

**MSC NOTICE 2004-55****NOTICE AND REQUEST FOR COMMENT**

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

**December 17, 2004**

**Introduction**

We, the Canadian Securities Administrators (CSA), seek comment on proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (the "Instrument"), which contains exemptions from the prospectus and registration requirements. The Instrument consolidates and harmonizes the prospectus and registration exemptions contained in various provincial statutes and national, multilateral and local instruments into a single national instrument.

Certain of the exemptions require that forms be filed. The required forms are Form 45-106F1 *Report of Exempt Distribution*, Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, Form 45-106F4 *Risk Acknowledgement*, and Form 45-106F5 *Risk Acknowledgement - Saskatchewan Close Personal Friends and Close Business Associates* (the "Forms").

Proposed Companion Policy 45-106CP *Prospectus and Registration Exemptions* (the "Companion Policy") provides guidance on how the CSA will interpret and apply the Instrument and the Forms.

We are publishing the Instrument, Forms and Companion Policy for a 90-day comment period.

We are concurrently publishing an additional CSA Notice proposing repeals and amendments as follows:

- repeal of the following national and multilateral instruments:
  - National Instrument 32-101 *Small Security Holder Selling and Purchase Arrangements* ("NI 32-101")
  - National Instrument 62-101 *Control Block Distribution Issues* ("NI 62-101")
  - Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103")
  - Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* ("MI 45-105"), and

- amendments to the following national instruments:
  - National Instrument 33-105 *Underwriting Conflicts*
  - National Instrument 45-101 *Rights Offerings* (“NI 45-101”)
  - National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (“NI 62-103”)
  - Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”)

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

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

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

The Instrument will be implemented as a

- rule or blanket order in British Columbia,
- rule in Alberta, Manitoba, Ontario, Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland and Labrador,
- regulation in Quebec,
- commission regulation in Saskatchewan, and
- policy or code in the Northwest Territories, Nunavut and Yukon.

### **Purpose and Benefits**

We believe that the Instrument will yield substantial benefits and reduce costs to market participants by harmonizing both the majority of prospectus and registration exemptions currently available across Canada, and the disclosure and filing requirements associated with those exemptions.

At present, most jurisdictions have a similar set of exemptions, however they are not identical, and market participants that wish to effect a multi-jurisdictional exempt distribution must familiarize themselves with the various exempt distribution regimes of the relevant jurisdictions. This typically necessitates culling through the various acts, regulations and instruments of the different jurisdictions. Upon implementation of the Instrument, however, market participants will generally have to look no further than the Instrument to view the landscape of exemptions. This should result in reduced transaction costs because market participants will no longer need to expend time and money dealing with a collection of exempt distribution regimes and their associated disclosure and filing requirements. For example, an issuer that wishes to rely on the accredited investor or business combination exemption to distribute securities across Canada will need to review only one exemption.

In addition to harmonizing the majority of exemptions we have consolidated many exemptions to make them more straightforward and user friendly. Examples of consolidated exemptions are the take-over bid and issuer bid exemption (section 2.16) and the estates, bankruptcies and liquidations exemption (section 3.4). The scope of certain exemptions has been modified and new exemptions have been added in response to a number of relatively routine exemptive relief applications. These changes should yield additional benefits to market participants.

The Instrument contains a few definitions and exemptions that do not apply in all jurisdictions. These differences are necessary to accommodate local securities legislation or as a means of addressing local policy concerns.

## **Summary**

### **Key Definitions**

#### ***Canadian Financial Institution***

The definition of “Canadian financial institution” is broader than the definition of the same term in National Instrument 14-101 *Definitions*. The definition in the Instrument includes an association or central cooperative society governed by the *Cooperative Credit Associations Act* (Canada) and a league governed by the *Credit Union and Caisse Populaires Act, 1994* (Ontario).

#### ***Founder***

The Instrument contains the definition for “founder” from MI 45-103. The definition of “founder” is similar to the definition of “promoter” that is currently contained in the securities legislation of most jurisdictions. The difference between “founder” and “promoter” is that a “founder” must be actively involved in the business of the issuer at the time of the trade. Unlike the definition of “promoter”, a person cannot become a “founder” solely through the acquisition of a certain percentage of an issuer’s securities.

#### ***Person***

The definition of “person” in the Instrument includes an individual, corporation, partnership, trust or fund. It also includes an association, syndicate, organization or other organized group of persons, whether incorporated or not and an individual or other person in their capacity as a trustee, executor, administrator, or personal or other legal representative.

### **Interpretations**

#### ***Control***

The concept of control has two different interpretations in the Instrument. For the purposes of Division 4 of Part 2 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in section 2.23(1). For the purposes of the rest of the Instrument the interpretation of control is found at section 1.3. The reason for having two different interpretations of control is that the exemption for trades to employees, executive officers, directors and consultants requires a broader concept of control than is considered necessary for the rest of the Instrument to accommodate trades of compensation securities in a wide variety of business structures.

**Trade - Quebec**

Section 1.7 of the Instrument contains an interpretation of “trade” for the purposes of the Instrument in Quebec. This is necessary because the securities legislation of Quebec does not define “trade” unlike the securities legislation of all other jurisdictions.

**Capital Raising Exemptions*****Rights Offerings (section 2.1)***

The exemption in the Instrument differs from current rights offering exemptions in two ways. First, it does not provide an exemption for the exercise of a right issued under a rights offering. An exemption to permit the exercise of a right issued under a rights offering is contained in section 2.43 of the Instrument, which is a general exemption to facilitate conversions, exchanges or the exercise of rights pursuant to previously issued securities. Secondly, the exemption is *explicitly* conditional on compliance with the applicable requirements of NI 45-101.

***Reinvestment Plan (section 2.2)***

This exemption does not apply to investment funds. A similar exemption for trades in securities of investment funds is contained in section 2.18 of the Instrument.

Both exemptions allow trades of securities of the issuer to existing security holders of the issuer under a plan if the plan permits the security holder to direct that “*dividends or distributions out of earnings, surplus, capital or other sources*” payable in respect of the issuer’s securities be applied to the purchase of additional securities of the same class.

***Accredited Investor (section 2.3)***

The definition of accredited investor is taken from both MI 45-103 and Ontario Securities Commission Rule 45-501 *Exempt Distributions* (“OSC Rule 45-501”) with certain modifications. We have added an investment fund that is managed by a registered adviser (paragraph (u) of the definition of “accredited investor”) as an additional category of “accredited investor”.

In paragraph (q) of the definition of “accredited investor”, an accredited investor includes a person acting on behalf of a fully managed account if the person is registered as an adviser in Canada or, except in Ontario, in a foreign jurisdiction.

***Private Issuer (section 2.4)***

All jurisdictions are now participating in a common private issuer exemption. It modifies the current private issuer exemption in MI 45-103 and replaces the closely-held issuer exemption in OSC rule 45-501 and the closed company exemption in the *Securities Act* (Quebec).

***Family, Friends and Business Associates (section 2.5) and Family, Founder and Control Person - Ontario (section 2.7)***

The exemption in section 2.5 is available to certain individuals who are considered to be close to an issuer (executive officers, directors and control persons) and certain of their close family, friends and business associates. This exemption is available in all jurisdictions except Ontario. Saskatchewan requires a signed risk acknowledgment from close friends and business associates (section 2.6).

Section 2.7 of the Instrument contains an Ontario-only exemption for founders, affiliates of founders, control persons and certain family members of founders, executive directors and officers.

***Affiliates (section 2.8)***

Most jurisdictions do not currently have this exemption, which is currently found in OSC Rule 45-501 where affiliated entities of an issuer are included in the definition of “accredited investor”.

***Offering Memorandum (section 2.9)***

The Instrument contains two versions of the offering memorandum exemption, one for British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador and one for Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Quebec and Saskatchewan. The primary difference between the two versions is that the second one requires that purchasers either be “eligible investors” as defined in the Instrument or purchase securities at an aggregate acquisition cost that is less than \$10,000. Ontario is not adopting the offering memorandum exemption.

***Minimum Amount Investment (section 2.10)***

All jurisdictions are participating in this exemption, which currently exists in most jurisdictions but in slightly different forms and for different prescribed minimum amounts. Under the Instrument the prescribed minimum amount for all jurisdictions is \$150,000, payable in cash at the time of the trade.

**Transaction exemptions*****Business Combination and Reorganization (section 2.11)***

This exemption is based on the exemption in British Columbia with slight modifications. The exemption permits trades that are made in connection with an amalgamation, merger, reorganization or arrangement. We have incorporated the exemption for trades that are made in connection with a dissolution or winding-up of an issuer into this exemption.

***Asset Acquisition (section 2.12)***

All jurisdictions are participating in this exemption, which currently exists in most jurisdictions but in slightly different forms and for different prescribed minimum amounts. The prescribed minimum amount for all jurisdictions under the Instrument is \$150,000.

***Petroleum, Natural Gas or Mining Properties (section 2.13)***

The exemption allows securities to be traded for mining, petroleum or natural gas properties or any interest in them.

***Securities for Debt (section 2.14)***

This is a new exemption for most jurisdictions. The exemption is based on the exemption in British Columbia with some modifications.

***Issuer Acquisition or Redemption (section 2.15)***

The exemption permits issuers to acquire their own securities. Most jurisdictions currently have a similar exemption.

***Take-over Bid and Issuer Bid (section 2.16)***

We have harmonized this provision for all jurisdictions and created one consolidated exemption for trades under take-over bids and issuer bids.

***Offer to Acquire to Security Holder Outside the Local Jurisdiction (section 2.17)***

This exemption will allow a trade in a security pursuant to an offer to acquire made by a person in a local jurisdiction that would have been a take-over bid or issuer bid if the offer to acquire

were made to a security holder in the local jurisdiction. This exemption will facilitate private company sales in circumstances where the selling security holders are not resident in the local jurisdiction.

## **Investment Fund Exemptions**

### ***Investment Fund Reinvestment (section 2.18)***

This section provides a similar exemption to that in section 2.2 but imposes additional conditions that are necessary in the context of trades and distributions of investment funds.

### ***Additional Investment in Investment Funds (section 2.19)***

The Instrument carries forward and harmonizes the exemption for trades of additional securities of an investment fund if the purchaser has initially purchased securities at a cost that is not less than \$150,000 or if the net asset value of those securities is at least \$150,000 at the time of the trade.

### ***Private Investment Club (section 2.20)***

This exemption is for trades in securities of investment funds that meet certain criteria. These types of investment funds are commonly referred to as private investment clubs. The provision clarifies that a condition of the exemption is that the private investment club have no more than 50 *beneficial* holders.

### ***Private Investment Fund - Loan and Trust Pools (section 2.21)***

This is an exemption for trades in securities of investment funds that are administered by a trust company or trust corporation, have no promoter other than the trust company or trust corporation and consist of co-mingled money of different estates and trusts. Most jurisdictions have a similar version of this exemption contained within their definition of "private mutual fund".

## **Employee, Executive Officer, Director and Consultant Exemptions (sections 2.22 to 2.29)**

We are including the exemptions from MI 45-105 for trades to employees, executive officers, directors and consultants in the Instrument in Division 4 of Part 2 with some modifications. Section 2.22 defines a number of terms specifically for the purposes of Division 4.

The exemption in section 2.27 of the Instrument that allows trades among employees, executive officers, directors and consultants and their "permitted assigns" (defined term) has been reorganized.

We have not carried forward the exception for trades to "investor relations persons" (defined term) if the compensation or other remuneration paid to such persons is dependent on the trading price or trading volume of the security being traded.

## **Miscellaneous Exemptions**

### ***Incorporation or Organization (section 2.30)***

This is a provision for trades by an issuer of its securities if the trades are reasonably necessary to facilitate the incorporation or organization of an issuer and if the securities are issued for a nominal consideration to not more than 5 incorporators or organizers. Most jurisdictions currently have a similar exemption. Given the availability of other exemptions such as the private issuer exemption (section 2.4), the family, friends and business associates exemption (sections 2.5 and 2.6), the family, founder and control person exemption (section 2.7), and the

employee exemption (section 2.24), we are inclined to not include this exemption in the final Instrument. **We seek specific comment on whether to include this exemption in the final Instrument.**

***Isolated Trade (section 2.31)***

There are two isolated trade exemptions in the Instrument. The first one provides an exemption from both the prospectus and registration requirements and is only available to the issuer of the security. This exemption is currently contained in the securities legislation of most jurisdictions. The other isolated trade exemption is in section 3.3.

***Dividends (section 2.32)***

This provision provides two exemptions relating to dividends. Subsection (1) is an exemption for a trade by an issuer in a security of its own issue to existing security holders as a “dividend or distribution out of earnings, surplus, capital or other sources”. Subsection (2) permits a trade by an issuer in a security of a reporting issuer to an existing security holder as a dividend in specie. The exemption in section 2.32(1) differs from the exemption currently available in most jurisdictions, which require that dividends or distributions be payable out of “earnings or surplus”. The exemption in the Instrument has been expanded to cover more types of dividends or distributions.

***Trade to Lender by Control Person for Collateral (section 2.33)***

The Instrument carries forward an exemption for a trade in a security to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person for the purpose of giving collateral for a bona fide debt. The Instrument does not carry forward the registration exemption that exists in some jurisdictions for lenders to sell securities to realize on a debt. We believe such lenders should use a registrant or another available exemption (for example the accredited investor exemption) to sell securities under those circumstances.

***Acting as Underwriter (section 2.34)***

This is an exemption for trades of securities to and among persons acting as underwriters. It is the only exemption under which persons acting as underwriters can acquire securities (section 1.5). The resale by a person who acquires under this section will be deemed a distribution under MI 45-102.

***Guaranteed Debt (section 2.35)***

The exemption in this section is for trades of “debt securities” that are issued or guaranteed by a variety of entities such as governments, “Canadian financial institutions” and “Schedule III banks”. “Debt security”, “Canadian financial institution” and “Schedule III bank” are defined in the Instrument. A new requirement is that a “debt security” issued by a foreign government must be rated to qualify under the exemption.

This exemption is broader than the current exemption available in the jurisdictions because it includes debt securities issued by “Canadian financial institutions”, which is a fairly wide range of institutions.

The exemption also permits trades of securities issued by certain specified entities such as Ontario school boards, the Comité de gestion de la taxe scolaire de l’île de Montréal, and the Asian Development Bank. The Instrument imposes a reporting requirement (see section 2.35(2)(g)(ii)) in regard to some types of securities that is currently in the securities legislation of most jurisdictions.

We have not included a separate exemption for trades in debt securities issued by trust corporations because those entities are now included in the definition of “Canadian financial institution”.

***Short Term Debt (section 2.36)***

This exemption is for trades in negotiable promissory notes or commercial paper maturing within one year of issue provided the note or paper is not convertible into a different type of security and has an “approved credit rating” from an “approved credit rating organization”, which are defined terms for the purposes of the Instrument. The exemption does not impose a minimum for trades to an individual, as is currently the case in some jurisdictions where trades to individuals must be for a denomination or principal amount that is \$50,000 or more. The “approved credit rating” requirement is a new requirement for most jurisdictions.

