day before original MI 45-102 was repealed] will be considered to be a qualifying issuer under this instrument until

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

APPENDIX B

AMENDMENTS TO FORM 45-103F1 OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS AND FORM 45-103F2 OFFERING MEMORANDUM FOR QUALIFYING ISSUERS OF MULTILATERAL INSTRUMENT 45-103 CAPITAL RAISING EXEMPTION

PART 1 AMENDMENTS TO FORM 45-103F1 OFFERING MEMORANDUM FOR NON-QUALIFYING ISSUERS

1.1. Amendments to Form 45-103F1 Offering Memorandum for Non-Qualifying Issuers

- (1) Form 45-103F1 *Offering Memorandum for Non-Qualifying Issuers* is amended by this Part of this Instrument.
- (2) The face page is amended by striking out the words “12 months” from the phrase “You will be restricted from selling your securities for 4 months/12months/an indefinite period.” under the subheading “Resale restrictions”.
- (3) Item 10.2 is repealed and the following is substituted:

Restricted Period - For trades in Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island 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 four 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 four months and a day after the distribution date.”

- (4) Item 10.3, is amended by
 - (a) striking out “listed in Appendix A of MI 45-102” in the preamble, and
 - (b) adding “Unless permitted under securities legislation,” before “You must not trade the securities”.
- (5) Instruction B.1 is repealed and the following substituted:

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.

- (6) Paragraph (c) of instruction B.4 is amended by
- (a) striking out “3, 6 or 9 month interim period that” and substituting “interim period ending 9, 6, or 3 months before the end of the issuer’s financial year, if that interim period” and
 - (b) striking out “the financial statements” and substituting “any financial statements”.
- (7) Instruction B.6 is repealed and the following substituted:
- If the issuer has changed its year end, refer to National Instrument 51-102 *Continuous Disclosure Obligations* (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).
- (8) Instruction B.8 is amended by
- (a) striking out “Canadian generally accepted auditing standards (Canadian GAAS) and the” and substituting “the requirements of NI 52-107. The”, and
 - (b) adding at the end of the instruction “Refer to National Instrument 45-108 *Auditor Oversight* for requirements for auditors of reporting issuers.”
- (9) Instruction B.9 is amended by striking out “Each page of any” and substituting “All”.
- (10) Instruction B.11 is repealed and the following substituted:
- 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.
- (11) Instruction C.1 is amended by adding “specified in C.4” before “for the business”.
- (12) Instruction C.2 is amended by striking out “50” and substituting “40” wherever it occurs.
- (13) Paragraph (b) of instruction C.2 is amended by adding “, excluding any investments in or advances to the business,” before “as at the end of”.
- (14) Instruction C.5 is amended by striking out “Canadian GAAS and the” and substituting “the requirements of Part 6 of NI 52-107. The”

- (15) Instruction C.8 is amended by adding “as defined in NI 51-102” after “reverse take-over”.
- (16) The following is added after instruction C.8:
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.
- (17) Instruction D.2 is amended by
- (a) adding “Notwithstanding the requirements in section 3.2(2)1 of NI 52-107,” before “an audit report” and
- (b) adding “of a non-reporting issuer “ after “offering memorandum”.
- (18) Instructions D.3 and D.4 are repealed.
- (19) Instruction D.6 is amended by
- (a) adding “or the reporting issuer does not have access to those financial statements,” to the end of paragraph (a), and
- (b) repealing paragraph (d) and substituting the following:
- 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.

PART 2 AMENDMENTS TO FORM 45-103F2 OFFERING MEMORANDUM FOR QUALIFYING ISSUERS

2.1. Amendments to Form 45-103F2 Offering Memorandum for Qualifying Issuers

- (1) Form 45-103F2 *Offering Memorandum for Qualifying Issuers* is amended by this Part of this Instrument.

(2) Instruction A.1 is amended by striking out the words “as defined in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102)”.

(3) Instruction B.1 is repealed and the following is substituted:

Any financial statements incorporated by reference into the offering memorandum must comply with National Instrument 51-102 *Continuous Disclosure Obligations* and National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.

(4) Instruction C.1 is repealed and the following is substituted:

If the offering memorandum does not incorporate by reference the issuer's AIF, prospectus, information circular or filing statement (as listed in the definition of qualifying issuer) that the issuer is relying on to meet the definition of qualifying issuer, update the offering memorandum to incorporate by reference the document as soon as the document is filed on SEDAR.

