APPENDIX B

Summary of Comments Received on Publication of Multilateral Instrument 45-103: September - November, 2002

On September 22, 2002, Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103") was published for comment in Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan and republished in Alberta and British Columbia. A total of 26 written comment letters were received. A summary of those comments and the responses of the CSA staff committee (the "Committee") considering MI 45-103 are set out below.

Issue	Comment Summary	Response
General comments on MI 45-103		
Additional restrictions on all exemptions	• One comment letter recommended that a minimum amount of documentation be required for any private placement, including - a description of the security, existing rights and exemption used, and - a copy of the CSA investor brochure regarding exempt market securities. • Two commentators recommended that investors under any exemption receive a risk acknowledgement. • One commentator recommended that all investors be eligible investors. • One commentator recommended that a right of withdrawal should apply to all exemptions. Another commentator suggested that statutory liability should apply to written material provided under any exemption. • One commentator recommended requiring the advice of an eligibility adviser where there is no disclosure and directors and officers are not personally liable.	• A statement of risks and a copy of the CSA's investor brochure may be useful items to provide to potential investors; however, the Committee did not think it essential that these additional requirements be mandated. The rationale for the family, friends and business associates exemption is that the investors are investing based on their relationship of trust with a principal of the company and are relying on that relationship to ensure that they are given the appropriate information. Given the rationale for the exemption, it did not seem necessary to impose a requirement that the investor also be an eligible investor or receive advice from an eligibility adviser. The rationale for the accredited investor exemption is that the investor has the ability to withstand the loss of an investment and, if the investor does not have the investment experience to evaluate the investment decision, at least has the financial resources to seek advice. The exemption assumes that an accredited investor who is not initially provided with sufficient documentation can request the documentation necessary to make an investment decision. • Although statutory civil liability does not currently apply to trades under most exemptions, securities legislation in most jurisdictions prohibits a misrepresentation from being made in

Issue	Comment Summary	Response
		connection with a trade. Civil liability and a right of withdrawal - protections afforded to public investors under a prospectus - were not imposed in connection with the family, friends and business associates and accredited investor exemptions because to do so seemed inconsistent with the rationales for providing those exemptions. Sales under those exemptions are permitted because we assume the investor does not need or expect most of the protections of securities legislation because they are investing either on the basis of a relationship of trust with a principal of the issuer or are able to withstand the loss of an investment and seek their own advice. • In the interests of harmonization, the Committee did not consider it necessary to impose statutory rights in respect of all exemptions in MI 45-103. However, this issue may be revisited in the context of the Uniform Securities Legislation project and, in particular, in light of the proposal for secondary market civil liability.
Harmonization	• Various comments were received commending the securities regulatory authorities for taking the initiative to harmonize the regulatory framework governing exemptions, thereby permitting more efficient private market financings and giving small business greater financing scope and flexibility. • One commentator expressed concern that the fact that MI 45-103 is not adopted in Ontario and Quebec will create regulatory burdens on issuers and a certain amount of confusion. An example of this is the differences between the private issuer exemption in MI 45-103 and the closely-held issuer exemption in OSC Rule 45-501 *Exempt Distributions*. • The commentator also expressed concern over the differences within MI 45-103 between jurisdictions, such as the eligibility criteria in the offering memorandum exemption.	• One of the goals in formulating MI 45-103 was to harmonize with OSC Rule 45-501 to the extent possible. We expect the two instruments to be revisited in the context of the Uniform Securities Legislation project and are hopeful that harmonization with Ontario and Quebec can be achieved at that time. • Harmonizing the regulation of the exempt market has been a challenging endeavour as there are some substantial differences in the nature of the capital markets in the various jurisdictions. Further, in many of the jurisdictions, MI 45-103 represents a significant change from the prior exempt market regimes. However, most of the differences between jurisdictions in MI 45-103 have now been eliminated. The Committee is hopeful that further differences may be eliminated as each jurisdiction gains experience with the instrument.