***Mortgages (section 2.37)***

This provision allows trades in a mortgage on real property by a person who is registered or licensed under mortgage legislation in a jurisdiction of Canada. The exemption does not apply to a “syndicated mortgage”, which is defined in the Instrument as meaning a mortgage in which 2 or more persons participate, directly or indirectly as mortgagee. We believe that, given the potential complexity of syndicated mortgages, they should not be traded under this exemption. Most jurisdictions currently have a similar exemption. **We seek specific comment on the decision to exclude syndicated mortgages from the exemption.**

***Personal Property Security Act (section 2.38)***

The exemption subsection (1) is for trades in a security evidencing indebtedness “secured by or under” a security agreement provided for under personal property security legislation for the acquisition of personal property if the security is not offered for sale to an individual. Most jurisdictions have a similar exemption, which refers to conditional sales contracts or other title retention contracts.

***Not for Profit Issuer (section 2.39)***

We have carried forward an exemption for trades by an issuer of securities of its own issue if the issuer is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit. The exemption requires that no part of the net earnings of the issuer benefit any security holder and that no commissions or other remuneration be paid in connection with the sale of a security under the exemption. This requirement is new to some jurisdictions.

***Variable Insurance Contract (section 2.40)***

An exemption for trades in variable insurance contracts by an insurance company is included in the Instrument provided certain conditions are met.

***RRSP/RRIF (section 2.41)***

The Instrument contains an exemption for trades between an individual or an associate of an individual and the RRSP or RRIF (as defined in the Instrument) established by or for that individual or under which he or she is a beneficiary. Most jurisdictions currently have a similar version of this exemption.

***Schedule III Banks and Cooperative Associations (section 2.42)***

This exemption was added to permit trades in an evidence of deposit issued by a “Schedule III bank”, which is defined in the Instrument as meaning an authorized foreign bank named in



Schedule III of the *Bank Act* (Canada), or an association governed by the *Cooperative Credit Associations Act* (Canada).

***Conversion, Exchange or Exercise (section 2.43)***

This section consolidates existing conversion provisions and allows securities to be traded by an issuer to existing security holders of the issuer if: (i) the issuer trades a security of its own issue in accordance with the terms and conditions of a previously issued security; or (ii) the issuer trades a security of another issuer that is a reporting issuer in accordance with the terms and conditions of a previously issued security. There are three scenarios under which the exemption is available: (i) conversion, exchange or exercise at the option of the holder; (ii) conversion, exchange or exercise at the option of the issuer; and (iii) automatic conversion, exchange or exercise.

Section 2.43(2) requires the issuer to give the regulator written notice of a trade where the issuer is trading a security of another issuer that is a reporting issuer. The regulator will then have 10 days to object to the trade. This section will not apply in British Columbia.

***Removal of Exemptions - Market Intermediaries (section 2.44)***

This section removes certain registration exemptions for trades in Ontario by market intermediaries. This is consistent with Ontario's current universal registration regime.

**Registration Only Exemptions**

***Registered Dealer (section 3.1)***

This is an exemption for trades by a person acting solely through an agent who is a registered dealer. All jurisdictions currently have this exemption.

***Exchange Contracts (section 3.2)***

This registration exemption is only available in Alberta, British Columbia, Saskatchewan and Quebec.

***Isolated Trade (section 3.3)***

There are two isolated trade exemptions in the Instrument. This one provides an exemption from only the registration requirement and is available to any person, other than the issuer of the security. This exemption is currently contained in the securities legislation of most jurisdictions. The other isolated trade exemption is in section 2.31.

***Estates, Bankruptcies and Liquidations (section 3.4)***

This exemption is intended to consolidate a number of current exemptions for trades under a variety of judicial procedures such as the probate of estates, receivership, bankruptcy, liquidation or judicial sale. Dealer registration exemptions for trades under these proceedings currently exist in most jurisdictions with slight variations among jurisdictions.

***Employees of Registered Dealer (section 3.5)***

This is an exemption for trades by an employee of a registered dealer if the employee does not usually trade in securities and has been designated by the regulator as a "non-trading" employee. Most jurisdictions currently have a similar exemption.

***Small Security Holder Selling and Purchase Arrangements (section 3.6)***

This exemption is substantively similar to NI 32-101 except that the exemption in the Instrument does not apply to being registered to advise.

**Adviser (section 3.7)**

This exemption currently exists in all jurisdictions, but in different variations. Section 3.7(a)(iv) represents a change for most jurisdictions in that it incorporates certain restrictions from Quebec with respect to lawyers, accountants, engineers, teachers and notaries in Quebec. The restrictions are that those individuals (i) do not recommend securities of an issuer in which they have an interest, and (ii) do not receive remuneration for the service of advising separate from remuneration received by that individual for practicing their profession.

Section 3.7(b) exempts publishers and writers for newspapers, magazines or business journals from registration as advisers provided they (i) give advice only through the publication, (ii) have no interest in the securities they provide advice on, and (iii) receive no commissions or other consideration for the advice other than for acting in their capacity as publisher or writer. This exemption applies for the types of publications set out, *however they are delivered*. As a result, through the operation of National Policy 11-201 *Delivery of Documents by Electronic Means*, the exemption will apply to electronic publications.

**Investment Dealer Acting as Portfolio Manager (section 3.8)**

This is an exemption from the requirement to be registered as an adviser for registered investment dealers who manage the investment portfolios of clients through discretionary authority. The exemption requires that the registered dealer comply with the rules and policies for portfolio managers set out by the Investment Dealers Association of Canada.

**Removal of Exemptions - Market Intermediaries (section 3.9)**

This section removes certain registration exemptions for trades in Ontario by market intermediaries. This is consistent with Ontario's current universal registration regime.

**Control Block Distributions (Part 4)**

This is a prospectus exemption for "control block distributions" (defined in Part 4) by eligible institutional investors. Except for section 4.2, Part 4 is an updated version of NI 62-101. Section 4.2 is a prospectus exemption to facilitate trades by a control person after a take-over bid. Most jurisdictions currently have this or a similar exemption.

**TSX Venture Exchange Offering (Part 5)**

This Part carries forward the prospectus exemption for TSX Venture Exchange issuers that is currently available in British Columbia, Alberta and Saskatchewan under local rules and orders. Ontario is not adopting this exemption.

**Reporting Requirements****Report of Exempt Distribution (Part 6)**

Section 6.1 sets out those exemptions that require the filing of a Form 45-106F1. The Form 45-106F1 does not require a vendor that is not the issuer to file a report of exempt distribution.

**Exemption (Part 7)**

This Part allows the regulator or securities regulatory authority to grant an exemption from the Instrument, in whole or in part, subject to conditions or restrictions as may be imposed in the exemption. In Ontario, only the regulator may grant such an exemption and only from Part 6.

## **Transitional Provisions and Coming into Force**

### ***Transitional (Part 8)***

Section 8.1 of the Instrument is an exemption for trades of additional securities of investment funds where there has been an initial trade under an exemption for a prescribed minimum amount. Most jurisdictions currently have this exemption and this provision ensures that persons who initially acquired under a current exemption in any jurisdiction will continue to be able to acquire additional securities.

Section 8.2 of the Instrument provides that an investment fund that distributed its securities under certain existing provisions of securities legislation will be an investment fund under paragraph (n)(ii) of the definition of “accredited investor” in the Instrument.

### **Capital Accumulation Plans Exemption**

As part of a project with the Joint Forum of Financial Market Regulators to develop Guidelines for Capital Accumulation Plans (the “guidelines”), the CSA have proposed a dealer registration and prospectus exemption for trades in mutual funds that occur under certain capital accumulation plans (the “CAP Exemption”). The CSA believe that it is appropriate that the CAP Exemption be available for such trades as long as there is compliance with those parts of the guidelines that substitute for receiving advice from a registrant and for prospectus disclosure. The CAP Exemption was published for comment in May 2004, with CSA Request for Comment 81-405 *Proposed Exemptions for Certain Capital Accumulation Plans*.

Once CSA staff have completed a review of the comments received on the CAP Exemption, it is anticipated that it will be implemented in most jurisdictions as a blanket exemption from the dealer registration and prospectus requirements. We expect that issuance of these blanket exemptions will occur prior to the coming into force of the Instrument. Given that the Instrument’s objective is to consolidate and harmonize as many dealer registration and prospectus exemptions as possible, we are seeking comment on whether we should incorporate the CAP Exemption, once finalized, into the Instrument.

### **Request for Comment**

We request your comments on the Instrument, the Forms and the Companion Policy.

### **How to Provide Your Comments**

Please provide your comments by **March 17, 2005**.

Please e-mail your submission as indicated below, but address your submission to all of the CSA member commissions, as follows:

Alberta Securities Commission  
 British Columbia Securities Commission  
 Manitoba Securities Commission  
 New Brunswick Securities Commission  
 Securities Commission of Newfoundland and Labrador  
 Registrar of Securities, Department of Justice, Government of the Northwest Territories  
 Nova Scotia Securities Commission  
 Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut  
 Ontario Securities Commission  
 Office of the Attorney General, Prince Edward Island

Autorité des marchés financiers du Québec  
Saskatchewan Financial Services Commission  
Registrar of Securities, Government of Yukon

You do not need to deliver your comments to all of the CSA member commissions. Please deliver your comments to the two addresses that follow, and they will be distributed to all other jurisdictions by CSA staff.

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If you are not able to send your comments by e-mail, please send a diskette containing your comments in Word.

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

## **Questions**

Please refer your questions to any of:

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# National Instrument 45-106 Prospectus and Registration Exemptions

## Table of Concordance: New Brunswick to Nunavut

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NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
<b>Part 2: Prospectus and Registration Exemptions</b>													
<b>Division 1: Capital Raising Exemptions</b>													
2.1	Rights Offering	NBSC Rule 45-501: s. 2.1(1)	NBSC Rule 45-501: s. 2.1 (2)	PEISA: s.2(3)(q)(i)	PEISA: s.13(1)(k)(i)	NLSA: s.36(1)(n)	NLSA: s.73(1)(h)	YSA s.2(h)	Registrar's Order March 1, 1980 s. 5	NWT Blanket Order #2: s. 3(f)	NWT Blanket Order #1: s. 3(f)	NU Blanket Order #3 s. 3(f)	NU Blanket Order #1 s. 3(f)
2.2	Reinvestment Plan	NBSC Rule 45-501: s. 2.2 (1)(2)(4)	NBSC Rule 45-501: s. 2.2 (3)	PEI Rule 45-506	PEI Rule 45-506	NLSA: s.36(1)(x) Blanket Order 13 (mutual Funds)	NLSA: s.54(3)(e) Blanket Order 13 (mutual funds)	YSA: s. 2(h)	No analogous provision	NWT Blanket Order #2: s. 3(x)	NWT Blanket Order #1: s. 3(x)	NU Blanket Order #3 s. 3(x)	NU Blanket Order #1 s. 3(x)
2.3	Accredited Investor	NBSC Rule 45-501: s. 2.3	NBSC Rule 45-501: s. 2.3	MI-45-103	MI 45-103	MI 45-103: s.5.1(1); NLSA s.36(1)(c) and (d)	MI 45-103: s.5.1(2), s.73(1)(a) and (c)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(a) and (r)	NWT Blanket Order #1: s. 3(a) and (r)	Blanket Order #3: s. 3(a) and (r)	Blanket Order #1: s. 3(a) and (r)
2.4	Private Issuer	NBSC Rule 45-501: s. 2.4 (1)	NBSC Rule 45-501: s. 2.4(2)	MI-45-103 PEISA: s. 2(4)(h)	MI 45-103 PEISA: s. 14.1(a)	MI 45-103: s.2.1(1), NLSA: s.36(2)(j)	MI 45-103: s.2.1(2), NLSA: s.73(1)(a)	No analogous provision	No analogous provision	MI 45-103, NWT Blanket Order #2: s. 3(ii), (r) and (s), NWTSA: s. 2(g)	MI 45-103, NWT Blanket Order #1: s. 3(ii)	MI 45-103, NU Blanket Order #3: s. 3(ii), (r) and (s), NUSA: s. 2(g)	MI 45-103, NU Blanket Order #1: s. 3(ii)
2.5	Family, Friends and Business Associates	NBSC Rule 45-501: s. 2.5 (1)	NBSC Rule 45-501: s. 2.5 (2)	MI 45-103	MI 45-103	MI 45-103: s.3.1(1)	MI 45-103: s.3.1(2)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(s)	NWT Blanket Order #1: s. 3(s)	NU Blanket Order #3: s. 3(s)	Blanket Order #1: s. 3(s)
2.7	Family, Founder and Control Person - Ontario	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.8	Affiliates	NBSC Rule 45-501: s. 2.6 (1)	NBSC Rule 45-501: s. 2.6 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.9	Offering Memorandum	NBSC Rule 45-501: s. 2.7 (1)	NBSC Rule 45-501: s. 2.7 (2)	MI 45-103	MI 45-103	MI 45-103: s.4.1(1)	MI 45-103: s.4.1(2)	No analogous provision	No analogous provision	MI 45-103	MI 45-103, NWT Blanket Order #1: s. 3(r)	MI 45-103	MI 45-103, NU Blanket Order #1: s. 3(r)
2.10	Minimum Amount Investment	NBSC Rule 45-501: s. 2.8 (1)	NBSC Rule 45-501: s. 2.8 (2)	PEISA: s. 2(3)(d)	PEISA: s. 13(1)(c)	NLSA: s. 36(1)(e)	NLSA: s. 73(1)(d)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(c)	NWT Blanket Order #1: s. 3(c)	NU Blanket Order #3: s. 3(c)	NU Blanket Order #1: s. 3(c)