(5) Section 2.2 of Instruction D is amended by

(a) repealing paragraph (a) and substituting the following:

the issuer's AIF, MD&A, prospectus, information circular or filing statement (as listed in the definition of qualifying issuer) that the issuer is relying on to meet the definition of qualifying issuer

(b) striking out “for the annual comparative financial statements referred to in 2.2.(d) in paragraph (f) and substituting “required to be filed under NI 51-102”,

(c) repealing paragraph (g) and substituting the following:

each business acquisition report required to be filed under NI 51-102,

(d) adding “ as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*,” after “mineral project,” in paragraph (i)

(e) repealing paragraph (j) and substituting the following:

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.

PART 3 EFFECTIVE DATE

3.1 Effective Date

This Instrument comes into force on ●, 200●.

– BLACKLINE –

Form 45-103F1
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? [Yes/No. 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.”]

Payment terms:

Proposed closing date(s):

Tax consequences: There are important tax consequences to these securities. See item 6. [If 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~~/12 months/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 to 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.

Incorporates consequential amendments that arise from proposed amendments to MI 45-102 Resale of Securities and proposed NI 51-102 Continuous Disclosure Obligations and NI 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency

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.

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) if the agreement is with a related party, the name of the related party and the relationship,
 - (ii) a description of any asset or property or interest acquired, disposed of, leased, under option, etc.,
 - (iii) purchase price and payment terms (e.g., paid in instalments, cash, securities or work commitments),

- (iv) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate,
- (v) the date of the agreement,
- (vi) the amount of any finder's fee or commission paid or payable to a related party in connection with the agreement, and
- (vii) 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 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	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 (or, if the issuer has not completed a financial year, since inception) 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 senior 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, senior officer or control person of the issuer, or

Incorporates consequential amendments that arise from proposed amendments to MI 45-102 Resale of Securities and proposed NI 51-102 Continuous Disclosure Obligations and NI 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency

- (ii) an issuer of which a person or company referred to in (i) above was a director, senior 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, senior officer or control person of the issuer, or
 - (ii) issuer of which a person or company referred to in (i) above was a director, senior 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 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.

Item 6 Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the 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 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,
 - 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,

Incorporates consequential amendments that arise from proposed amendments to MI 45-102 *Resale of Securities* and proposed NI 51-102 *Continuous Disclosure Obligations* and NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

- 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, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island 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, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan, state one of the following, as applicable:

- (a) If, ~~at the distribution date,~~ the issuer is not:
- (i) ~~a reporting issuer in the Canadian province or territory in which the purchaser resides, and~~
 - (ii) ~~a SEDAR filer and a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec or Saskatchewan, state: a reporting issuer in a jurisdiction at the distribution date state:~~

“Unless permitted under securities legislation, you cannot trade the securities before the ~~earlier of the date that is 12~~**four** months and a day after the date [insert name of issuer or other term used to refer to the issuer]~~1.~~ becomes a reporting issuer in the ~~Canadian~~**any** province or territory in which you reside, or 2. ~~first becomes a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec or Saskatchewan, and a SEDAR filer~~**of Canada**.”

- (b) ~~If, at the distribution date, the issuer is not a “qualifying issuer” (as defined under Multilateral Instrument 45-102 *Resale of Securities*) but is a SEDAR filer and a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec or Saskatchewan, state:~~
- (b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:**

~~“Unless permitted under securities-~~ **securities** ~~legislation, you cannot trade the securities before the date that is 12 months and a day after the distribution date.”~~

~~(c) If, at the distribution date, the issuer is not a “qualifying issuer” and is a reporting issuer in the Canadian province or territory in which the purchaser resides, state: “Unless permitted under securities legislation, you cannot trade the securities before the date that is 12 months and a day after the distribution date.”~~
securities before

~~(d) If, at the distribution date the issuer is a “qualifying issuer”, state: “Unless permitted under securities legislation, you cannot trade the securities before the date that is 4~~**four** ~~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 ~~listed in Appendix A of MI 45-102~~ at the time the security is acquired by the purchaser state:

~~You~~**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:

Incorporates consequential amendments that arise from proposed amendments to MI 45-102 *Resale of Securities* and proposed NI 51-102 *Continuous Disclosure Obligations* and NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

- (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 Financial Statements

Include all financial statements required in the offering memorandum immediately before the certificate page of the offering memorandum.