Issue	Comment Summary	Response
Existing local exemptions	• Although commentators supported adoption of MI 45-103, a number of commentators in MB, NS and SK recommended that existing local exemptions, e.g., the community ventures program, offering memorandum, informed purchaser, exempt purchaser, incorporator, control person, promoter, and $97,000 or $150,000 exemptions be retained.	• The MSC, NSSC and SSC do not anticipate immediately repealing existing local exemptions. Some jurisdictions anticipate monitoring or reviewing use of the new exemptions in MI 45-103 before recommending repeal of existing local exemptions. If it is determined that a $97,000 or $150,000 exemption should be retained indefinitely, the Committee is hopeful that a harmonized exemption can be adopted.
Advertising	• Two commentators believed that the ability to advertise in connection with use of the exemptions in MI 45-103 was beneficial as it allowed issuers to delay the preparation of costly offering documents until there was sense of whether investors would be interested in the offering.	• The Committee agrees.
Exemption:	**Private issuer**	
Restriction on commissions	• Three comments were received objecting to the restrictions on commissions. It was suggested that private issuers will not be aware of the restriction and that the matter is sufficiently dealt with in corporate law.	•The unique SK restriction prohibiting any commissions under the private issuer exemption has been removed. The restriction that remains does not prevent the payment of commissions in regard to trades to accredited investors nor does it restrict the payment of a commission to a party other than a director, officer, founder or control person. The Committee is of the view that it is not appropriate to pay commissions to directors, officers, founders and control persons in respect of sales to their family, friends and business associates or to other people who are not the public.
Permitted placees	• It was suggested that the list of permitted placees be expanded to include other in-laws, cousins and persons approved by the securities regulatory authority. • It was suggested that the exemption permit securities to be issued on acquisitions or mergers of private issuers. • It was also suggested that a private issuer should be permitted to rely on other exemptions without losing its private issuer status.	•We have not specifically added in-laws and cousins to the list of permitted placees. However, the companion policy now clarifies that those close family members not specifically listed, can be considered “close personal friends” if they have known the director, senior officer, founder or control person well enough and for a sufficient period of time to be in a position to assess his or her capabilities and trustworthiness. • Using the exemption in connection with the merger of private issuers is addressed in the companion policy. •The Committee disagreed with the suggestion that the list of permitted placees should be further expanded. The main

Issue	Comment Summary	Response
		advantages to an issuer of retaining private issuer status is that the issuer is not required to file a report of exempt distribution and its designated security holders are permitted to trade securities amongst themselves. These advantages are provided in order to minimize the regulation of private issuers. However, if the issuer sells designated securities to persons or companies not listed in the exemption, the Committee considers it appropriate that the issuer cease to have the advantages of a private issuer such that it must report those trades and its holders of designated securities should lose the ability to trade the securities amongst themselves.
Exclusion of mutual funds	• Mutual funds that are otherwise private issuers should not be excluded from the definition of private issuer.	•Mutual funds have been excluded from the definition of private issuer in a number of jurisdictions for many years. However, in many jurisdictions, an additional exemption exists for the sale of securities of a private mutual fund. The Committee is not aware of a reason why mutual funds need to rely on the private issuer exemption.
Definition of private issuer	• It is unclear whether the reference to securityholders' agreement requires an agreement between all or just some of the security holders.	•The Committee believes the section, as currently worded, clearly requires that all the designated securities be subject to restrictions on transfer.
SK risk acknowledgement	• A number of commentators recommended the elimination of the SK risk acknowledgement form under the private issuer exemption.	• The SSC will harmonize with the other jurisdictions, eliminating the requirement for a risk acknowledgement form under the private issuer exemption.
MB local provisions	• The term "senior officer" needs to be defined in Manitoba if it is to be used in this exemption.	• The term is defined in Manitoba securities legislation.
Exemption:	**Family, friends and business associates**	
Permitted placees	• The list of permitted family members should be expanded to include other relatives such as cousins, aunts, uncles, sisters-in-law and brothers-in-law. •One commentator asked whether a company could qualify as a close personal friend.	• As indicated above in respect of the private issuer exemption, we have not added in-laws and cousins to the list of permitted family members. However, the companion policy now clarifies that close family members that are not specifically listed as permitted placees, can be considered as falling within the term "close personal friend" if the necessary relationship exists with that family member. • The Committee does not believe that companies would constitute close personal friends; however, companies