# National Instrument 45-106 Prospectus and Registration Exemptions

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NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
<b>Division 2: Transaction Exemptions</b>													
2.11	Business Combination and Reorganization	NBSC Rule 45-501: s. 2.9 (1)	NBSC Rule 45-501: s. 2.9 (2)	PEI Rule 45-502 and PEISA: s. 2(3)(k), s. 2(3)(j)(ii)	PEI Rule 45-502 and PEISA: s. 13(1)(f) s. 13(1)(e)(ii)	NLSA: s. 36(1)(n)(ii), 36(1)(n)(o), Blanket Order 48	NLSA: s. 73(1)(f)(ii), 73(1)(i), Blanket Order 48	YSA: s. 2(i)	Registrar's Order March 1, 1980: s. 6	NWT Blanket Order #2: s. 3(e)(ii) and (g), NWTSA: s. 2(i) and (j)	NWT Blanket Order #1: s. 3(e)(ii) and (g)	NU Blanket Order #3: s. 3(e)(ii) and (g), NUSA: s. 2(i) and (j)	NU Blanket Order #1: s. 3(e)(ii) and (g)
2.12	Asset Acquisition	NBSC Rule 45-501: s. 2.10 (1)	NBSC Rule 45-501: s. 2.10 (2)	No analogous provision	PEISA: s. 13(1)(g)	NLSA: s. 36(1)(r)	NLSA: s. 77(1)(l)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(k)	NWT Blanket Order #1: s. 3(k)	NU Blanket Order #3: s. 3(k)	NU Blanket Order #1: s. 3(k)
2.13	Petroleum, Natural Gas and Mining Properties	NBSC Rule 45-501: s. 2.11 (1)	NBSC Rule 45-501: s. 2.11 (2)	No analogous provision	No analogous provision	NLSA: s. 36(2)(n)	NLSA: s. 73(1)(m)	YSA s. 2(k)	Registrar's Order March 1, 1980 s. 16	NWT Blanket Order #2: s. 3(l)	NWT Blanket Order #1: s. 3(l)	NU Blanket Order #3: s. 3(l)	NU Blanket Order #1: s. 3(l)
2.14	Securities for Debt	NBSC Rule 45-501: s. 2.12 (1)	NBSC Rule 45-501: s. 2.12 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	YSA s. 2(e)	Registrar's Order March 1, 1980 s. 1	NWTSA: s. 2(e)	No analogous provision	NUSA: s. 2(e)	No analogous provision
2.15	Issuer Acquisition or Redemption	NBSC Rule 45-501: s. 2.13 (1)	NBSC Rule 45-501: s. 2.13 (2)	No analogous provision	No analogous provision	NLSA: s. 36(1)(x)	NLSA: s. 54(3)(b)(ii)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(j)	NWT Blanket Order #1: s. 3(j)	NU Blanket Order #3: s. 3(j)	NU Blanket Order #1: s. 3(j)
2.16	Take-over Bid and Issuer Bid	NBSC Rule 45-501: s. 2.14 (10)	NBSC Rule 45-501: s. 2.14 (2)	PEI Rule 45-510	PEI Rule 45-510	NLSA: s. 36(1)(p) and (q)	NLSA: s. 73(1)(j) and (k)	C.O. 1979/155 s. 1(b)	Registrar's Order March 1, 1980 s. 6	NWT Blanket Order #2: s. 3(h) and (i)	NWT Blanket Order #1: s. 3(h) and (i)	NU Blanket Order #3: s. 3(h) and (i)	NU Blanket Order #1: s. 3(h) and (i)
2.17	Offer to Acquire to Security Holder Outside Local Jurisdiction	NBSC Rule 45-501: s. 2.15 (1)	NBSC Rule 45-501: s. 2.15 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
<b>Division 3: Investment Fund Exemptions</b>													
2.18	Investment Fund Reinvestment	NBSC Rule 45-501: s. 2.16 (1)	NBSC Rule 45-501: s. 2.16(3)	PEI Rule 45-508	PEI Rule 45-508	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(y)	NWT Blanket Order #1: s. 3(y)	NU Blanket Order #3: s. 3(y)	NU Blanket Order #1: s. 3(y)
2.19	Additional Investment in Investment Funds	NBSC Rule 45-501: s. 2.17 (1)	NBSC Rule 45-501: s. 2.17 (2)	PEI Rule 45-512	PEI Rule 45-512	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(z)	NWT Blanket Order #1: s. 3(z)	NU Blanket Order #3: s. 3(z)	NU Blanket Order #1: s. 3(z)

# National Instrument 45-106 Prospectus and Registration Exemptions

## Table of Concordance: New Brunswick to Nunavut

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NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.20	Private Investment Club	NBSC Rule 45-501: s. 2.18 (1)	NBSC Rule 45-501: s. 2.18 (2)	PEI Rule 45-505	PEI Rule 45-505	NLSA: s. 36(2)(c)	NLSA: s. 74(1)(a)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(cc)	NWT Blanket Order #1: s. 3(cc)	NU Blanket Order #3: s. 3(cc)	NU Blanket Order #1: s. 3(cc)
2.21	Private Investment Fund Loan and Trust Pools	NBSC Rule 45-501: s. 2.19 (1)	NBSC Rule 45-501: s. 2.19 (2)	No analogous provision	No analogous provision	NLSA: s. 36(2)(c)	NLSA: s. 74(1)(a)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(jj)	NWT Blanket Order #1: s. 3(jj)	NU Blanket Order #3: s. 3(jj)	NU Blanket Order #1: s. 3(jj)
<b>Division 4: Employee, Executive Officer, Director and Consultant Exemptions</b>													
2.24	Employee, Executive Officer, Director, and Consultant	NBSC Rule 45-501: s. 2.22 (1) (2) (3)	NBSC Rule 45-501: s. 2.22 (4)	PEISA: s. 2(3)(1), MI 45-105: s. 2.1(1)	PEISA: s. 13(1)(h), MI 45-105: s. 2.1(2)	NLSA: s. 36(1)(s), MI 45-105: s. 2.1(1)	NLSA: s. 74(1)(n), MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1)	MI 45-105: s. 2.1(2)	MI 45-105: s. 2.1(1), NWT Blanket Order #2: s. 3(n)	MI 45-105: s. 2.1(2), NWT Blanket Order #1: s. 3(n)	MI 45-105: s. 2.1(1), NU Blanket Order #3: s. 3(n)	MI 45-105: s. 2.1(2), NU Blanket Order #1: s. 3(n)
2.26	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of a Non-Reporting Issuer	NBSC Rule 45-501: s. 2.25 (1) (2)	NBSC Rule 45-501: s. 2.25 (3)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)	MI 45-105: s. 2.2(1)	MI 45-105: s. 2.2(2)
2.27	Permitted Transferees	NBSC Rule 45-501: s. 2.26 (1) (2) (3)	NBSC Rule 45-501: s. 2.26 (4)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)	MI 45-105: s. 2.4(1), (2)	MI 45-105: s. 2.4(3)
2.28	Resale - Non-reporting Issuer	NBSC Rule 45-501: s. 2.27		MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2		MI 45-105: s. 3.2	
2.29	Issuer Bid	NBSC Rule 45-501: s. 2.28 Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, Issuer Bid Exemption Only		MI 45-105: s. 4.1, NWT Blanket Order #2: s. 3(i), Issuer Bid Exemption Only		MI 45-105: s. 4.1, NU Blanket Order #3: s. 3(i), Issuer Bid Exemption Only	
<b>Division 5: Miscellaneous Exemptions</b>													
2.30	Incorporation or Organization	NBSC Rule 45-501: s. 2.29 (1) (2)	NBSC Rule 45-501: s. 2.29 (3)	No analogous provision	No analogous provision	NLSA: s. 36(1)(t)	NLSA: s. 73(1)(o)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(o)	NWT Blanket Order #1: s. 3(o)	NU Blanket Order #3: s. 3(o)	NU Blanket Order #1: s. 3(o)

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Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.31	Isolated Trade by Issuer	NBSC Rule 45-501: s. 2.30 (1)	NBSC Rule 45-501: s. 2.30 (2)	PEISA: s. 2(3)(b)	PEISA: s. 13(1)(b)	NLSA: s. 36(1)(b)	NLSA: s. 73(1)(b)	YSA: s. 2(c)	Registrar's Order March 1, 1980 s. 1	NWT Blanket Order #2: s. 3(b)	NWT Blanket Order #1: s. 3(b)	NU Blanket Order #3: s. 3(b)	NU Blanket Order #1: s. 3(b)
2.32	Dividends	NBSC Rule 45-501: s. 2.31 (1) (2)	NBSC Rule 45-501: s. 2.31 (3)	PEISA: s. 2(3)(j)(i), s. 2(3)(p)	PEISA: s. 13(1)(e)(i), s. 13(1)(j)	NLSA: s. 36(1)(l)(i) and 36(1)(m)	NLSA: s. 73(1)(f)(i) and 73(1)(g)	YSA: s. 2(h)	Registrar's Order March 1, 1980 s. 5(a)	NWT Blanket Order #2: s. 3(e)(i) and NWTSA: s. 2(h)	NWT Blanket Order #1: s. 3(e)(i)	NU Blanket Order #3: s. 3(e)(i) and NUSA: s. 2(h)	NU Blanket Order #1: s. 3(e)(i)
2.33	Trade to Lender by Control Person for Collateral	NBSC Rule 45-501: s. 2.32 (1)	NBSC Rule 45-501: s. 2.31 (2)	PEI Rule 45-504	PEISA: s. 13(1)(d)	NLSA: s. 36(1)(f)	NLSA: s. 73(1)(e)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(d) and NWTSA: s. 2(e)	NWT Blanket Order #1: s. 3(d)	NU Blanket Order #3: s. 3(d) and NUSA: s. 2(e)	NU Blanket Order #1: s. 3(d)
2.34	Acting as Underwriter	NBSC Rule 45-501: s. 2.33 (1)	NBSC Rule 45-501: s. 2.33 (2)	PEISA: s. 2(3)(g)	PEI Rule 45-509	NLSA: s. 36(1)(i)	NLSA: s. 73(1)(r)	No analogous provision	Registrar's Order March 1, 1980 s.4	NWT Blanket Order #2: s. 3(v)	NWT Blanket Order #1: s. 3(v)	NU Blanket Order #3: s. 3(v)	NU Blanket Order #1 s. 3(v)
2.35	Guaranteed Debt	NBSC Rule 45-501: s. 2.34 (2)	NBSC Rule 45-501: s. 2.34 (3)	PEISA: s. 2(4)(b)	PEISA: s. 14.1(a), s. 14.1(a)	NLSA: s. 36(2)(a)	NLSA: s. 74(1)(a)	YSA: s. 2(i)	Registrar's Order March 1, 1980 s. 10	NWT Blanket Order #2: s. 3(aa)	NWT Blanket Order #1: s. 3(aa)	NU Blanket Order #3: s. 3(aa)	NU Blanket Order #1: s. 3(aa)
2.36	Short-term debt	NBSC Rule 45-501: s. 2.35 (1)	NBSC Rule 45-501: s. 2.35 (2)	PEISA: s. 2(4)(c)	PEISA: s. 14.1(a)	NLSA: s. 36(2)(d)	NLSA: s. 74(1)(a)	YSA: s. 2(e)	Registrar's Order March 1, 1980 s. 11	NWT Blanket Order #2: s. 3(dd) and NWTSA: s. 2(n)	NWT Blanket Order #1: s. 3(dd)	NU Blanket Order #3: s. 3(dd) and NUSA: s. 2(n)	NU Blanket Order #1: s. 3(dd)
2.37	Mortgages	NBSC Rule 45-501: s. 2.36 (1) (2)	NBSC Rule 45-501: s. 2.36 (3)	No analogous provision	No analogous provision	NLSA: s. 36(2)(e)	NLSA: s. 74(1)(a)	YSA: s. 2(l)	Registrar's Order March 1, 1980: s. 10	NWT Blanket Order #2: s. 3(ee) and NWTSA: s. 2(m)	NWT Blanket Order #1: s. 3(ee)	NU Blanket Order #3: s. 3(ee) and NUSA: s. 2(m)	NU Blanket Order #1: s. 3(ee)
2.38	Personal Property Security Act	NBSC Rule 45-501: s. 2.37 (1)	NBSC Rule 45-501: s. 2.37 (2)	PEISA: s. 2(4)(d)	PEISA: s. 14.1(a)	NLSA: s. 36(2)(f)	NLSA: s. 74(1)(a)	YSA: s. 2(n)	Registrar's Order March 1, 1980: s. 11	NWT Blanket Order #2: s. 3(ff) and NWTSA: s. 2(o)	NWT Blanket Order #1: s. 3(ff)	NU Blanket Order #3: s. 3(ff) and NUSA: s. 2(o)	NU Blanket Order #1: s. 3(ff)
2.39	Not for profit issuer	NBSC Rule 45-501: s. 2.38 (1)	NBSC Rule 45-501: s. 2.38 (2)	PEISA: s. 2(4)(e)	PEISA: s. 14.1(a)	NLSA: s. 36(2)(g)	NLSA: s. 74(1)(a)	YSA: s. 2(o)	Registrar's Order March 1, 1980: s. 12	NWT Blanket Order #2: s. 3(gg) and NWTSA: s. 2(p)	NWT Blanket Order #1: s. 3(gg)	NU Blanket Order #3: s. 3(gg) and NUSA: s. 2(p)	NU Blanket Order #1: s. 3(gg)
2.40	Variable Insurance Contract	NBSC Rule 45-501: s. 2.40 (1)	NBSC Rule 45-501: s. 2.40 (2)	PEI Rule 45-503	PEI Rule 45-503	NLSA: s. 54(3)(a)	NLSA: s. 36(1)(x)	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(kk)	NWT Blanket Order #1: s. 3(kk)	NU Blanket Order #3: s. 3(kk)	NU Blanket Order #1: s. 3(kk)

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		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
2.41	RRSP/RRIF	NBSC Rule 45-501: s. 2.41 (1)	NBSC Rule 45-501: s. 2.41 (2)	PEI Rule 45-511	PEI Rule 45-511	No analogous provision	No analogous provision	No analogous provision	No analogous provision	NWT Blanket Order #2: s. 3(II)	NWT Blanket Order #1: s. 3(II)	NU Blanket Order #3: s. 3(II)	NU Blanket Order #1: s. 3(II)
2.42	Schedule III Banks and Cooperative Associations - Evidence of Deposit	NBSC Rule 45-501: s. 2.42 (1)	NBSC Rule 45-501: s. 2.42 (2)	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision	No analogous provision
2.43	Conversion, Exchange, or Exercise	NBSC Rule 45-501: s. 2.43 (1) (2)	NBSC Rule 45-501: s. 2.43 (3)	PEI Rule 45-501, PEISA: s. 2(3)(j)(iii)	PEI Rule 45-501, PEISA: s. 13(1)(e)(iii)	NLSA: s. 36(1)(l)(iii) and 36(1)(n)(ii), Blanket Order 23	NLSA: s. 73(1)(f)(iii) and 73(1)(h)(ii), Blanket Order 23	YSA: s. 2(h)	Registrar's Order March 1, 1980: s. 5(c)	NWT Blanket Order #2: s. 3(e)(iii)	NWT Blanket Order #1: s. 3(e)(iii)	NU Blanket Order #3: s. 3(e)(iii)	NU Blanket Order #1: s. 3(e)(iii)
<b>Part 3: Registration Only Exemptions</b>													
3.1	Registered Dealer	NBSC Rule 45-501: s. 3.1		PEISA: s. 2(3)(h)		NLSA: s. 36(1)(j)		YSA: s. 2(a)		NWTSA: s. 2(b)		NUSA: s. 2(b)	
3.2	Exchange Contract	No analogous provision		No analogous provision		No analogous provision		No analogous provision		No analogous provision		No analogous provision	
3.3	Isolated Trade	NBSC Rule 45-501: s. 3.2		PEISA: s.2(3)(b)		NLSA: s. 36(1)(b)		YSA: s. 2(a)		NWTSA: s. 2(a)		NUSA: s. 2(a)	
3.4	Estates, Bankruptcies, and Liquidations	NBSC Rule 45-501: s. 3.3		PEISA: s. 2(3)(a)		NLSA: s. 36(1)(a)		YSA: s. 2(f)		NWT Blanket Order #2: s. 3(mm) and NWTSA s. 2(f)		NU Blanket Order #3: s. 3(mm) and NUSA: s. 2(f)	
3.5	Employees of Registered Dealer	NBSC Rule 45-501: s. 3.4		PEISA: s. 2(3)(f)		NLSA: s. 36(1)(h)		No analogous provision		No analogous provision		No analogous provision	
3.6	Small Security Holder Selling and Purchase Arrangements	NBSC Rule 45-501: s. 3.5 (2)		NI 32-101		NI 32-101		NI 32-101		NI 32-101		NI 32-101	