**Incorporates consequential amendments that arise from proposed
amendments to MI 45-102 *Resale of Securities* and proposed NI 51-102 *Continuous Disclosure Obligations* and
NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency***

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 45-103F1
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 senior 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 or company 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 4.1 of Multilateral Instrument 45-103 *Capital Raising 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. ~~Any~~**All** financial statements included in the offering memorandum must be prepared in accordance with Canadian generally accepted accounting principles (Canadian GAAP). ~~Differential reporting, as discussed in section 1300 of the CICA Handbook, is not acceptable for financial statements of either the issuer or of a business for which financial statements are required in the offering memorandum~~**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).

Incorporates consequential amendments that arise from proposed amendments to MI 45-102 *Resale of Securities* and proposed NI 51-102 *Continuous Disclosure Obligations* and NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

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 ~~3, 6 or 9 month~~ interim period that **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 ~~the~~**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 ~~National Policy 51 Changes in the Ending Date of a Financial Year and in Reporting Status~~**Instrument 51-102 Continuous Disclosure Obligations (NI 51-102)** for guidance concerning interim periods in a transition year. ~~Financial~~**To satisfy B.4(c) in a transition year, provide financial** statements for the most recently completed interim period ~~in a transition year should be provided to satisfy B.4(c).~~**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 ~~Canadian generally accepted auditing standards (Canadian GAAS) and 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.6**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 45-108 Auditor Oversight for requirements for auditors of reporting issuers.**
9. ~~Each page of any~~**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. ~~However, unless it may be is necessary to include the interim financial statements in the offering memorandum 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 ~~50~~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 ~~50~~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 ~~Canadian GAAS and 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. ~~An~~ 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. The financial statements of a person or company incorporated or organized in a jurisdiction outside of Canada that are included in an offering memorandum, may be prepared in accordance with a body of generally accepted accounting principles, other than Canadian GAAP, if those accounting principles are as comprehensive as Canadian GAAP (e.g., U.S. GAAP) and cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements (“foreign GAAP”), if the notes to the financial statements~~

- ~~(a) explain and quantify the effect of material differences between Canadian GAAP and foreign GAAP that relate to measurements and those differences are not so pervasive as to render the financial statements misleading, and~~
- ~~(b) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.~~

3. [Repealed by amendments to MI 45-103 •, 2004.]

- ~~4. The financial statements of a person or company incorporated or organized in a jurisdiction outside of Canada that are included in an offering memorandum, may be audited in accordance with a body of generally accepted auditing standards, other than Canadian GAAS, provided that~~
 - ~~(a) those auditing standards are substantially equivalent to Canadian GAAS, requiring audit work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS, and~~
 - ~~(b) the auditor's report is accompanied by a statement of the auditor~~
 - ~~(i) disclosing any material differences in the form and content of the foreign auditor's report as compared to a Canadian auditor's report, and~~
 - ~~(ii) unless the auditing standards are U.S. GAAS, confirming that the auditing standards applied are substantially equivalent to Canadian GAAS.~~

4. [Repealed by amendments to MI 45-103 •, 2004.]

- 5. 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.5(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.5(a) for any completed financial year has been audited, or identifies the financial statements from which the financial information provided under D.5(a) has been derived; and
 - (ii) the audit opinion with respect to the financial information or financial statements referred to in D.5(c)(i) was issued without a reservation of opinion.

If the financial information included in an offering memorandum under D.5(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.

6. 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 ~~at least:~~
 - (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:
 - (iA) gross revenue,
 - (iiB) royalty expenses,
 - (iiiC) production costs, and
 - (ivD) operating income, ~~and~~
 - ~~(v)~~ if a material fact, A. (i) information with respect to ~~reserve estimates and estimates of future net revenue and production volumes~~ 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,
 - ~~B. (iii)~~ actual production volumes of the property for the most recently completed year, and
 - ~~C. (iv)~~ estimated production volumes of the property for the next year, based on information in the reserve report.
7. 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:
- (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.~~1. that the issuer was unable to obtain an audited operating statement,
 - ~~2.~~2. the reasons for that inability,
 - ~~3.~~3. the fact that the purchase agreement includes the representations and warranties referred to in D.7(b)(ii), and
 - ~~4.~~4. that the results presented in the operating statements may have been materially different if the statements had been audited.

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**Form 45-103F2
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]

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."]

Payment terms:

Proposed closing date(s):

Tax consequences: "There are important tax consequences to these securities. See item 6." [If 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. 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 to 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.

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 in the documents listed in the table below has been incorporated by reference into this offering memorandum from documents 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.2.2):

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 C.2.4) 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, Officers, Promoters and Principal Holders

3.1 Using the following table, provide information about each director, senior 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 senior 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, senior 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 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 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,
 - 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, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island 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].