Issue	Comment Summary	Response
		controlled by individuals with the necessary relationship are specifically referred to as permitted placees under the exemption.
Restrictions on commissions	• Directors and officers should be permitted to obtain commissions for selling to family and friends provided that the investor acknowledges the fee in writing.	• The Committee disagrees with allowing directors, officers, founders and control persons to obtain commissions for selling securities to their family, friends and business associates. The rationale for the exemption is that the purchaser has a relationship with a director, officer, founder or control person that permits an assessment of their capabilities and trustworthiness and that the purchaser will rely on that relationship to obtain the information necessary to make an investment decision. The payment of a commission increases the risk of a conflict of interest and may impact the ability of the purchaser to rely on that relationship to obtain information.
SK unique provisions	• A number of commentators believed that the proposed SK risk acknowledgement form was an improvement over the current system in SK. Other commentators questioned the need for a SK risk acknowledgement form. • A number of commentators strongly opposed the requirement to describe (on the report of exempt distribution) the nature of the relationship. • One commentator recommended the removal of the Saskatchewan two day cancellation right for trades to friends and business associates.	• The SSC believes that the SK risk acknowledgement form is necessary and will require a SK risk acknowledgement form from SK purchasers under the family, friends and business associates exemption. However, the risk acknowledgement form will not require a description of the relationship, just a statement of the person with whom the necessary relationship exists and his or her position with the issuer. • The SSC will not require a description of the nature of the relationship on the report of exempt distribution. • To harmonize with the other jurisdictions, the SSC will not impose a two day cancellation right with regard to trades under the family, friends and business associates exemption.
Exemption:	**Offering memorandum**	
Balancing investor protection and efficient capital raising	• One commentator expressed concern that under the new offering memorandum exemption, retail investors may be exposed to significant risk because there is no requirement for a registrant to be involved. The commentator believed that registrants provide additional investor protection because they are required to comply with the “know your client” rule and to only recommend securities suitable to the	• Issuers advised that mandating registrant involvement was not a viable option as many registrants are not interested in assisting with small private financings and that this is particularly so if the issuer is not public and has no immediate plans to become public. The risk acknowledgement form is intended to alert investors to the potential risks of investing and, in particular, the fact that no one is assessing the suitability of investment for the investor. It advises potential

Issue	Comment Summary	Response
	investment objectives and risk tolerance of clients. However, the commentator conceded that allowing non-registrants to sell exempt securities augments the effectiveness of capital raising as non-registrants are more inclined to actively participate in small sized private placements than dealer registrants. The commentator suggested that the involvement of non-registrants may reduce the up-front costs but may increase the back end costs if something goes wrong. • The commentator recommended that the securities regulatory authorities carefully monitor financing activity under the exemption to assess its effectiveness and the associated risks to investors.	investors that they can seek advice and tells them to contact the IDA for a list of registered investment dealers in the area. In addition, except in BC and NS, an investor under the offering memorandum exemption is limited to a $10,000 investment unless the investor meets certain financial tests or obtains advice from a registered dealer. The jurisdictions believe these protections will serve investors. • Since implementation of MI 45-103 in AB and BC, the ASC and BCSC have been monitoring use of the offering memorandum exemption. A number of the other jurisdictions anticipate that they will also monitor its use once adopted.
Offering memoranda - financial statement requirement	• Three MB commentators questioned the need for audited financial statements in the non-qualifying issuer offering memorandum and thought that the requirement was too onerous. They recommended that the financial statements be subject to a review engagement report by an independent professional accountant and that the investor acknowledge that the statements are not audited. • One of those commentators observed that previous research has suggested that investors in small business tend to focus primarily on the business acumen of the principals and the perceived prospects for the small business in the context of the market it is trying to service. The commentator believes that these additional costs will operate as a serious deterrent to small business offerings. It was suggested that the requirement for an audit might be triggered if a certain dollar amount was being raised.	• The offering memorandum exemption in MI 45-103 requires audited financial statements for businesses that have been in operation for a year or more. Currently, in MB, audited financial statements are not necessarily required for the sale of securities under the local offering memorandum exemption. The Committee determined that, in the interests of uniformity, the requirement in MI 45-103 for audited financial statements would be maintained. However, the MSC intends to retain the existing local prospectus exemptions for a period of time. The local exemptions will co-exist with the exemptions in MI 45-103. Some of the jurisdictions may monitor the impact of the financial statement requirements in MI 45-103 and it is expected that the issue will also be considered by the CSA's proportionate regulation committee.