# National Instrument 45-106 Prospectus and Registration Exemptions

## Table of Concordance: New Brunswick to Nunavut

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

NI 45-106		Analogous Local Provisions											
Section #	Exemption	New Brunswick		PEI		Newfoundland and Labrador		Yukon Territory		Northwest Territories		Nunavut	
		Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption	Registration Exemption	Prospectus Exemption
3.7	Adviser	NBSC Rule 45-501: s. 3.6		PEISA: s. 2(5)		NLSA: s. 35		YSA: s. 30		NWT Blanket Order #2: s. 2		NU Blanket Order #3: s. 2	
3.8	Investment Dealer Acting as Portfolio Manager	NBSC Rule 45-501: s. 3.7		PEISA Reg: s. 48		NL Reg.: s. 133		YSA: s. 30		No analogous provision		No analogous provision	
<b>Part 4: Control Block Distributions</b>													
4.1	Control Block Distributions		NBSC Rule 45-501: s. 4.1 (3)		No analogous provision		NI 62-101		No analogous provision		NWT Blanket Order #1: s. 3(q)		NU Blanket Order #1: s. 3(q)
4.2	Trades by a Control Person After a Take-Over Bid		NBSC Rule 45-501: s. 4.2		No analogous provision		NL Regs: s. 15(1)		No analogous provision		No analogous provision		No analogous provision
<b>Part 5: Offerings by TSX Venture Exchange Offering Document</b>													
5.2	TSX Venture Exchange Offering		NBSC Rule 45-501: s. 5.2		No analogous provision		No analogous provision		No analogous provision		NWT Blanket Order #1: s. 2(c)		NU Blanket Order #1: s. 2(c)
<b>Deleted Local Exemptions Not Being Carried Forward Upon the Coming Into Force of NI 45-106*</b>													
		None	None	PEISA: s.2(3)(e), (m), (n), s.2(4)(i)	PEISA: s.14.1(a) as it relates to s.2(4)(i), s.13(1)(i)	NLSA: s. 36(1)(g)(k)(z)and (cc), s. 36(2)(k)(l)and(m)	NLSA: s.74(1) as it relates to s. 36(2)(k)(l) and (m)	None	None	None	None	None	None

\*The provisions included in this section refer to those exemptions which are currently available under the securities legislation of the local jurisdiction, but will not be carried forward in NI 45-106 and will not

otherwise be available under the securities legislation of the local jurisdiction upon the coming into force of NI 45-106.

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

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# PROSPECTUS AND REGISTRATION

## EXEMPTIONS

### NI 45-106

#### PART 1: DEFINITIONS AND INTERPRETATION

##### Definitions

##### 1.1 In this Instrument

**“accredited investor”** means

- (a) a Canadian financial institution, or a Schedule III bank,
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
- (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
- (f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
- (g) a municipality, public board or commission in Canada,

- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada,
- (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1 000 000,
- (k) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
- (l) an individual who, either alone or with a spouse, has net assets of at least \$5 000 000,
- (m) a person, other than an individual or investment fund, that has net assets of at least \$5 000 000 as shown on its most recently prepared financial statements,
- (n) an investment fund that distributes or has distributed its securities only to persons
  - (i) who are or were accredited investors at the time of the distribution, or
  - (ii) in the circumstances referred to in sections 2.10 [*Minimum amount investment*], and 2.19 [*Additional investment in investment funds*],
- (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator has issued a receipt,
- (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act*

(Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of an account that is fully managed by the trust company or trust corporation, as the case may be,

- (q) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of
  - (i) a jurisdiction of Canada, or
  - (ii) except in Ontario, a foreign jurisdiction,
- (r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,
- (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) and paragraph (i) in form and function,
- (t) a person 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 that are accredited investors,
- (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser, or
- (v) a person that is recognized or designated by the securities regulatory authority as an accredited investor;

**“AIF”** means

- (a) for financial years starting before January 1, 2004, a current AIF as defined in MI 45-102 effective November 30, 2001, and
- (b) for financial years starting on or after January 1, 2004,

- (i) an AIF as defined in NI 51-102,
- (ii) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not filed or been required to file an AIF or annual financial statements under NI 51-102, or
- (iii) a QT circular if the issuer has not filed or been required to file annual financial statements under NI 51-102 subsequent to filing its QT circular;

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

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

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

**“Canadian financial institution”** means

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

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

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

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

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

**“director”** means

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

**“eligibility adviser”** means

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

- (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months;

**“eligible investor”** means

- (a) a person whose
  - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
  - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
  - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (b) a person of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees are eligible investors,
- (f) an accredited investor,
- (g) a person described in section 2.5 [*Family, friends and business associates*], or
- (h) a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

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

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

**“financial assets”** means

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

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

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

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

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

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

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

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

**“person”** includes

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

**“private issuer”** means an issuer

- (a) that is not a reporting issuer or an investment fund,
- (b) whose securities, other than non-convertible debt securities,
  - (i) are subject to restrictions on transfer that are contained in the issuer’s constating documents or security holders’ agreements, and
  - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons provided that each person is counted as one beneficial owner unless the person is created or used primarily to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner but not including employees and former employees of the issuer or its affiliates, and
- (c) that has distributed securities only to persons described in section 2.4(1) [*Private issuer*];

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



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

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

**“related liabilities”** means

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

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

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

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

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

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

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

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

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

“**syndicated mortgage**” means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by a mortgage;

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

## **Affiliate**

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

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

## **Control**

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

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,

- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

### **Registration requirement**

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

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

### **Underwriter exemption**

**1.5** Under this Instrument, the only exemption available for a trade in a security where the purchaser is acting as an underwriter is section 2.34 [*Acting as underwriter*].

### **Definition of distribution - Manitoba and Yukon**

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

### **Definition of trade - Quebec**

**1.7** For the purpose of this Instrument, in Quebec, “trade” means

- (a) the sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise, but does not include,
  - (i) except as provided in paragraph (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith, or
  - (ii) the purchase of a security,

- (b) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system,
- (c) receipt by a registrant of an order to buy or sell a security,
- (d) a transfer, pledge or encumbering of securities of an issuer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith,
- (e) entering into a derivative,
- (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities referred to in paragraphs (a) to (e), or
- (g) any act in furtherance of the business of dealing in securities.

## **PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS**

### **Division 1: Capital Raising Exemptions**

#### **Rights offering**

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

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

- (a) the issuer has given the regulator prior written notice stating the date, amount, nature and conditions of the trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up,
- (b) except in British Columbia, the regulator has not objected in writing to the trade within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator objects to the trade, the

issuer has delivered to the regulator information relating to the securities that is satisfactory to and accepted by the regulator, and

- (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.

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

### **Reinvestment plan**

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

**2.2 (1)** Subject to subsections (3) and (5), the dealer registration requirement does not apply to the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, if the trades are permitted by a plan of the issuer:

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

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder to which the dividend or distribution is available.

(4) Subject to subsections (3) and (5), the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

(5) This section does not apply to a trade in or distribution of a security of an investment fund.

### Accredited investor

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

2.3 (1) The dealer registration requirement does not apply to a trade in a security to a purchaser if the purchaser purchases the security as principal and is an accredited investor.

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

(3) Subject to subsection (4), for the purpose of this section, a trust company or trust corporation described in paragraph (p) of the definition of “accredited investor” in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(4) Subsection (3) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

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

(6) This section is not available for a trade in a security to a person described in paragraph (m) of the definition of “accredited investor” in section 1.1 [*Definitions*] if that person is

- (a) created primarily to permit purchases of securities in reliance on an exemption from the dealer registration requirement or the prospectus requirement, or
- (b) used primarily to purchase securities under these exemptions.

## Private issuer

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

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

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

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

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

### **Family, friends and business associates**

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

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

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister or child of a spouse of a founder of the issuer,



- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees are persons described in paragraphs (a) to (g).

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

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

#### **Family, friends and business associates - Saskatchewan**

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

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

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

#### **Family, founder and control person - Ontario**

<b>Refer to Appendix D of MI 45-102 <i>Resale of Securities</i>. First trades are subject to a restricted period on resale.</b>
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**2.7 (1)** In Ontario, the dealer registration requirement does not apply to a trade in a security to a person who purchases the security as principal and is

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

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

#### **Affiliates**

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

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

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

#### **Offering memorandum**

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

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

- (a) the purchaser purchases the security as principal, and
- (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer

- (i) delivers an offering memorandum to the purchaser in compliance with subsections (7) to (13), and
- (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (14).

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

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

and

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

**(3)** In British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

(4) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Quebec and Saskatchewan, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

(5) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Quebec and Saskatchewan, this section is not available for a trade in a security to a person described in paragraph (a) of the definition of “eligible investor” in section 1.1 [*Definitions*] if that person is

- (a) created primarily to permit purchases of securities in reliance on an exemption from the dealer registration requirement or the prospectus requirement, or
- (b) used primarily to purchase securities under the exemptions described in subsections (2) and (4).

(6) No commission or finder’s fee may be paid to any person, other than a registered dealer, in connection with a trade to a purchaser in

- (a) Northwest Territories, Nunavut and Saskatchewan under subsections (2) and (4), or
- (b) New Brunswick under subsections (1) and (3).

(7) An offering memorandum delivered under this section must be in the required form.

(8) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2<sup>nd</sup> business day after the purchaser signs the agreement to purchase the security.

(9) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains

a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,

- (b) is enforceable by the purchaser delivering a notice to the issuer
  - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
  - (ii) in the case of an action for damages, before the earlier of
    - A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
    - B) 3 years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
  - (i) must not exceed the price at which the security was offered, and
  - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

**(10)** An offering memorandum delivered under this section must contain a certificate that states the following:

“This offering memorandum does not contain a misrepresentation.”

**(11)** A certificate under subsection (10) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, a person acting in that capacity,
- (b) on behalf of the directors of the issuer,
  - (i) by any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
  - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**(12)** A certificate under subsection (10) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

**(13)** If a certificate under subsection (10) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless

- (a) the purchaser receives an update of the offering memorandum,
- (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (11), and
- (c) the purchaser re-signs the agreement to purchase the security.

**(14)** A risk acknowledgement under subsection (1), (2), (3) or (4) must be in the required form and an issuer relying on subsection (1), (2) (3) or (4) must retain the signed risk acknowledgment for 8 years after the distribution.

**(15)** The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a trade in a security under subsection (1), (2), (3) or (4) until midnight on the 2<sup>nd</sup> business day after the purchaser signs the agreement to purchase the security, and

- (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (8).

(16) The issuer must file a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10<sup>th</sup> day after the distribution under the offering memorandum or update of the offering memorandum.

(17) If a qualifying issuer uses a form of offering memorandum that allows the qualifying issuer to incorporate previously filed information into the offering memorandum by reference, the qualifying issuer is exempt from the requirement under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* to file a technical report to support scientific or technical information about the qualifying issuer's mineral project in the offering memorandum or incorporated by reference into the offering memorandum if the information about the mineral project is contained in a previously filed technical report under National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

#### **Minimum amount investment**

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

**2.10 (1)** The dealer registration requirement does not apply to a trade in a security to a person if

- (a) that person purchases as principal, and
- (b) the security has an acquisition cost to the purchaser of not less than \$150 000 paid in cash at the time of the trade.

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

(3) This section is not available for a trade in a security to a person if that person is

- (a) created primarily to permit purchases of securities in reliance on an exemption from the dealer registration requirement or the prospectus requirement, or

(b) used primarily to purchase securities under these exemptions.

(4) This section is only available for a trade in a security of a single issuer.

## **Division 2: Transaction Exemptions**

### **Business combination and reorganization**

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

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

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

or

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

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



### **Asset acquisition**

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

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

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

### **Petroleum, natural gas and mining properties**

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

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

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

### **Securities for debt**

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

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

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

### **Issuer acquisition or redemption**

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

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

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

#### **Take-over bid and issuer bid**

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

**2.16 (1)** The dealer registration requirement does not apply to a trade in a security under a take-over bid or issuer bid.

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

#### **Offer to acquire to security holder outside local jurisdiction**

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

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

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

### **Division 3: Investment Fund Exemptions**

#### **Investment fund reinvestment**

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

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

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

**(2)** The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

**(3)** A plan that permits the trades described in subsection (1) must be available to every security holder to which the dividend or distribution is available.

**(4)** No sales charge is payable on a trade described in subsection (1).

**(5)** The most recent prospectus of the investment fund, if any, must set out

- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
- (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund, and
- (c) instructions on how the right referred to in paragraph (b) can be exercised.

(6) Subject to sections (3), (4) and (5), the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

#### **Additional investment in investment funds**

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

**2.19** (1) The dealer registration requirement does not apply to a trade by an investment fund in a security of its own issue to an existing security holder that initially acquired securities as principal for an acquisition cost of not less than \$150 000 paid in cash at the time of the trade if

- (a) for any subsequent trade, the purchase of securities is for the same class or series as the initial trade, and
- (b) the acquisition cost or the net asset value of securities of the investment fund held by the existing security holder as at the date of any subsequent trade is not less than \$150 000.

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

#### **Private investment club**

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

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

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not and has never distributed its securities to the public,

- (d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires security holders to make contributions in proportion to the value of the securities held by them.

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

### **Private investment fund - loan and trust pools**

<b>Refer to Appendix E of MI 45-102 <i>Resale of Securities</i>. First trades are subject to a seasoning period on resale.</b>
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**2.21 (1)** The dealer registration requirement does not apply to a trade in a security of an investment fund if the investment fund

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

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

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

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

### Definitions

#### 2.22 In this Division

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

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

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

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

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

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

- (a) is engaged to provide services to the issuer or a related entity of the issuer, other than services provided in relation to a distribution,
- (b) provides the services under a written contract with the issuer or a related entity of the issuer, and
- (c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer

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

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

**“investor relations activities”** means activities or communications, by or on behalf of an issuer or a security holder of the issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
  - (i) to promote the sale of products or services of the issuer, or
  - (ii) to raise public awareness of the issuer

that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,

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

or

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

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

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

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

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

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

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

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



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

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

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

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

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

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

## **Interpretation**

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

- (a) ownership of or direction over voting securities in the second person,
- (b) a written agreement or indenture,

- (c) being the general partner or controlling the general partner of the second person, or
- (d) being a trustee of the second person.

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

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

### **Employee, executive officer, director and consultant**

<b>Refer to Appendix E of MI 45-102 <i>Resale of Securities</i>. First trades are subject to a seasoning period on resale.</b>
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**2.24 (1)** Subject to section 2.25 [*Unlisted reporting issuer exception*], the dealer registration requirement does not apply to

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

with

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

if participation in the trade is voluntary.

(2) A trade under subsection (1) with a person referred to in paragraph (c), (d) or (e) includes a trade with a trustee, custodian or administrator acting as agent to facilitate a trade under a plan.