4. **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 45-103F2
Offering Memorandum for Qualifying Issuers

A. General Instructions

1. Only a "qualifying issuer" ~~as defined in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102)~~ may use this form.
2. 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 Offering Memorandum Form 45-103F1.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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 senior 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.

9. 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.
10. 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.
11. If an issuer uses this form in connection with a distribution under an exemption other than section 4.1 of Multilateral Instrument 45-103 *Capital Raising 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

1. Any financial statements incorporated by reference into the offering memorandum must ~~be prepared in accordance with Canadian generally accepted accounting principles. Any audit must be conducted in accordance with Canadian generally accepted auditing standards.~~ **comply with National Instrument 51-102 *Continuous Disclosure Obligations* and National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.**
2. 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

1. If the offering memorandum does not incorporate by reference either (a) ~~the audited financial statements for the issuer's most recently completed financial year (including the audit report), or~~ (b) ~~the issuer's current AIF (as defined in MI 45-102),~~ **the issuer's AIF, MD&A prospectus, information circular or filing statement (as listed in the definition of qualifying issuer) that the issuer is relying on to meet the definition of qualifying issuer.** update the offering memorandum to incorporate by reference the document as soon as the document is filed on SEDAR ~~but, in any event, no later than the 120th day following the financial year end.~~
2. 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.2.2 unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.

D. Specific Instructions

Item 2: Information about the Issuer

2.2 **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 current AIF (as defined in MI 45-102),~~
(a) the issuer's AIF, prospectus, information circular or filing statement (as listed in the definition of qualifying issuer) that the issuer is relying on to meet the definition of qualifying issuer.
- (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 report of the auditor, 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) ~~for the annual comparative financial statements referred to in 2.2(d),~~**required to be filed under NI 51-102,**
- (g) ~~MD&A for the issuer's interim financial statements, to the extent that the issuer is required to file interim MD&A with a Canadian securities regulatory authority,~~
(g) each business acquisition report required to be filed under NI 51-102,
- (h) except as provided in D.2.4, 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) ~~on implementation of~~ **if the issuer has oil and gas activities, as defined in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities,** ~~technical reports, certificates, consents and other~~**all** documents that, in each case, ~~are~~ **it is required to file** under that instrument ~~to be filed~~**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.

2.4 **Existing Information Not Incorporated by Reference** - An issuer is not required to incorporate by reference in an offering memorandum the disclosure required:

Incorporates consequential amendments that arise from proposed
amendments to MI 45-102 *Resale of Securities* and proposed NI 51-102 *Continuous Disclosure Obligations* and
NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

- (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,
- (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.

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APPENDIX C

AMENDMENTS TO COMPANION POLICY 45-103CP TO MULTILATERAL INSTRUMENT 45-103 CAPITAL RAISING EXEMPTIONS

PART 1 AMENDMENTS

1.1. Amendments

- (1) Companion Policy 45-103CP to Multilateral Instrument 45-103 *Capital Raising Exemptions* is amended by this Amendment.
- (2) Section 4.1 is amended by:
 - (a) striking out “Newfoundland and Labrador,” after “Eligibility criteria in Alberta, Manitoba” in the section heading,
 - (b) striking out “except British Columbia and Nova Scotia” after “Each of the jurisdictions,” in the first paragraph and substituting “except British Columbia, Nova Scotia, and Newfoundland and Labrador”, and
 - (c) striking out “Newfoundland and Labrador” in the sixth sentence of the third paragraph.
- (3) Section 4.3 is repealed and the following is substituted:

There are two forms of offering memorandum: Form 45-103F2, which may be used by qualifying issuers, and Form 45-103F1, which must be used by all other issuers. Form 45-103F2 permits 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 National Instrument 51-102 *Continuous Disclosure Obligations* ("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 45-103F2, the venture issuer must voluntarily file an AIF under NI 51-102 in order that it can incorporate that annual information form into its offering memorandum.

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Amendment comes into force on ●, 200●.

– BLACKLINE –

COMPANION POLICY 45-103CP
TO MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTIONS

Application

Multilateral Instrument 45-103 *Capital Raising Exemptions* (“MI 45-103”) has been implemented in Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, and Saskatchewan.

New Brunswick does not yet have rule making authority under the current *Security Frauds Prevention Act* (New Brunswick) and the Yukon does not have rule making authority under the *Securities Act* (Yukon). Consequently, neither of these two jurisdictions is able to adopt MI 45-103. Until such time as the New Brunswick and Yukon securities regulatory authorities are able to adopt MI 45-103, the New Brunswick and Yukon regulators will consider applications for exemptions on a case-by-case basis. In exercising discretionary authority, each of the New Brunswick and Yukon regulators will consider the provisions of MI 45-103.