Issue	Comment Summary	Response
Offering memoranda - material contracts	• A comment was made suggesting that the disclosure of material contracts required in Form 45-103F1 be the same as in the prospectus form and, in particular, that contracts entered into in the ordinary course of business not be required to be disclosed.	• Only material contracts are required to be disclosed in an offering memorandum. The prospectus form may require disclosure of other contracts. The Committee believes the distinction between the offering memorandum and prospectus forms is appropriate. If a material contract is properly disclosed elsewhere in an offering memorandum, it only needs to be listed in the material contract section with a cross-reference to where in the offering memorandum the appropriate disclosure is contained.
Exclusion of mutual funds from use of exemption	• Two MB commentators recommended that mutual funds be permitted to use the offering memorandum exemption and suggested that a separate simplified disclosure form should be created as soon as possible for mutual fund issuers.	• At this time, BC and NS will permit mutual funds to use the offering memorandum exemption. However, BC and NS may reconsider this position. Concern exists that if mutual funds are permitted to use the offering memorandum exemption they can avoid ever becoming a reporting issuer and providing continuous disclosure. In connection with other projects, certain of the jurisdictions expect to consider the use of exemptions by mutual funds and may develop alternative regimes for mutual funds.
$1 million cap in SK, NWT and NU	• Most commentators recommended that the cap be increased to $5 million or eliminated. The commentators believe the $1 million cap results in under funding and that small businesses often need a number of rounds of financing. A number of SK commentators recommended that certain continuous disclosure obligations, (e.g., annual and semi-annual financial statements) as currently imposed in SK, apply to a non-reporting issuer if the issuer has raised over a certain amount of money. • One commentator recommended that all jurisdictions should impose a $1 million cap unless an investment dealer sells the offering.	• SK, NWT and NU determined that it was appropriate to increase the maximum amount that could be raised under the offering memorandum exemption and, in the interests of harmonization, determined not to impose a maximum. • In the interests of harmonization, the SSC will not impose continuous disclosure obligations on non-reporting issuers. • The Committee considers that there are sufficient other investor protections in the instrument that it is not necessary to require the involvement of an investment dealer in offerings over $1 million. Prior consultation with market participants has suggested that investment dealers may not be interested in smaller offerings and that this requirement could be a barrier to capital formation.

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Only eligible investors can purchase over $10,000	• Most commentators recommended that any investor should be permitted to invest up to $10,000. One commentator suggested that any investor should be permitted to invest any amount. One commentator suggested that all investors should be required to be eligible investors.	• BC and NS have determined to permit any investor to invest any amount under the offering memorandum exemption. Each of the other jurisdictions has determined to permit any investor to invest up to $10,000 and to only permit eligible investors to invest over that amount.
Definition of "eligible investor"	• Certain commentators in MB expressed concerns that the financial tests for eligible investors were too high and should be revised downwards to reflect local demographics. • One commentator requested guidance as to how to establish that an investor is an eligible investor	• In the interests of harmonization, the Committee determined to maintain the existing financial tests for eligible investors in MI 45-103. However, certain jurisdictions acknowledged that the financial tests might be somewhat high in their jurisdictions. In certain of the jurisdictions, some existing local exemptions will be retained to address this issue. In addition, in some circumstances a local application for discretionary relief may be considered. • The companion policy provides guidance as to how to establish that an investor is an eligible investor.
Definition of "eligibility adviser"	• All SK and MB comments on this issue supported allowing lawyers and accountants to provide independent advice. One commentator suggested that the proposed restrictions on their ability to provide advice when they have acted for the issuer in the past should be reconsidered because of the relatively small size of the professional community and that the issue of conflict of interest is addressed by professional conduct rules	Lawyers and accountants will continue to qualify as eligibility advisers in SK and MB. The proposed restrictions on prior involvement by the lawyer or accountant with the issuer were considered appropriate and have been retained.
Resale restrictions	• Two commentators expressed concern that MI 45-103 imposes resale restrictions where none currently exist. One commentator suggested that the MB resale restrictions should be no more onerous than they are currently and no more onerous than exist in BC and Alberta and considered hold periods necessary for control persons and insiders.	• The MB resale restrictions in MI 45-103 have been amended to more accurately track the current resale restrictions in the MB seed capital exemptions.
Exemption:	**Accredited investor**	
Threshold income or asset	• Five commentators believed that the threshold income and asset tests were too high relative to the	• In the interests of harmonization, the Committee determined to maintain the existing financial tests for accredited investors.