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

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

### **Unlisted reporting issuer exception**

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

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

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

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

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

- (a) obtains security holder approval, and
- (b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:
  - (i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;
  - (ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;
  - (iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
  - (iv) in the case of options, the maximum term and the basis for the determination of the exercise price;
  - (v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability;

- (vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

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

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

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

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

to

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

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

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

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

## Permitted transferees

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

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

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

or

- (b) is between permitted assigns of that person.

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

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

if the security was acquired from

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

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

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

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

### **Resale - non-reporting issuer**

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

### **Issuer bid**

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

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

outstanding securities of the class or series at the beginning of the period.

## **Division 5: Miscellaneous Exemptions**

### **Incorporation or organization**

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

**2.30 (1)** Subject to subsection (2), the dealer registration requirement does not apply to a trade by an issuer in a security of its own issue if the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than 5 incorporators or organizers.

**(2)** If the statute under which the issuer is incorporated or organized requires the trade to be for a greater consideration or to a larger number of incorporators or organizers, the securities may be traded for that greater consideration or to that larger number of incorporators or organizers.

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

### **Isolated trade by issuer**

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

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

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

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



## Dividends

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

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

**(2)** The dealer registration requirement does not apply to a trade by an issuer in a security of a reporting issuer to an existing security holder as a dividend in specie.

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

## Trade to lender by control person for collateral

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

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

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

## Acting as underwriter

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

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

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

## Guaranteed debt

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

### 2.35 (1) In this section

**“Asian Development Bank”** means a bank established pursuant to a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;

**“Inter-American Development Bank”** means a bank established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, of which Canada is a member;

**“International Bank for Reconstruction and Development”** means the bank established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada);

**“International Finance Corporation”** means the corporation established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada);

**“permitted supranational agency”** means the Asian Development Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank and the International Finance Corporation.

### (2) The dealer registration requirement does not apply to a trade in a debt security

- (a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,
- (b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,
- (c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be

collected by or through the municipality in which the property is situated,

- (d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (e) of any school board in Ontario or of a corporation established under section 248(1) of the *Education Act* (Ontario),
- (f) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or
- (g) of or guaranteed by a permitted supranational agency if
  - (i) the debt securities are payable in the currency of Canada or the United States of America, and
  - (ii) with respect to those securities, all documents or other information required by the regulator, or in Ontario, the securities regulatory authority, are filed with the regulator or securities regulatory authority, as the case may be.

(3) If the trade referred to in subsection (2)(c) or (d) occurs in British Columbia, then the debt security must be rated by a rating agency designated by the securities regulatory authority in British Columbia.

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

### **Short-term debt**

<p><b>This provision will not be cited in any Appendix of MI 45-102 <i>Resale of Securities</i>. These securities will be free trading.</b></p>
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**2.36 (1)** The dealer registration requirement does not apply to a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper traded

- (a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section, and
- (b) has an approved credit rating from an approved credit rating organization.

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

### **Mortgages**

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

**2.37** (1) The dealer registration requirement does not apply to a trade in a mortgage on real property by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of a jurisdiction of Canada.

(2) Subsection (1) does not apply to a syndicated mortgage.

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

### **Personal Property Security Act**

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

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

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

## Not for profit issuer

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

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

- (a) no part of the net earnings benefit any security holder of the issuer,
- (b) no commission or other remuneration is paid in connection with the sale of the security, and
- (c) the trade occurs in British Columbia, the issuer has delivered an information statement in the form required by the securities regulatory authority in British Columbia to the purchaser before the purchaser agrees in writing to purchase the security.

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

## Variable insurance contract

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

**2.40 (1)** The dealer registration requirement does not apply to a trade in a variable insurance contract by an insurance company incorporated by or under an act of the legislature of a jurisdiction if the variable insurance contract is

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

(d) a variable life annuity.

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

(3) For the purposes of subsection (1), “contract”, “group insurance”, “life insurance” and “policy” have the respective meanings assigned to them in the legislation for a jurisdiction set out in Appendix A.

### **RRSP/RRIF**

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

**2.41** (1) The dealer registration requirement does not apply to a trade in a security between

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

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

### **Schedule III banks and cooperative associations - evidence of deposit**

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

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

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

## Conversion, exchange, or exercise

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

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

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

## Removal of exemptions – market intermediaries

**2.44** (1) Subject to subsection (2), in Ontario, the exemptions from the dealer registration requirement in sections s.2.1 [*Rights offering*], 2.3 [*Accredited investor*], 2.4 [*Private issuer*], 2.7 [*Family, founder and control person - Ontario*], 2.10 [*Minimum amount investment*], 2.11 [*Business combination and reorganization*], 2.12 [*Asset acquisition*], 2.14 [*Securities for debt*], 2.15 [*Issuer acquisition or redemption*], 2.16 [*Take-over bid and issuer bid*], 2.17 [*Offer to acquire to security holder outside local*

*jurisdiction*], 2.19 [*Additional investment in investment funds*], 2.21 [*Private investment fund - loan and trust pools*], 2.31 [*Isolated trade by issuer*], 2.32 [*Dividends*], 2.34 [*Acting as underwriter*] 2.35 [*Guaranteed debt*], 2.36 [*Short-term debt*], 2.40 [*Variable insurance contract*], and 2.43 [*Conversion, exchange, or exercise*] are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary.

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

### **PART 3: REGISTRATION ONLY EXEMPTIONS**

#### **Registered dealer**

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

#### **Exchange contract**

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

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

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



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

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

### **Isolated trade**

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

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

### **Estates, bankruptcies, and liquidations**

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

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

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

### **Employees of registered dealer**

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

## Small security holder selling and purchase arrangements

3.6 (1) For the purposes of this section

“**exchange**” means

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

“**policy**” means

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

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

- (a) the trade is an act in furtherance of participation by the holders of the securities in an arrangement that is in accordance with the policy of that exchange,

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

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

## **Adviser**

**3.7** The adviser registration requirement does not apply to

- (a) the following persons if performance of services as an adviser are incidental to their principal business or occupation:
  - (i) a Canadian financial institution and a Schedule III bank;
  - (ii) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
  - (iii) a société d'entraide économique or the Fédération des sociétés d'entraide économique du Québec governed by the Act respecting the sociétés d'entraide économique (Quebec);

- (iv) a lawyer, accountant, engineer or teacher, or, in Quebec, a notary, if that individual
  - A) does not recommend securities of an issuer in which that individual has an interest, and
  - B) does not receive remuneration for the performance of services as an adviser separate from remuneration received by that individual for practicing in their professions;
- (v) a registered dealer or any partner, officer or employee of a registered dealer;

or

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

### **Investment dealer acting as portfolio manager**

**3.8 (1)** Subject to subsection (2), the adviser registration requirement does not apply to a registered investment dealer who manages the investment portfolios of its clients through discretionary authority granted by the clients if the investment dealer follows the rules, policies or other similar instruments made by the Investment Dealers Association of Canada for portfolio managers.

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

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

(3) The designated and approved individuals referred to in subsection (2)(a) must be registered under securities legislation to trade in securities.

### **Removal of exemptions – market intermediaries**

**3.9 (1)** Subject to subsection (2), in Ontario, the exemptions from the dealer registration requirements in sections 3.1 [*Registered dealer*] and 3.3 [*Isolated trade*] are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary.

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

## **PART 4: CONTROL BLOCK DISTRIBUTIONS**

### **Control block distributions**

**4.1 (1)** In this Part

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

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

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

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

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

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

## Trades by a control person after a take-over bid

**4.2 (1)** Subject to subsection (2), the prospectus requirement does not apply to a trade in a security from the holdings of a control person acquired under a take-over bid if

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

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

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

## PART 5: OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT

### Application and interpretation

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

(2) In this Part

**“exchange policy”** means the latest edition of Exchange Policy 4.6 - *Public Offering by Short Form Offering Document* and Exchange Form 4H - *Short Form Offering Document*, of the TSX Venture Exchange;

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

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

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

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

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

**“subsequently triggered report”** means a material change report that must be filed no later than 10 days after a material change under securities legislation as a result of a material change that occurs after the date the TSX Venture exchange



offering document is certified but before a purchaser enters into an agreement of purchase and sale;

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

**“TSX Venture exchange offering document”** means an offering document that complies with the exchange policy, subject to any waiver or variation the TSX Venture Exchange permits;

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

#### **TSX Venture Exchange offering**

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

**(i) the purchaser who acquires the security was an insider, a promoter of the issuer, an underwriter of the issuer, or a member of the underwriter’s professional group at the time the security was acquired, or**

**(ii) any other purchaser who purchases securities in excess of \$40 000.**

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

**5.2** The prospectus requirement does not apply to a distribution by an issuer in a security of its own issue if

- (a) the issuer has filed an AIF in a jurisdiction of Canada,
- (b) the issuer is a SEDAR filer,
- (c) the issuer is a reporting issuer in a jurisdiction of Canada and has filed with the securities regulatory authority of that jurisdiction
  - (i) a TSX Venture exchange offering document that has been accepted by the TSX Venture Exchange,

- (ii) all documents required to be filed under the securities legislation of that jurisdiction, and
  - (iii) any subsequently triggered report,
- (d) the distribution is of listed securities or units consisting of listed securities and warrants,
- (e) the issuer has filed with the TSX Venture Exchange, and the TSX Venture Exchange has accepted, a TSX Venture exchange offering document in respect of the distribution, that
  - (i) incorporates by reference the following documents of the issuer filed with the securities regulatory authority in any jurisdiction of Canada:
    - A) the AIF,
    - B) the most recent annual financial statements and, for financial years starting on or after January 1, 2004, the MD&A relating to those financial statements,
    - C) all unaudited interim financial statements and, for financial years starting on or after January 1, 2004, the MD&A relating to those financial statements, filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document,
    - D) all material change reports filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document, and
    - E) all documents required under NI 43-101 and NI 51-101 filed on or after the date of the AIF but before or on the date of the TSX Venture exchange offering document,

- (ii) deems any subsequently triggered report required to be delivered to a purchaser under this Part to be incorporated by reference,
  - (iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the exchange policy,
  - (iv) grants to purchasers contractual rights of withdrawal, as required by the exchange policy, and
  - (v) contains all the certificates required by the exchange policy,
- (f) the distribution is conducted in accordance with the exchange policy, subject to any waiver or variation the TSX Venture Exchange permits,
- (g) the issuer or the underwriter delivers the TSX Venture exchange offering document and any subsequently triggered report to each purchaser
  - (i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the TSX Venture exchange offering document, or
  - (ii) not later than midnight on the 2nd business day after the agreement of purchase and sale is entered into,
- (h) the listed securities issued under the TSX Venture exchange offering document, when added to the listed securities of the same class issued under prior exchange offerings do not exceed,
  - (i) the number of securities of the same class outstanding immediately before the issuer distributes securities of the same class under the TSX Venture exchange offering document, or

- (ii) the number of securities of the same class outstanding immediately before a prior exchange offering,
- (i) the gross proceeds under the TSX Venture exchange offering document, when added to the gross proceeds from prior exchange offerings do not exceed \$2 million,
- (j) no purchaser acquires more than 20% of the securities distributed under the TSX Venture exchange offering document, and
- (k) no more than 50% of the securities distributed under the TSX Venture exchange offering document are subject to section 2.5 of MI 45-102.

### **Underwriter obligations**

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

## **PART 6: REPORTING REQUIREMENTS**

### **Report of exempt distribution**

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

- (a) section 2.3(2) [*Accredited investor*];
- (b) section 2.5(2) [*Family, friends and business associates*];
- (c) section 2.9 (3) and (5) [*Offering memorandum for Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Quebec, and Saskatchewan*];

- (d) section 2.10 (2) [*Minimum amount investment*];
- (e) section 2.12 (2) [*Asset acquisition*];
- (f) section 2.13(2) [*Petroleum, natural gas and mining properties*];
- (g) section 2.14 (2) [*Securities for debt*];
- (h) section 2.19 (2) [*Additional investment in investment funds*];
- (i) section 2.31(2) [*Isolated trade*];
- (j) section 5.2 [*TSX Venture offering*].

### **When report not required**

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

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

### **Required form of report of exempt distribution**

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

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

### **Required form of offering memorandum**

**6.4 (1)** Except in British Columbia, the required form of offering memorandum under section 2.9 [*Offering memorandum*] is Form 45-106F2.

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

### **Required form of risk acknowledgement**

**6.5 (1)** Except in British Columbia, the required form of risk acknowledgement under section 2.9(15) [*Offering memorandum*] is Form 45-106F4.

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

### **Required forms in British Columbia**

**6.6** In British Columbia, the required forms are the forms specified by the securities regulatory authority under section 172 of the *Securities Act* (British Columbia).

## **PART 7: EXEMPTION**

### **Exemption**

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

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

## PART 8: TRANSITIONAL, COMING INTO FORCE

### Additional investment - investment funds

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

- (a) the securities were acquired under any of the following provisions:
  - (i) in Alberta, sections 86(1)(e) and 131(1)(d) of the *Securities Act* (Alberta) and section 122.2 of the Alberta Securities Commission Rules (General);
  - (ii) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the Securities Act R.S.B.C. 1996, c. 418,
  - (iii) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;
  - (iv) in New Brunswick,
  - (v) Newfoundland and Labrador,
  - (vi) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
  - (vii) in Northwest Territories,
  - (viii) in Nunavut,
  - (ix) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*;
  - (x) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -Exempt Distributions - Exemption for Purchase of Mutual Fund Securities;

- (xi) in Quebec, section 51 and 155.1(2) of the *Securities Act* (Quebec);
  - (xii) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan);
  - (xiii) in Yukon.
- (b) for any subsequent trade, the purchase of securities is for the same class or series as the initial trade, and
  - (c) the acquisition cost or the net asset value of securities of the investment fund held by the purchaser as at the date of any subsequent trade is not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted.

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

**Definition of “accredited investor” - investment fund**

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

- (a) in Alberta, sections 86(1)(e) and 131(1)(d) of the *Securities Act* (Alberta) and section 122.2 of the Alberta Securities Commission Rules (General);
- (b) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the Securities Act R.S.B.C. 1996, c. 418,
- (c) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation MR 491/88R*;
- (d) in New Brunswick,
- (e) Newfoundland and Labrador,



- (f) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
- (g) in Northwest Territories,
- (h) in Nunavut,
- (i) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions*;
- (j) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -Exempt Distributions - Exemption for Purchase of Mutual Fund Securities;
- (k) in Quebec, section 51 and 155.1(2) of the *Securities Act* (Quebec);
- (l) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan);
- (m) in Yukon.

**Coming into force**

**8.3** This Instrument comes into force on \_\_\_\_\_ .

**APPENDIX A**

**To**

**National Instrument 45-106 *Prospectus and Registration Exemptions***

**Variable insurance contract exemption  
(section 2.40)**

**JURISDICTION**

**LEGISLATION REFERENCE**

ALBERTA	“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Alberta) and the regulations under that Act.
NEW BRUNSWICK	“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (New Brunswick) and the regulations under that Act.
NOVA SCOTIA	“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the <i>Insurance Act</i> (Nova Scotia) and the regulations under that Act.
ONTARIO	“contract”, “group insurance”, “life insurance” and “policy” have the respective meanings assigned to them in section 1 and 171 the <i>Insurance Act</i> (Ontario).
QUEBEC	“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the Civil Code of Quebec”
PRINCE EDWARD ISLAND	"contract", "group insurance", "life insurance" and "policy" have the respective meanings assigned to them in sections 1 and 174 of the <i>Insurance Act</i> (Prince Edward Island).