Background

Securities legislation applies to any trade of a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. The dealer registration requirement prohibits a person or company from trading in a security unless the person or company is registered in the appropriate category. The prospectus requirement requires the use of a prospectus for any distribution of securities or, in some jurisdictions, for a primary distribution to the public.

Securities legislation provides exemptions from the dealer registration requirement and prospectus requirement in certain circumstances. In addition, the securities regulatory authority has the power to make discretionary orders to exempt trades, intended trades, securities and persons or companies from the dealer registration requirement and the prospectus requirement when it is not prejudicial to the public interest to do so.

Purpose

MI 45-103 provides four exemptions from the dealer registration requirement and prospectus requirement to assist issuers in raising capital. Issuers may also use other exemptions available to them under securities legislation to raise capital.

This Policy provides guidance on the use of the exemptions in MI 45-103.

Part 1 General

1.1 Definitions

MI 45-103 contains certain terms that are defined in National Instrument 14-101 *Definitions*.

1.2 Multijurisdictional trades

A trade can occur in more than one jurisdiction. If it does, the issuer must comply with the securities legislation of each jurisdiction in which the trade occurs.

1.3 Responsibility for compliance

The issuer or selling security holder trading securities under an exemption is responsible for determining whether the exemption is available. In doing so, the seller may rely on factual representations by the purchaser, provided that the seller has no reasonable grounds to believe that those representations are false. However, the seller must still determine whether, given those facts, the exemption is available.

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 the representation: "I am a close personal friend of the director".

In another example, an issuer distributing securities to an individual under the accredited investor exemption can rely on a representation that the purchaser had net income before taxes in excess of \$200,000 in each of the two most recent years and expects to have net income before taxes in excess of \$200,000 in the current year. However, the issuer should not rely merely on the representation: "I am an accredited investor".

The person or company trading securities under an exemption is also responsible for retaining the documents necessary to show that the person or company properly relied upon the exemption.

1.4 Prohibited Activities

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 or company who engages in such activities must comply with the securities legislation of each jurisdiction in which the trade occurs.

Securities legislation in certain of the jurisdictions prohibits any person or company from making certain representations to a purchaser, including an undertaking as to the future value or price of the securities. In certain of the jurisdictions, these provisions also prohibit a person or company from making any statement that the person or company knows, or ought reasonably to know, is a misrepresentation. Misrepresentation is defined in the 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.

1.5 Responsibilities of registrants

An exemption from the dealer registration requirement does not relieve a registrant from its responsibilities to purchasers under securities legislation. In

particular, MI 45-103 does not provide an exemption from the know your client and suitability rules, the prohibitions against certain activities described in section 1.4 or the duty of a registrant to deal fairly, honestly and in good faith with clients. If the relationship between a registrant and its client is a fiduciary relationship, additional responsibilities may apply under common law.

1.6 Advising

MI 45-103 does not provide an exemption from the adviser registration requirement. Only advisers registered or exempted from registration under securities legislation may act as advisers in connection with a trade made under MI 45-103. For example, under the accredited investor exemption, foreign portfolio managers are permitted to purchase securities on behalf of fully managed accounts; however, this does not relieve the foreign portfolio manager from requirements under securities legislation to be registered either to trade securities or to provide advice or hold itself out as providing advice in relation to securities.

1.7 Advertising and soliciting purchasers

Advertising to solicit or find purchasers is not restricted under any of the exemptions in MI 45-103. However, issuers should review the securities legislation and securities directions for guidelines 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.

MI 45-103 does not prohibit the use of registrants, finders, telemarketing or advertising in any form (for example, Internet, e-mail, direct mail, newspaper or magazine) to solicit or find purchasers under any of the exemptions. However, if any of these means are used to find purchasers (other than accredited investors) under the private issuer exemption or the family, friends and business associates exemption, it may create a presumption that the relationship required for use of these exemptions is not present. For example, if, 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 purchasers are not family, friends or business associates, and that the issuer cannot rely on this exemption. However, if a private issuer uses a finder to locate an accredited investor, this would not preclude the private issuer from relying on the private issuer exemption, provided the other conditions to the exemption are met.