Issue	Comment Summary	Response
tests for accredited investors	average net worth and net income levels in certain local jurisdictions.	However, certain jurisdictions acknowledged that the financial tests may be somewhat high in their jurisdictions. In certain of the jurisdictions, some of the existing local exemptions, including the $97,000 or $150,000 minimum purchase exemption, will be retained, at least for a period of time, while the use of these exemptions is monitored.
Portfolio managers and trust companies	• Most commentators supported expanding the deeming provision to allow foreign portfolio managers and trust companies to be deemed to be purchasing as principal when purchasing for fully managed accounts and considered that it was not necessary to impose any additional restrictions on the foreign portfolio managers and trust companies. • One commentator suggested that the foreign portfolio manager should either be required to be registered in a jurisdiction of Canada or meet the tests in BC Instrument45-504 *Trades to Trust Companies, Insurers and Portfolio Managers Outside British Columbia*. • One commentator noted that allowing foreign portfolio managers to be deemed to be purchasing as principal would not provide an exemption from the requirement to be registered to trade in securities or advise in relation to securities.	• MI 45-103 has been revised to permit foreign portfolio managers and trust companies to be deemed to be purchasing as principal when purchasing for accounts that are fully managed by them. • The Committee agrees that this change does not in any way suggest that a foreign portfolio manager or trust company is exempted from the requirement to be registered to advise or trade and, accordingly, a statement to that effect has been added to the companion policy.
Insurance companies	• Seven commentators recommended allowing insurance companies to also be deemed to be purchasing as principal when purchasing for accounts fully managed by them because insurance companies invest on behalf of accounts and have investment expertise. One commentator recommended that it be restricted to insurance companies organized in Canada.	• Insurance companies have not been deemed to be purchasing as principal when purchasing for accounts fully managed by them. The Committee understands that insurance companies purchase securities on behalf of segregated accounts but do so as principal. Accordingly, a deeming section is not necessary.

Issue	Comment Summary	Response
Registered charities	• A number of commentators recommended that registered charities be included as accredited investors. The commentators advised that charities receive donations of shares and stock options and that if these donations constitute trades, there needs to be a way for charities to obtain these securities. • Two commentators suggested that although some charities have sophisticated boards of trustees, not all charities do and that accordingly, charities should only be included as accredited investors if they meet certain size tests or have demonstrated investment acumen.	• The Committee believes that many charities may meet the accredited investor definition without an additional specific reference in the definition. For example, the definition of accredited investor includes persons or companies with $5 million in net assets. A charity that had $5 million in net assets may be able to rely on this prong of the definition. A charity that is a trust may also qualify under the current definition of an accredited investor. However, to enable other charities to qualify as accredited investors while addressing concerns that not all charities have sophisticated boards of trustees, MI 45-103 will provide that a registered charity is an accredited investor if it receives investment advice from an eligibility adviser or a registrant qualified to provide advice on the securities distributed.
Credit unions	• Two commentators requested that credit unions and associations under the *Cooperative Credit Associations Act* (Canada) be included as accredited investors. Bill C-8 has defined the term "association" to only include associations incorporated under that Act and not to central cooperative credit societies registered under that Act. Consequently, Credit Union Central of Saskatchewan is no longer an association for the purposes of the definition of accredited investor.	• The definition of accredited investor includes Canadian financial institutions. That term is defined in National Instrument 14-101 *Definitions* to include a credit union authorized to carry on business in Canada or a jurisdiction of Canada. However, to address the concern, the definition of accredited investor has been amended to also include "an association under the *Cooperative Credit Associations Act* (Canada) located in Canada or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act."
Other categories of accredited investor	• A NS commentator requested that the definition of accredited investor be expanded to include a Nova Scotia Community Economic Development Investment Fund that has received a letter of non-objection and closed on an offering. A SK commentator recommended that the definition of accredited investor be expanded to include type A venture capital companies under *The Labour-sponsored Venture Capital Corporations Act* (Saskatchewan), Indian bands, capital pool companies and venture capital companies with net assets of less than $5 million.	• In the interests of uniformity and because full details of the nature of each of the funds or pools is not known, the definition of accredited investor in MI 45-103 has not been expanded to incorporate each of the unique local funds or pools. However, some of these entities may constitute accredited investors under the existing definition. Applications by entities that have a status equivalent to that of an accredited investor will be considered on a case-by-case basis. In some jurisdictions, an application for exempt purchaser status may also be considered. • The BCSC is considering designating VCCs registered under