SASKATCHEWAN “contract”, “life insurance” and “policy” have the respective meanings assigned to them in section 2 of *The Saskatchewan Insurance Act* (Saskatchewan).

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

## APPENDIX B

To

### National Instrument 45-106 *Prospectus and Registration Exemptions*

#### Control Block Distribution

(Part 4)

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

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***Prospectus and Registration Exemptions***

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**COMPANION POLICY 45-106CP**  
***Prospectus and Registration Exemptions***

**PART 1 – INTRODUCTION**

National Instrument 45-106 *Prospectus and Registration Exemptions* (“NI 45-106”) provides exemptions from the prospectus and registration requirements and one exemption from the issuer bid requirement.

Text boxes have been included in NI 45-106 to help users understand the resale restrictions attached to securities acquired under a distribution exemption in NI 45-106. Users of NI 45-106 are reminded that these text boxes are guidance only, and Multilateral Instrument 45-102 *Resale of Securities* should still be referred to for statements of the law respecting resale restrictions.

**1.1 Purpose**

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of various parts of NI 45-106.

**1.2 Status in Yukon**

Until such time as the Government of Yukon adopts NI 45-106 as a rule, it will consider applications for exemptions on a case-by-case basis and it will consider the provisions of NI 45-106 in exercising its discretionary authority.

**1.3 All trades are subject to securities legislation**

Market participants are reminded that the securities legislation of a local jurisdiction applies to any trade in a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of “trade” in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. In Québec a trade also includes any act in furtherance of the business of dealing in securities. A person, who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade occurs.

If a trade is exempted from the dealer registration requirement, so too is any act, solicitation or conduct in furtherance of that trade.

#### **1.4 Multi-jurisdictional trades**

Market participants are further reminded that a trade can occur in more than one jurisdiction. If it does, the person conducting the trade must comply with the securities legislation of each jurisdiction in which the trade occurs. For example, a trade from a person in Ontario to a purchaser in Alberta may be considered a trade in both jurisdictions.

#### **1.5 Other exemptions**

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. The Canadian Securities Administrators (“CSA”) will issue a notice that lists other exemptions available under securities legislation.

#### **1.6 Discretionary relief**

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement and the registration requirement.

#### **1.7 Advisers**

Subsection 1.4(2) of NI 45-106 provides that an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under NI 45-106.

#### **1.8 Persons created to use exemptions (“syndication”)**

Certain provisions in NI 45-106 specifically prohibit syndications. A distribution of securities to a person that had no pre-existing purpose and is created solely or primarily to acquire securities under exemptions (a “syndicate”) may also be considered a distribution of securities to the persons beneficially owning or controlling the syndicate.

For example, if an issuer wishes to distribute securities to potential purchasers under the offering memorandum exemption but 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 circumstances where more than one issuer is involved care should be taken by the multiple issuers to ensure that the ultimate purchaser understands what securities the purchaser acquired and what rights are attached to those securities.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of an exemption that prohibits the use of a syndicate to use a syndicate to indirectly distribute securities when the exemption is not available to directly distribute securities to each person in the syndicate. In these instances where syndications have been created to acquire securities under an exemption the various securities regulators have historically taken enforcement action on the grounds of public policy concerns.

### **1.9 Responsibility for compliance**

A person trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally a person trading securities under an exemption should retain documents necessary to show that the person properly relied upon the exemption.

For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement describing the purchaser's relationship with the director. On the basis of that factual information, the issuer could determine whether the purchaser is a close personal friend of the director for the purposes of the exemption. The issuer should not rely merely on a representation: "I am a close personal friend of a director".

It is not appropriate for a person to assume an exemption is available. For instance an issuer should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the issuer should request that the purchaser provide the details on how they fit within the accredited investor definition.

### **1.10 Prohibited activities**

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from

making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

## **PART 2 – INTERPRETATION**

### **2.1 Definitions**

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

### **2.2 Executive officer (“policy making function”)**

The definition of “executive officer” in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations*.

The definition includes someone who “performs a policy-making function” in respect of the issuer. The CSA is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

Paragraph (d) of the definition of “executive officer” includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

### **2.3 Directors, executive officers and officers of non-corporate issuers**

The term “director” is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or officer may be important where a person intends to trade securities of a limited partnership under

an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

## **2.4 Founder**

The definition of “founder” includes a requirement that, at the time of the trade, the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of NI 45-106, regardless of their degree of prior involvement with the issuer or the extent of their continued ownership interest in the issuer.

## **2.5 Investment fund**

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

## **2.6 Affiliate, control and related entity**

### **(1) Affiliate**

Section 1.2 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

### **(2) Control**

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in section 2.23(1). For the purposes of the rest of NI 45-106 the interpretation of control is found at section 1.3 of NI 45-106. The reason for having two different interpretations of control is that the exemption for trades to employees, executive officers, directors and consultants requires a broader concept of control to accommodate the issuance of compensation securities in a wide variety of business structures than is considered necessary for the rest of the Rule.

The concept of control contained in section 1.3 is a narrower and more specific test, in that one person controls another person if: (i) the first person owns or exercises control over voting securities of the second person, which would entitle the first person to elect a majority of the board of directors of the second person; (ii) the second person is a partnership, other than a limited partnership, the first person holds more than 50% of the interests of the partnership; or (iii) the second person is a limited partnership, the general partner is the first person.

## **2.7 Close personal friend**

For the purposes of both the private issuer exemption and the family, friends and business associates exemption, a “close personal friend” of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The term “close personal friend” can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same organization, association or religious group, or
- (c) a client, customer, former client or former customer.

## **2.8 Close business associate**

For the purposes of both the private issuer exemption and the family, friends and business associates exemption, a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness. An individual is not a close business associate solely because the individual is a client, customer, former client or former customer of the issuer.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available for a close business associate of a close business associate of a director of the issuer.

## **PART 3 – CAPITAL RAISING EXEMPTIONS**

### **3.1 Soliciting purchasers**

Part 2, Division 1, capital raising exemptions in NI 45-106 does not prohibit the use of registrants, finders, telemarketing or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under sections 2.4 or 2.5 (respectively, the private issuer exemption or the family, friends and business associates exemption) may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find purchasers under the family, friends and business associates exemption, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on the exemption.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemption, provided that all of the other conditions to that exemption are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

### **3.2 Soliciting purchasers – Newfoundland and Labrador and Ontario**

In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement set out in sections 2.44 and 3.9 of NI 45-106 are not available to a "market intermediary". A person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario the term "market intermediary" is defined in Ontario Securities Commission Rule 14-501 *Definitions*.

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities; the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities

legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

### **3.3 Soliciting purchasers – Manitoba, New Brunswick and Québec**

In Manitoba, New Brunswick and Québec the dealer registration exemptions in NI 45-106 are only available to dealers who limit their activity to trades in securities exempted by NI 45-106 and this activity is incidental to a dealer's primary activity. Therefore, it would be inappropriate for issuers to retain employees whose predominant purpose is to actively solicit numerous members of the public to determine their category of investor, for example their accredited investor status or their eligible investor status, and to sell them securities pursuant to an exemption.

### **3.4 Advertising**

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

### **3.5 Restrictions on finder's fees or commissions**

The following restrictions apply with respect to certain exemptions under NI 45-106:

- (1) no commissions or finder's fees may be paid to directors, executive officers, founders and control persons in connection with a trade made under the private issuer exemption or the family, friends and business associates exemption, except in connection with a trade to an accredited investor under the private issuer exemption; and
- (2) in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a trade to a purchaser in one of those jurisdictions under the offering memorandum exemption.

### **3.6 Accredited investor**

- (1) Individual qualification – financial tests

An individual is an "accredited investor" for the purposes of NI 45-106 if he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the "accredited investor" definition in section 1.1 of NI 45-106.

These branches of the definition are designed to treat spouses as a single investing unit, so that either spouse qualifies as an “accredited investor” if the combined financial assets, net income or net assets of both spouses exceed the \$1 000 000, \$300 000 or \$5 000 000 thresholds.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the “accredited investor” definition are intended to create “bright-line” standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

Paragraph (j) of the “accredited investor” definition refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 000 000. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual’s spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The following factors are indicative of beneficial ownership of financial assets:

- (a) physical or constructive possession of evidence of ownership of the financial asset;
- (b) entitlement to receipt of any income generated by the financial asset;
- (c) risk of loss of the value of the financial asset; and
- (d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the threshold test because paragraph (j) takes into account financial assets owned beneficially by a spouse. However, financial assets held in a group RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet these beneficial ownership requirements.

(4) Calculation of purchaser's net assets

To calculate a purchaser's net assets under paragraph (l) of the "accredited investor" definition, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the trade.

(5) Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

(6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the trade. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the trade is completed.

(7) Designation as an Accredited Investor

Paragraph (v) of the "accredited investor" definition in NI 45-106 contemplates that a person may apply to be recognized or designated by the securities regulatory authorities as an accredited investor. The securities regulatory authorities will consider applications for accredited investor recognition or designation submitted by or on behalf of persons that do not meet any of the other criteria for accredited investor status but nevertheless have the requisite sophistication or financial resources.

The securities regulatory authorities have not adopted any specific criteria for granting accredited investor recognition or designation to applicants as the securities regulatory authorities believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement and dealer registration requirement. Accordingly, the securities regulatory authorities expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority considers it appropriate in the circumstances it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.



### **3.7 Private issuer**

#### **(1) Meaning of “a member of the public”**

Whether or not a person is a “member of the public” must be determined on the facts of each particular case. The courts have interpreted “the public” very broadly in the context of securities trading. Whether a person is a “member of the public” will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to trade securities in reliance upon the private issuer exemption in section 2.4 of NI 45-106 to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the purchaser is not a “member of the public” in the circumstances.

#### **(2) Meaning of “close personal friends” and “close business associates”**

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

#### **(3) Business combination of private issuers**

Securities distributed in an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers to holders of securities of those issuers is not a distribution to members of the public provided that the resulting issuer is a private issuer.

Similarly, 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.

#### **(4) Acquisition of a private issuer**

Persons relying on the private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the distribution will not be considered to have been to a member of the public.

#### **(5) Ceasing to be a private issuer**

The term “private issuer” is defined in section 1.1 of NI 45-106. A private issuer can distribute securities only to the persons listed in section 2.4(1) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(1), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer exemption. For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers will still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates exemption (except in Ontario) or the accredited investor exemption. However, issuers that rely on these exemptions must file a report of exempt distribution with the securities regulatory authority in each jurisdiction in which the distribution took place.

### **3.8 Family, friends and business associates**

#### (1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemption in section 2.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

#### (2) Meaning of “close personal friends” and “close business associates”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

#### (3) Risk acknowledgement – Saskatchewan

Under section 2.6(1) of NI 45-106, the family, friends and business associates exemption in section 2.5 of NI 45-106 cannot be relied upon in Saskatchewan for a trade based on close personal friendship or close business association unless the person obtains a signed “risk acknowledgement” in the required form from the purchaser and retains the form for eight years after the trade.

### **3.9 Offering memorandum**

#### (1) Eligibility criteria - Alberta, Manitoba, Saskatchewan, Québec, Prince Edward Island, Northwest Territories and Nunavut

Alberta, Manitoba, Saskatchewan, Québec, Prince Edward Island, Northwest Territories and Nunavut impose eligibility criteria on persons investing under the offering memorandum exemption. In these jurisdictions, anyone can purchase up to \$10 000 worth of securities under the offering memorandum exemption. However, the purchaser must be an eligible investor if the purchaser’s acquisition cost is more than \$10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is

legally obligated to exercise or convert the securities. The \$10 000 maximum acquisition cost is calculated per distribution.

Nevertheless, concurrent and consecutive closely timed offerings to the same purchaser will usually constitute one distribution. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the \$10 000 threshold by dividing a subscription in excess of \$10 000 by one purchaser into a number of smaller subscriptions of \$10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or has \$400 000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the trade. Another way a purchaser can qualify, as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser's jurisdiction) that is authorized to give advice with respect to the type of security being distributed. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(2) Use of offering memorandum exemption by investment funds

Except in Newfoundland and Labrador, investment funds that are not reporting issuers or labour sponsored venture capital funds cannot use the offering memorandum exemption. In Saskatchewan, Manitoba and Québec, in addition to being a reporting issuer, an investment fund must be listed on a stock exchange or quoted on an over the counter market.

(3) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information

form (AIF), management's discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under 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 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

(4) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in subsection 2.9(11) of NI 45-106.

The certificate must be signed by each of the following: the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or chief financial officer, persons acting in those capacities), by all promoters of the issuer, and any two directors of the issuer. If the issuer has more than two directors, any two directors who are authorized to sign the certificate, other than the chief executive officer and chief financial officer, may sign on behalf of all of the directors. If the issuer does not have at least two directors other than the chief executive officer and chief financial officer, then all directors must sign the certificate.

"Promoter" is defined differently in provincial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under this exemption.

In the case of an exempt distribution by a limited partnership where the general partner is a corporation, the general partner is expected to sign as promoter and the chief executive officer, chief financial officer and directors of the general partner to sign in those capacities on behalf of the issuer.

(5) Consideration to be held in trust

The purchaser has the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser's cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer's responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(6) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority in each of the jurisdictions in which the issuer distributes securities under the offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(7) Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

### **3.10 Minimum amount investment**

An issuer may wish to trade more than one kind of security of its own issue, such as shares and debt, in a single transaction under the minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the trade, the exemption can be used notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

## **PART 4 - OTHER EXEMPTIONS**

### **4.1 Employee, executive officer, director and consultant exemptions**

Trustees, custodians or administrators who engage in activities contemplated by subsection 2.27(2) of NI 45-106 that bring together buyers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting "marketplaces" and "alternative trading systems".

### **4.2 Business combination and reorganization**

#### **(1) Broad interpretation**

The securities regulatory authorities interpret the phrase "statutory procedure" broadly and are of the view that the exemption can be used for all trades in securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the trades occur.

(2) Statutory procedure

Section 2.11 of NI 45-106 exempts trades in securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done “under a statutory procedure”. The securities regulatory authorities are of the view that the references to statutory procedure in section 2.11 of NI 45-106 are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the *Companies’ Creditors Arrangement Act* (Canada).

(3) Three-cornered amalgamations

Certain corporate statutes permit a so-called “three-cornered merger or amalgamation” under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. Section 2.11 of NI 45-106 exempts these trades as the exemption applies to any trade made in connection with an amalgamation or merger done under a statutory procedure.

(4) Exchangeable shares

A transaction involving a procedure described in section 2.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly the Canadian shareholders receive: shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder's choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the exemption in section 2.11 of NI 45-106 was available for all trades necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as

being "in connection with" the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities have taken the position that the statutory procedure exemption in section 2.11 of NI 45-106 is available for all trades of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section 2.11, even where such trades occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement ultimately represented a decision to exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in these circumstances.