Although MI 45-103 does not prohibit the use of registrants and finders, under the private issuer and family, friends and business associates exemptions, commissions and finder's fees are not permitted to be paid to directors, senior officers, founders and control persons except, under the private issuer exemption, in connection with a trade to an accredited investor. In Saskatchewan, no commissions or finder's fees may be paid to anyone in connection with a trade under the family, friends and business associates exemption. In addition, 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.

1.8 Persons or companies created solely or primarily to use exemptions

A distribution of securities by an issuer to a person or company that had no pre-existing purpose and is created solely or primarily to purchase securities under exemptions (a “syndicate”) may also be considered a distribution of securities by the issuer to the persons or companies beneficially owning or controlling the syndicate (the “owners”). It is an inappropriate use of the exemptions to use a syndicate to indirectly distribute securities to the owners where there is no exemption available to directly distribute securities to the owners. For example, if an issuer wishes to distribute securities to potential purchasers under the offering memorandum exemption but, for tax or other reasons, the potential purchasers form a limited partnership and the issuer distributes its securities to the limited partnership, the issuer may be considered to be distributing its securities not only to the limited partnership, but also to each of the individual limited partners. Consequently, both the issuer and the limited partnership may need to comply with the requirements of the offering memorandum exemption. In these circumstances, care should be taken to ensure that it is clear to the purchasers which issuer they will own securities in.

Part 2 Private issuer exemption

2.1 Meaning of "the public"

Section 2.1 of MI 45-103 provides exemptions from the dealer registration and prospectus requirements for trades in securities of a private issuer to those specific persons or companies listed in section 2.1(1)(a) to (k). For example, a trade in securities of a private issuer to an accredited investor is exempt from the dealer registration and prospectus requirements so long as the accredited investor purchases the securities as principal.

Because securities regulatory authorities cannot list all circumstances where a person or company, based on the tests that have developed in the common law, would not be a member of the public, section 2.1(1)(k) permits trades to any person or company that is not the public. However, the issuer, or other person or company relying on this subsection of the private issuer exemption, must satisfy itself that the purchaser is not a member of the public in the particular circumstances. The courts have interpreted “the public” very broadly in the context of securities trading.

Consult legal counsel if you need further guidance.

2.2 Meaning of “close personal friend”

A close personal friend is an individual who has known the director, senior officer, founder or control person well enough and for a sufficient period of time to be in a position to assess the capabilities and trustworthiness of the director, senior officer, founder or control person. The term close personal friend can include family members not already listed in the exemption if the family member is in a position to assess the capabilities and trustworthiness of the director, senior officer, founder or control person.

An individual is not a close personal friend solely because the individual is a relative or a member of the same organization, association or religious group.

An individual is not a close personal friend solely because the individual is a client, customer or former client or customer. For example, an individual is not a close personal friend of a registrant or former registrant simply because the individual is a client or former client of that registrant or former registrant.

The relationship between the purchaser and the director, senior officer, founder or control person must be direct. For example, the exemption is not available for a close personal friend of a close personal friend of the director, senior officer, founder or control person.

2.3 Meaning of “close business associate”

A close business associate is an individual who has had sufficient prior business dealings with the director, senior officer, founder or control person to be in a position to assess the capabilities and trustworthiness of the director, senior officer, founder or control person.

A casual business associate or a person introduced or solicited for the purpose of purchasing securities is not a close business associate.

An individual is not a close business associate solely because the individual is a client, customer or former client or customer. For example, an individual is not a close business associate of a registrant or former registrant solely because the individual is a client or former client of that registrant or former registrant.

The relationship between the purchaser and the director, senior 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, senior officer, founder or control person.

2.4 Distribution of debt securities

A private issuer may distribute any type of securities under the private issuer exemption as long as the sales are made only to the persons or companies listed in section 2.1(1) of MI 45-103. However, a private issuer may also distribute securities to the public under another exemption if the securities are not designated securities, such as debt securities, without losing its private issuer status.

2.5 Merger of private issuers

Securities distributed in an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers to holders of securities of those private issuers is not a distribution to the public provided the resulting issuer is a private issuer. Securities distributed by a private issuer in a share exchange take over bid for another private issuer is not a distribution to the public provided the offeror remains a private issuer after completion of the bid.

2.6 Acquisition of a private issuer

Generally, if the owner of a private issuer sells the business of the private issuer by a sale of securities, rather than assets, to another party who acquires all of the securities, the distribution will not be considered to have been to the public. However, in each case, the person or company relying on the private issuer

exemption in these circumstances must be satisfied that the purchaser is not the public.

2.7 Ceasing to be a private issuer

The meaning of private issuer is set out in section 1.1 of MI 45-103. A private issuer can distribute designated securities only to the persons or companies listed in section 2.1(1) of MI 45-103. If a private issuer distributes designated securities to a person or company not listed in section 2.1(1), even under another exemption, it will no longer be a private issuer and will no longer be able to use the private issuer exemption. For example, if a private issuer distributes designated securities under the offering memorandum exemption, it will no longer be a private issuer. That issuer may then be able to use the other exemptions provided under securities legislation, including the family, friends and business associates exemption, the accredited investor exemption and the offering memorandum exemption, but will be required to report the distributions to the securities regulatory authority in each jurisdiction in which the distribution took place.

2.8 Non-corporate issuers

The private issuer and the family, friends and business associates exemptions refer to directors and senior officers of the issuer. In the case of non-corporate issuers, such as limited partnerships and trusts, no one may have been elected or appointed to those positions. However, securities legislation defines the terms “directors” and “senior officers” to also include individuals acting in a capacity or performing functions similar to a director or senior officer. For example, if a seller intends to trade securities of a limited partnership under an exemption that is conditional on a relationship with a director or senior officer, the seller 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 senior officer of an issuer.

Part 3 Family, friends and business associates exemption

3.1 Meaning of close personal friends and close business associates

For the purposes of the family, friends and business associates exemption, the meaning of close personal friend and close business associate is the same as in the private issuer exemption.

3.2 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. However, if the issuer sells securities to a large number of persons under this exemption, this may create 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.

3.3 Required Saskatchewan Risk Acknowledgement

In Saskatchewan, any person or company trading securities under the family, friends and business associates exemption based on a close personal friendship or close business association must obtain from each Saskatchewan purchaser a

Form 45-103F5 *Risk Acknowledgement - Saskatchewan Close Personal Friends and Close Business Associates.*

Part 4 Offering memorandum exemption

- 4.1 Eligibility criteria in Alberta, Manitoba, ~~Newfoundland and Labrador~~, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan**
 Each of the jurisdictions, except British Columbia and Nova Scotia, and Newfoundland and Labrador, impose eligibility criteria on persons or companies investing under the offering memorandum exemption in MI 45-103. In these jurisdictions, anyone can purchase up to \$10,000 worth of securities in an offering. However, if the purchaser's aggregate acquisition cost is more than \$10,000, the purchaser must be an eligible investor.

In determining the aggregate 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 aggregate acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The \$10,000 maximum aggregate acquisition cost is calculated per distribution. Concurrent offerings to the same purchaser will usually constitute one distribution. Consequently, when calculating the aggregate acquisition cost, all concurrent 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 beneficially on behalf of 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 owing at the time of the trade.

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. In Alberta, ~~Newfoundland and Labrador~~, Northwest Territories, Nunavut and Prince Edward Island, an eligibility adviser refers to a registered investment dealer (or some other category of unrestricted dealer in the purchaser's jurisdiction.) 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 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. We do not consider an assessment of suitability by these dealers sufficient to qualify a purchaser as an eligible investor.

4.2 Use of offering memorandum exemption by mutual funds

Except in British Columbia and Nova Scotia, mutual fund issuers are precluded from using the offering memorandum exemption.

4.3 Form of offering memorandum

There are two forms of offering memorandum. ~~Qualifying issuers under Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") may use Form 45-103F2. **Form 45-103F2, which may be used by qualifying issuers, and Form 45-103F1, which must be used by all other issuers.** Form 45-103F2 permits qualifying issuers to incorporate by reference their annual **information form (AIF), management's discussion and analysis (MD&A), annual** financial statements, ~~annual information form~~ and subsequent specified continuous disclosure documents **required under National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102").** ~~All other issuers must use Form 45-103F1.~~~~

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 45-103F2, the venture issuer must voluntarily file an AIF under NI 51-102 in order that it can incorporate that annual information form into its offering memorandum.

4.4 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 section 4.4 of MI 45-103.

The chief executive officer, chief financial officer, two directors and all promoters of the issuer must sign the certificate. 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. "Promoter" is defined in the securities legislation to be a person or company 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 the founding, organization or substantial reorganization of the issuer. Under the securities legislation, persons or companies who receive consideration solely as underwriting commissions or in consideration of property who do not otherwise

take part in the founding, organization or reorganization of the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person or company a promoter under this exemption.

In the case of an exempt distribution by a limited partnership where the general partner is a corporation, we expect the general partner 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.

4.5 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.

4.6 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 this 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.

4.7 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 the 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.