#### **4.3 Asset acquisition - character of assets to be acquired**

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations cash assets that make up working capital could be considered in the total calculation of the fair market value.

#### **4.4 Securities for debt - *bona fide debt***

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt exemption may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

#### **4.5 Take-over bid and issuer bid**

##### **(1) Exempt bids**

Issuers are reminded that the terms take-over bid and issuer bid, for the purposes of section 2.16 of NI 45-106, include an exempt take-over bid and exempt issuer bid.



(2) Bids involving exchangeable shares

The take over bid and issuer bid exemption is available for trades necessary to complete a take over bid or an issuer bid that involves an exchangeable share structure (as described under the heading Business combination and reorganization (statutory procedure)), even where such trades may occur several months or even years after the bid is completed.

#### **4.6 Isolated trade**

The isolated trade exemption in section 2.31 of NI 45-106 is limited to trades made by an issuer in a security of its own issue. A comparable exemption from the dealer registration requirement is available under section 3.3. The latter exemption is available for trades in any security but it is not available to issuers to trade a security of its own issue.

It is intended that the isolated trade exemptions will only be used rarely and are not available for registrants or others whose business is trading in securities. Reliance upon this exemption might be appropriate, for example, when a person who is not involved in the business of trading wishes to make a single trade of a security that person owns to another person. The exemption would not be available to a person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.

#### **4.7 Mortgages**

NI 45-106 has specifically excluded syndicated mortgages from the mortgage exemption in section 2.37. In determining what constitutes a syndicated mortgage issuers will need to refer to the definition provided in Part 1 of NI 45-106.

The mortgage exemption does not apply to securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage exemption also does not apply to a trade in a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

#### **4.8 Not for Profit Issuer**

This exemption allows trades in securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit (“not for profit issuer”). To use this exemption, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised under this exemption for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for the

issuer may no longer be able to rely on the exemption. For example, an issuer that is organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer may be deemed unable to rely on this exemption. The same would also be true if one of an issuer's mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use this exemption, because no part of the issuer's net earnings can go to any security holder.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec). However, not for profit issuers that distribute outside of Québec must rely on the exemption in section 2.39 of NI 45-106.

#### **4.9 Exchange Contracts**

The exemption for exchange contracts in section 3.2 of NI 45-106 is only available in Alberta, British Columbia, Quebec and Saskatchewan. In Manitoba and Ontario exchange contracts are governed by commodity futures legislation.

The registration exemption for exchange contracts in section 3.2(1)(b) of NI 45-106 allows for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, while an unsolicited trade does not require registration, if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.

### **PART 5 – FORMS**

#### **5.1 Report of exempt distribution**

An issuer that has distributed a security of its own issue under any of the exemptions listed in section 6.1 of NI 45-106 is required to file Form 45-106F1 a “report of exempt distribution” on or before the 10th day after the distribution. The form contains detailed instructions on how to complete and file it.

The securities legislation of several provinces requires, in effect, that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority or, where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that

information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,

- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, or
- (c) in Quebec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or the regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I (“Schedule I”) discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Quebec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently the information listed in Schedule I will not be made publicly available.

## **5.2 Forms required under the offering memorandum exemption**

NI 45-106 designates two forms of offering memorandum the first, Form 45-106F2 is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under section 2.9(1) or 2.9(2) of NI 45-106 is Form 45-106F4.

The British Columbia securities regulatory authority has specified the same offering memorandum forms (Form 45-106F2 and Form 45-106F3) and risk acknowledgment form (Form 45-106F4) for use in that jurisdiction under B.C. Policy 13-601 *Required Forms*.

## **5.3 Real estate securities**

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

#### **5.4 Risk acknowledgement form respecting close personal friends and close business associates – Saskatchewan**

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 if the person intends to rely upon the “family, friends and business associates exemption” in section 2.5 of NI 45-106 based on a relationship of close personal friendship or close business association. The form of risk acknowledgement required in these circumstances is Form 45-106F5.

### **PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION**

#### **6.1 Resale restrictions**

In most jurisdictions, securities distributed under an exemption may be subject to restrictions on their resale. The particular resale, or “first trade”, restrictions depend on the parties to the trade and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt trade will be freely tradable.

Resale restrictions are imposed under Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102). While the Rule contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in MI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be traded under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

**Form 45-106F1**  
***Report of Exempt Distribution***

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

**Issuer information**

**Item 1:** State the full name, address and telephone number of the issuer of the security distributed. Include former name if name has changed since last report.

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

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

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

**Details of distribution**

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

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

**Item 6:** For each security distributed:

- (a) describe the type of security,

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

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

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

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

**Commissions and finder's fees**

**Item 8:** Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

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

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

**Item 9:** If different than the person signing the certificate to this form, state the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report.

**Item 10:** If a distribution is made in Ontario, please include the attached “Authorization of Indirect Collection of Personal Information for Distributions in Ontario”.

**Certificate**

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of issuer (please print)

\_\_\_\_\_  
Print name, title and telephone number of person signing

\_\_\_\_\_  
Signature

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

**Notice - Collection and use of personal information**

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

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



## **Authorization of Indirect Collection of Personal Information for Distributions in Ontario**

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

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

## Schedule I

Complete the following table.

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

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

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

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

**Instructions:**

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

## **Securities Regulatory Authorities and Regulators**

### **British Columbia Securities Commission**

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

### **Alberta Securities Commission**

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

### **Saskatchewan Financial Services Commission**

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

### **The Manitoba Securities Commission**

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

### **Ontario Securities Commission**

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

### **Autorité des marchés financiers**

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

**New Brunswick Securities Commission**

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

**Nova Scotia Securities Commission**

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

**Prince Edward Island Securities Office**

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

**Securities Commission of Newfoundland and Labrador**

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

**Government of Yukon**

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

**Government of Northwest Territories**

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

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

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

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

**The Issuer**

Name:

Head office:   Address:

                  Phone #:

                  E-mail address:

                  Fax #:

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

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

SEDAR filer? [Yes/No]

**The Offering**

Securities offered:

Price per security:

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

Payment terms:

Proposed closing date(s):

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

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

**Resale restrictions**

State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item10."

**Purchaser's rights**

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

State in bold type:

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

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



## Item 1: Use of Net Proceeds

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

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

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

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

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

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

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

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

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

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

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

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

### **2.5 Short Term Objectives and How We Intend to Achieve Them**

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

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

### **2.6 Insufficient Proceeds**

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

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

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

including the following information:

- (i) 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 that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder. If the issuer has not completed its first financial year then include compensation paid since inception. Compensation includes any form of remuneration including cash, shares and options.

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

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

Name	Principal occupation and related experience

**3.3 Penalties, Sanctions and Bankruptcy**

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

## Item 4: Capital Structure

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

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

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

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

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

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

**Item 5: Securities Offered**

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

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

**5.2 Subscription Procedure**

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

**Item 6: Income Tax Consequences and RRSP Eligibility**

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

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

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

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

### **Item 7: Compensation Paid to Sellers and Finders**

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

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

### **Item 8: Risk Factors**

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

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
  - arbitrary determination of price,

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

## **Item 9: Reporting Obligations**

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

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

## **Item 10: Resale Restrictions**

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

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



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

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

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

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

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

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

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

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

(b) you have held the securities for at least 12 months.

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

## **Item 11: Purchasers' Rights**

State the following:

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

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

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

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

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

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

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

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the

damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

### **Item 12: Financial Statements**

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

### **Item 13: Date and Certificate**

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

**This offering memorandum does not contain a misrepresentation."**

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),
- (b) on behalf of the directors of the issuer
  - (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a), or
  - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

Instructions for Completing  
Form 45-106F2  
*Offering Memorandum for Non-Qualifying Issuers*

**A. General Instructions**

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
3. The issuer may include additional information in the offering memorandum other than that specifically required by the form. However, the offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus.
4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
5. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
6. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about "directors", provide disclosure for the general partner(s) of the limited partnership and the trustee(s) and manager of the trust. If a general partner, trustee or manager is a corporation, provide disclosure of the directors and executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.
7. When the term "related party" is used in this form, it refers to:

- (a) a director, officer, promoter or control person of the issuer,
- (b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence,
- (c) in regard to a person referred to in (a) or (b), his or her spouse or a person with whom he or she is living in a marriage-like relationship,
- (d) an insider of the issuer,
- (e) a company controlled by one or more individuals referred to in (a) to (d), and
- (f) in the case of an insider, promoter or control person that is not an individual, any person that controls that insider.

(If the issuer is not a reporting issuer, the reference to "insider" includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.)

- 8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
- 9. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
- 10. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

## **B. Financial Statements - General**

- 1. All financial statements included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), regardless of whether the issuer is a reporting issuer or not.
- 2. Include all financial statements required in the offering memorandum immediately prior to the certificate page of the offering memorandum.
- 3. If the issuer has not completed one financial year, include the following financial statements of the issuer in the offering memorandum:

- (a) statements of income, retained earnings and cash flows for the period from inception to a date not more than 60 days before the date of the offering memorandum, and
  - (b) a balance sheet dated as at the ending date of the statements required by B.3(a).
- 4. If the issuer has completed one or more financial years, include the following financial statements of the issuer in the offering memorandum:
  - (a) statements of income, retained earnings and cash flows for the most recently completed financial year that ended more than 120 days before the date of the offering memorandum,
  - (b) a balance sheet as at the last day of the most recently completed financial year that ended more than 120 days before the date of the offering memorandum,
  - (c) statements of income, retained earnings and cash flows for the most recently completed interim period ending 9, 6, or 3 months before the end of the issuer's financial year, if that interim period ended more than 60 days before the date of the offering memorandum, and ended after the date of any financial statements required under B.4(a), and
  - (d) a balance sheet dated as at the ending date of the statements required by B.4(c).
- 5. If financial statements of the issuer for a more recent annual or interim period than those required by B.3 or B.4 have been prepared, include those more recent financial statements in the offering memorandum.
- 6. If the issuer has changed its year-end, refer to NI 51-102 for guidance concerning interim periods in a transition year. To satisfy B.4(c) in a transition year, provide financial statements for the most recently completed interim period that ended more than 60 days before the date of the offering memorandum and ended after the date of any financial statements required under B.4(a).
- 7. If the issuer has completed two or more financial years that ended more than 120 days from the date of the offering memorandum, the annual financial statements required under B.4(a) and (b) must include comparatives for the prior year. The interim financial statements required under B.4(c) and (d) may exclude comparatives if financial statements for the comparative periods were not previously prepared.
- 8. The annual financial statements required under B.4(a) and (b) must be audited in accordance with the requirements of NI 52-107. The audit report must be included in the offering memorandum. The financial statements required under B.3, B.4(c) and (d) and B.5 and the comparatives required by B.7 may be unaudited; however, if any of those

financial statements have been audited, the audit report on them must be included in the offering memorandum. Refer to National Instrument 52-108 *Auditor Oversight* for requirements for auditors of reporting issuers.

9. All unaudited financial statements must indicate in bold that the financial statements have not been audited.
10. If the offering memorandum does not contain audited financial statements for the issuer's most recently completed financial year, update the offering memorandum to include the annual audited financial statements and the audit report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end.
11. The offering memorandum does not have to be updated to include interim financial statements for periods completed after the date 60 days prior to the date of the offering memorandum unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.
12. Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum,
13. If the issuer is a limited partnership, include in the offering memorandum the financial statements required by Part B of the general partner and, if the limited partnership has active operations, of the limited partnership.

### **C. Financial Statements - Business Acquisitions**

1. If the issuer
  - (a) has acquired a business during the past two years and the audited and/or unaudited consolidated financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 12 consecutive months, or
  - (b) is proposing to acquire a business and either:
    - (i) is obligated to complete the acquisition, or
    - (ii) has the right to acquire the business and has decided to complete the acquisition,

include the financial statements specified in C.4 for the business if the test in C.2 is met, irrespective of how the issuer accounts for the acquisition.

2. Include the financial statements for a business referred to in C.1 if either:
  - (a) the issuer's proportionate share of the consolidated assets of the business exceeds 40% of the consolidated assets of the issuer calculated using the most recent annual financial statements of each of the issuer and the business before the date of the acquisition or proposed date of acquisition, or
  - (b) the issuer's consolidated investments in and advances to the business as at the date of the acquisition or the proposed date of acquisition exceeds 40% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the end of the issuer's most recently completed financial year that ended before the date of the acquisition or proposed date of acquisition.
3. Where an issuer or a business referred to in C.1 has not yet completed a financial year or has completed its first financial year that ended within 120 days of the offering memorandum date and financial statements for that year are not yet available, use the financial statements referred to in B.3(b) or B.4(d) to make the calculations in C.2.
4. If a business referred to in C.1 meets either of the threshold tests in C.2, include in the offering memorandum the following financial statements of the business:
  - (a) If the business has not completed one financial year include
    - (i) statements of income, retained earnings and cash flows for the period from inception to a date not more than 60 days before the date of the offering memorandum, and
    - (ii) a balance sheet dated as at the ending date of the statements required by C.4(a)(i).

However, if the date of acquisition for a business precedes the ending date of the period referred to in C.4(a)(i), then provide financial statements for the period from inception to the date of acquisition or a date not more than 30 days before the date of acquisition.

- (b) If the business has completed one or more financial years include
  - (i) statements of income, retained earnings and cash flows for the most recently completed financial year that ended before the date of acquisition and more than 120 days before the date of the offering memorandum,



- (ii) a balance sheet dated as at the ending date of the statements required by C.4(b)(i),
- (iii) statements of income, retained earnings and cash flows for either:
  - A) the most recently completed 3, 6 or 9 month interim period that ended before the date of acquisition and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under C.4(b)(i), or
  - B) the period from the first day after the financial year referred to in C.4(b)(i) to the date of acquisition or a date not more than 30 days before the date of acquisition, and
- (iv) a balance sheet dated as at the ending date of the statements required by C.4(b)(iii).

5. The annual financial statements required under C.4(b)(i) and (ii) must be audited in accordance with the requirements of Part 6 of NI 52-107. The audit report must be included in the offering memorandum. The financial statements required under C.4(a) and C.4(b)(iii) and (iv) may be unaudited; however, if any of those financial statements have been audited, the audit report must be included in the offering memorandum.
6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business" most recently completed financial year that ended before the date of acquisition, update the offering memorandum to include those financial statements and the audit report when they are available, but in any event no later than the date 120 days following the year end.
7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:
  - (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and
  - (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

8. If an acquisition or a proposed acquisition has been or will be accounted for as a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part B. The legal parent, as that term is defined in the CICA Handbook, is considered to be the business acquired. C.1 may require financial statements of the legal parent.
9. An issuer is exempt from the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

**D. Financial Statement - Exemptions**

1. An issuer will satisfy the financial statement requirements of this form if it includes the financial statements required by securities legislation for a prospectus.
2. Notwithstanding the requirements in section 3.2(2)1 of NI 52-107, an audit report on financial statements contained in an offering memorandum of a non-reporting issuer may contain a reservation relating to opening inventory unless the issuer previously filed an audit report on financial statements for the same entity for a prior year in which there was a reservation relating to inventory.
3. If an acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the CICA Handbook, financial statements for a business required by C.4 are not required to be included in the offering memorandum if:
  - (a) the offering memorandum includes disclosure for the periods for which financial statements are required under Part C that:
    - (i) summarizes the assets, liabilities and results of operations of the business, and
    - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
  - (b) the financial information provided under D.3(a) for any completed financial year has been audited, or has been derived from audited financial statements of the business; and
  - (c) the offering memorandum discloses that:
    - (i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the financial statements from

which the financial information provided under D.3(a) has been derived;  
and

- (ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was issued without a reservation of opinion.

If the financial information included in an offering memorandum under D.3(a) has been derived from financial statements of a business incorporated or organized in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information must be accompanied by a note that explains and quantifies the effect of material differences between Canadian GAAP and the foreign GAAP.

- 4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if:
  - (a) the required financial statements do not exist or the reporting issuer does not have access to those financial statements,
  - (b) the acquisition was not or will not be accounted for as a "reverse take-over" as defined in the CICA Handbook,
  - (c) the property did not or does not constitute a "reportable segment" of the seller, as defined in section 1701 of the CICA Handbook, at the time of acquisition, and
  - (d) the offering memorandum contains alternative disclosure for the property which includes:
    - (i) an operating statement (which must be accompanied by an audit report if it is prepared as an alternative to audited annual financial statements) presenting for the business, at a minimum, the following line items:
      - A) gross revenue,
      - B) royalty expenses,
      - C) production costs, and
      - D) operating income,

- (ii) information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates, and other relevant information regarding the property,
- (iii) actual production volumes of the property for the most recently completed year, and
- (iv) estimated production volumes of the property for the next year, based on information in the reserve report.

5. Financial statements for a business that is an interest in an oil and gas property or for the acquisition or proposed acquisition by an issuer of a property are not required to be audited if:

- (a) the property was acquired prior to December 31, 2000, and the offering memorandum states that, despite making reasonable efforts, the issuer was unable to obtain audited operating statements because the seller refused to provide such audited statements or to permit access to the information necessary to audit the statements, or
- (b) during the 12 months preceding the date of the acquisition or the proposed date of an acquisition, the daily average production of the property on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil) is less than 20 per cent of the total daily average production of the seller for the same or similar periods and:
  - (i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,
  - (ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and
  - (iii) the offering memorandum discloses
    - 1. that the issuer was unable to obtain an audited operating statement,
    - 2. the reasons for that inability,

3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(b)(ii), and
4. that the results presented in the operating statements may have been materially different if the statements had been audited.

**Form 45-106F3**  
*Offering Memorandum for Qualifying Issuers*

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

**The Issuer**

Name:

Head office:

Address:

Phone #:

E-mail address:

Fax #:

Where currently listed or quoted? [e.g., TSX/TSX Venture Exchange]

Jurisdictions in which the issuer is a reporting issuer:

**The Offering**

Securities offered:

Price per security:

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

Payment terms:

Proposed closing date(s):

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

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

**Resale restrictions**

State: "You will be restricted from selling your securities for 4 months and a day. See item 10".

**Purchaser's rights**

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

State in bold type:

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

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

## Item 1: Use of Net Proceeds

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

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

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

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

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

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

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

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

**Item 2: Information About** [name of issuer or other term used to refer to issuer]

**2.1 Business Summary** - Briefly (in one or two paragraphs) describe the business intended to be carried on by the issuer over the next 12 months. State whether this represents a change of business. If the issuer is a non-resource issuer, describe the products that the issuer is or will be developing or producing and the stage of development of each of the products. If the issuer is a natural resource issuer, state: whether the issuer's principal properties are primarily in the exploration or in the development or production stage; what resources the issuer is engaged in exploring, developing or producing; and the locations of the issuer's principal properties.

**2.2 Existing Documents Incorporated by Reference** - State:

“Information has been incorporated by reference into this offering memorandum from documents listed in the table below, which have been filed with securities regulatory authorities in Canada. The documents incorporated by reference are available for viewing on the SEDAR website at [www.sedar.com](http://www.sedar.com). In addition, copies of the documents may be obtained on request without charge from [insert complete address and telephone and the name of a contact person].

Documents listed in the table and information provided in those documents are not incorporated by reference to the extent that their contents are modified or superseded by a statement in this offering memorandum or in any other subsequently filed document that is also incorporated by reference in this offering memorandum.”

Using the following table, list all of the documents incorporated by reference (as required by Instruction D.1):

Description of document (In the case of material change reports, provide a brief description of the nature of the material change)	Date of document

**2.3 Existing Documents Not Incorporated by Reference** - State:

“Other documents available on the SEDAR website (for example, most press releases, take-over bid circulars, prospectuses and rights offering circulars) are not incorporated by reference into this offering memorandum unless they are specifically referenced in the table above. Your rights as described in item 11 of this offering memorandum apply only



in respect of information contained in this offering memorandum and documents or information incorporated by reference.”

**2.4 Existing Information Not Incorporated by Reference** - Certain specified information (as outlined in Instruction D.2) contained in the documents incorporated by reference may be, but is not required to be, incorporated by reference into the offering memorandum. If the issuer does not wish to incorporate that information into the offering memorandum, the issuer must state that and include a statement in the offering memorandum identifying:

- (a) the information that is not being incorporated by reference, and
- (b) the document in which the information is contained.

**2.5 Future Documents Not Incorporated by Reference** - State:

“Documents filed after the date of this offering memorandum are not deemed to be incorporated into this offering memorandum. However, if you subscribe for securities and an event occurs, or there is a change in our business or affairs, that makes the certificate to this offering memorandum no longer true, we will provide you with an update of this offering memorandum, including a newly dated and signed certificate, and will not accept your subscription until you have re-signed the agreement to purchase the securities.”

### **Item 3: Directors, Executive Officers, Promoters and Principal Holders**

**3.1** Using the following table, provide information about each director, executive officer, promoter and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a “principal holder”). If the principal holder is not an individual, state in a note to the table the name of any person or company that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

Name and municipality of principal residence	Position(s) with the issuer

**3.2** State: “You can obtain further information about directors and executive officers from [insert the name and date of the document(s) with the most current information, e.g., management information circular, annual information form or material change report].”

**3.3 State:** “Current information regarding the securities held by directors, executive officers and principal holders can be obtained from [refer to the SEDI website at [www.sedi.ca](http://www.sedi.ca) or, if information cannot be obtained from the SEDI website, refer to the securities regulatory authority(ies) from which the information can be obtained, including any website(s)]. [Name of issuer or other term used to refer to issuer] can not guarantee the accuracy of this information.”

#### **Item 4: Capital Structure**

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

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

#### **Item 5: Securities Offered**

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

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

#### **5.2 Subscription Procedure**

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).

- (c) Disclose any conditions to closing e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met.

## **Item 6: Income Tax Consequences and RRSP Eligibility**

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

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

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

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

## **Item 7: Compensation Paid to Sellers and Finders**

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

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

**Item 8: Risk Factors**

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

Risk factors will generally fall into the following three categories:

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

**Item 9: Reporting Obligations**

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

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

## Item 10: Resale Restrictions

For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and [Yukon] state:

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

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

## Item 11: Purchasers’ Rights

State the following:

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

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

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

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

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or

companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

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

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

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities.”

## **Item 12: Date and Certificate**

State the following on the certificate page of the offering memorandum:

“Dated [insert the date the certificate page of the offering memorandum is signed].

**This offering memorandum does not contain a misrepresentation.”**

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),
- (b) on behalf of the directors of the issuer
  - (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a), or
  - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**Instructions for Completing  
Form 45-106F3  
Offering Memorandum for Qualifying Issuers**

A. General Instructions

1. Only a "qualifying issuer" may use this form.
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 Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.
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 executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers



of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.

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 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

## **B. Financial Statements**

1. Any financial statements incorporated by reference into the offering memorandum must comply with NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.
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 the issuer's AIF, and audited financial statements for its most recently completed financial year, update the offering memorandum to incorporate by reference the document as soon as the document is filed on SEDAR.
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.1 unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.

**D. Information about the Issuer**

1. ***Existing Documents Incorporated by Reference*** - In addition to any other document that an issuer may choose to incorporate by reference, the issuer must incorporate the following documents:
  - (a) the issuer's AIF reflecting the issuer's most recently completed financial year for which annual financial statements are required to be filed,
  - (b) material change reports, except confidential material change reports, filed after the commencement of the issuer's current financial year,
  - (c) the interim financial statements for the issuer's most recently completed financial period for which the issuer prepares interim financial statements that are required to be filed,
  - (d) the financial statements, together with the accompanying auditor's report, for the issuer's most recently completed financial year for which annual financial statements are required to be filed,
  - (e) if, before the offering memorandum is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under 2.2(c) and (d) is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication,
  - (f) management's discussion and analysis (MD&A) as required under NI 51-102,
  - (g) each business acquisition report required to be filed under NI 51-102,
  - (h) except as provided in D.2, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings that, in each case, are required to be filed after the commencement of the issuer's current financial year,
  - (i) if the issuer has a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, technical reports, certificates and

consents required to be filed under NI 43-101 that, in each case, are required to be filed after the commencement of the issuer's current financial year, and

- (j) if the issuer has oil and gas activities, as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, all documents that it is required to file under NI 51-101 after the commencement of the issuer's current financial year.

An issuer may incorporate any additional document provided that the document is available for viewing on the SEDAR website and that, on request by a purchaser, the issuer provides a copy of the document to the purchaser, without charge.

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

- (a) under securities legislation, in an information circular or annual filing of:
  - (i) the repricing downward of options or free standing stock appreciation rights,
  - (ii) the composition of the compensation committee of the board of directors of the issuer and its report on executive compensation, or
  - (iii) a graph comparing the yearly percentage change in the issuer's cumulative total shareholder return on publicly traded securities with the cumulative total return of a broad equity market index of a published industry or line-of-business index or other issuers, and
- (b) by an exchange or other market on which the issuer's securities trade, in the issuer's information circular regarding the issuer's corporate governance practices.

Form 45-106F4

**Risk Acknowledgement**

- I acknowledge that this is a risky investment.
- I am investing entirely at my own risk.
- No securities regulatory authority has evaluated or endorsed the merits of these securities or the disclosure in the offering memorandum.
- The person selling me these securities is not registered with a securities regulatory authority and has no duty to tell me whether this investment is suitable for me.  
*[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- I will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting or if the purchaser is a Manitoba resident]*
- I could lose all the money I invest.

I am investing \$\_\_\_\_\_ [total consideration] in total; this includes any amount I am obliged to pay in future. \_\_\_\_\_ [name of issuer] will pay \$\_\_\_\_\_ [amount of fee or commission ] of this to \_\_\_\_\_ [name of person selling the securities] as a fee or commission.

**I acknowledge that this is a risky investment and that I could lose all the money I invest.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Purchaser

\_\_\_\_\_  
Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

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**You have 2 business days to cancel your purchase** *[Instruction: The issuer must complete this section before giving the form to the purchaser.]*

To do so, send a notice to [name of issuer] stating that you want to cancel your purchase. You must send the notice before midnight on the 2<sup>nd</sup> business day after you sign the agreement to purchase the securities. You can send the notice by fax or email or deliver it in person to [name of issuer] at its business address. Keep a copy of the notice for your records.

Issuer Name and Address:

Fax:

E-mail:

### **You are buying Exempt Market Securities**

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority.

There are restrictions on your ability to resell *exempt market securities*. *Exempt market securities* are more risky than other securities.

**You will receive an offering memorandum** Read the offering memorandum carefully because it has important information about the issuer and its securities. Keep the offering memorandum because you have rights based on it. Talk to a lawyer for details about these rights.

### **You will not receive advice** [*Instruction: Delete if sold by registrant*]

You will not get professional advice about whether the investment is suitable for you. But you can still seek that advice from a registered adviser or investment dealer. In Alberta, Manitoba, Northwest Territories, Prince Edward Island, Québec and Saskatchewan to qualify as an eligible investor, you may be required to obtain that advice. Contact the Investment Dealers Association of Canada (website at [www.ida.ca](http://www.ida.ca)) for a list of registered investment dealers in your area.

### **The securities you are buying are not listed** [*Instruction: Delete if securities are listed or quoted*]

The securities you are buying are not listed on any stock exchange, and they may never be listed. You may never be able to sell these securities.

**The issuer of your securities is a non-reporting issuer** *[Instruction: Delete if issuer is reporting]*

A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer.

For more information on the exempt market, call your local securities regulatory authority.

*[Instruction: Insert the name, telephone number and website address of the securities regulatory authority in the jurisdiction in which you are selling these securities.]*

***[Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.]***

**Risk Acknowledgement  
Saskatchewan Close Personal Friends and Close Business Associates**

I acknowledge that this is a risky investment:

- I am investing entirely at my own risk.
- No securities regulatory authority has evaluated or endorsed the merits of these securities.
- The person selling me these securities is not registered with a securities regulatory authority and has no duty to tell me whether this investment is suitable for me.  
*[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- I will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting]*
- I could lose all the money I invest.
- I do not have a 2-day right to cancel my purchase of these securities or the statutory rights of action for misrepresentation I would have if I were purchasing the securities under a prospectus.

I am investing \$\_\_\_\_\_ [total consideration] in total; this includes any amount I am obliged to pay in future.

I am a **close** personal friend or **close** business associate of \_\_\_\_\_ [state name], who is a \_\_\_\_\_ [state title - founder, director, executive officer or control person] of \_\_\_\_\_ [state name of issuer or its affiliate – if an affiliate state “an affiliate of the issuer” and give the issuer’s name].

I acknowledge that I am purchasing based on my close relationship with \_\_\_\_\_ [state name of founder, director, executive officer or control person] whom I know well enough and for a sufficient period of time to be able to assess her/his capabilities and trustworthiness.

**I acknowledge that this is a risky investment and that I could lose all the money I invest.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Purchaser

\_\_\_\_\_  
Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

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### **You are buying Exempt Market Securities**

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority.

There are restrictions on your ability to resell *exempt market securities*. Exempt market securities are more risky than other securities.

### **You may not receive any written information about the issuer or its business**

If you have any questions about the issuer or its business, ask for written clarification before you purchase the securities. You should consult your own professional advisers before investing in the securities.

### **You will not receive advice** *[Instruction: Delete if sold by registrant]*

Unless you consult your own professional advisers, you will not get professional advice about whether the investment is suitable for you.

### **The issuer of your securities is a non-reporting issuer** *[Instruction: Delete if issuer is reporting]*

A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer. You can only sell the securities of a non-reporting issuer in very limited circumstances. You may never be able to sell these securities.

### **The securities you are buying are not listed** *[Instruction: Delete if securities are listed or quoted]*

The securities you are buying are not listed on any stock exchange, and they may never be listed. There may be no market for these securities. You may never be able to sell these securities.

For more information on the exempt market, refer to the Saskatchewan Financial Services Commission's website at <http://www.sfsc.gov.sk.ca>.

*[Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.]*