Part 5 Accredited investor exemption

5.1 Meaning of accredited investor

The meaning of accredited investor under MI 45-103 is intended to be very similar to the meaning under Ontario Securities Commission Rule 45-501 *Exempt Distributions*. However, OSC Rule 45-501 is drafted for use only in Ontario, while MI 45-103 is drafted as a multilateral instrument and therefore uses certain terms that are defined under National Instrument 14-101 *Definitions*. For example, a Canadian financial institution is defined under NI 14-101 to mean a bank, loan corporation, trust company, insurance company, treasury branch, credit union or caisse populaire authorized to carry on business in Canada or a jurisdiction.

5.2 Application to individuals

An individual is an accredited investor if the individual satisfies either the financial asset test in paragraph (k), the net asset test in paragraph (m) or the net income test in paragraph (l) of section 1.1. If the combined financial assets, net assets or net income of spouses exceeds the \$1 million, \$5 million or \$300,000 thresholds, either spouse (or both spouses together) qualifies as an accredited investor. If the combined net income of the 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. 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 owing at the time of the trade.

Part 6 Resale of securities

6.1 Resale of securities

Securities distributed under an exemption are usually subject to restrictions on their resale. The resale restrictions depend on the status of the issuer and the exemption that was relied on to distribute the securities. Part 6 of MI 45-103 sets out the applicable resale restrictions for securities distributed under the capital raising exemptions. The resale restrictions applicable in Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan refer to specific sections of MI 45-102. To calculate the length of resale restrictions under MI 45-102, you must consider the issuer's reporting issuer status. However, because the securities legislation of Northwest Territories, Nunavut and Prince Edward Island do not contain the concept of reporting issuer, when calculating the length of the resale restrictions in those jurisdictions, consider the issuer's reporting issuer status in

Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec or Saskatchewan.

The resale restrictions in MI 45-102 are not generally applicable in Manitoba as Manitoba is an 'open jurisdiction'. The Manitoba resale restrictions are described in Part 6 of MI 45-103.

Sellers of securities may also rely on other exemptions from the prospectus requirement to sell their securities.

Part 7 Reporting requirements

7.1 Report of exempt distribution

MI 45-103 requires an issuer relying on the family, friends and business associates exemption, the offering memorandum exemption or the accredited investor exemption to file a Form 45-103F4 report of exempt distribution within 10 days of the distribution. If the distribution is made in more than one jurisdiction, the issuer may complete one form identifying all purchasers and file that form in each of the jurisdictions in which the distribution is made. The required filing fee is not affected by identifying all purchasers in one form.

7.2 Additional disclosure in British Columbia

In British Columbia, if a non-reporting issuer files a Form 45-103F4 reporting an exempt distribution under the offering memorandum exemption, the issuer must provide the telephone number and e-mail address of each purchaser.

Part 8 Required forms

8.1 Required forms under the offering memorandum exemption

Subject to section 8.2, the required form of offering memorandum under section 4.2 of MI 45-103, in all jurisdictions that have adopted MI 45-103, is Form 45-103F1 unless the issuer is a qualifying issuer in which case the issuer may use Form 45-103F2. Similarly, in all jurisdictions that have adopted MI 45-103, the required form of risk acknowledgment under section 4.5 of MI 45-103 is Form 45-103F3. The British Columbia regulator has specified these required forms in a separate local instrument.

8.2 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 the securities legislation in the jurisdictions where securities are being distributed.

8.3 Required form of Saskatchewan risk acknowledgement for close personal friends and close business associates

In Saskatchewan, a risk acknowledgement is also required under section 3.1 of MI 45-103 if the exempt distribution is based on close personal friendship or close business association. The required form of risk acknowledgement under this section is Form 45-103F5.

8.4 Required form of report of exempt distribution

Except in British Columbia, the required form of report of exemption distribution under section 7.2 of MI 45-103 is Form 45-103F4. The British Columbia regulator has specified the Form 45-103F4 as the required form of report of exempt distribution in a separate local instrument.

8.5 Use of Form 45-103F4 to report other exempt distributions

If an issuer or vendor is required to report a distribution made under an exemption from the prospectus requirement in securities legislation that is not contained in MI 45-103, the issuer or vendor may use Form 45-103F4 to report the exempt distribution instead of the report otherwise required in the local jurisdiction.

8.6 Fees payable on filing Form 45-103F4

Form 45-103F4 is a successor to or an alternative form of the required local report. Accordingly, when filing a Form 45-103F4 the issuer or vendor, if applicable, must pay the same fee as required on filing a local report.