Issue	Comment Summary	Response
		BC's SBVC Act as exempt purchasers.
General		
RRSPs	• One commentator recommended that a general exemption permitting trades to RRSP accounts should be available provided that the annuitant is an eligible investor.	• The definition of accredited investor includes trusts. Accordingly, RRSPs that are trusts may qualify as accredited investors. Under the private issuer exemption, family, friends and business associates exemption and offering memorandum exemption, trades may be made by the issuer to a trust or estate in which all of the beneficiaries or a majority of the trustees are permitted placees. Furthermore, under the private issuer exemption and family, friends and business associates exemption, trades from a permitted placee to his or her RRSP may also be allowed if the trade is to a trust or estate in which all of the beneficiaries or a majority of the trustees are permitted placees. The Committee believes that providing an exemption in other circumstances is beyond the scope of MI 45-103. It is anticipated that this broader issue will be addressed in the context of the Uniform Securities Legislation project. In the interim, the BCSC has issued a statement indicating that it does not consider transfers to RRSPs to constitute trades. The ASC has issued a rule that provides exemptions for certain trades to RRSPs, RRIFs and RESPs. Certain other jurisdictions will consider issuing a local statement or ruling.
Closely-held issuer exemption	•Two commentators recommended adoption of the OSC's closely-held issuer exemption. However, the commentators acknowledged that the exemption may permit certain abuses and that additional restrictions may be necessary.	• We believe that the exemptions in MI 45-103 provide a flexible method by which closely-held issuers may raise seed capital while still providing adequate investor protection. We do not believe it is appropriate to provide an exemption that requires no relationship with the principals of an issuer, no ability to withstand loss, no investment acumen, no disclosure of the issuer or its business and no investment advice.
Statutory prohibition on unfair trade practices	• Four MB commentators recommended against a legislative amendment to prohibit unfair trade practices. The commentators believe the proposed provision is too vaguely worded.	• The MSC will consider these comments. The proposed language currently exists in the BC *Securities Act* and was drawn from similar provisions in consumer protection legislation in BC. The language adopted in each of the jurisdictions will be varied as considered appropriate by the

Issue	Comment Summary	Response
		local legislature.
Filing fees	• One commentator recommended that filing fees in connection with exemptions should be minimal and another recommended that they should be standardized or summarized in connection with MI 45-103.	• Harmonization of fees was considered to extend beyond the scope of MI 45-103. Refer to the jurisdictions' fee schedules.
Reports of exempt distribution	• Two commentators questioned the need to file a report of exempt distribution for pooled funds within 10 days of the trade since there are no insiders or control persons.	• The Committee proposes to amend MI 45-103 to provide that with regard to sales under the accredited investor exemption, the report of exempt distribution may be made on an annual basis. With regard to other exemptions in MI 45-103, the report of exempt distribution will be required within 10 days of the distribution. Timely receipt of the report of exempt distribution is necessary in order to monitor use of these exemptions and to identify areas of concern.
Local rules		
BC specific comments	• One commentator recommended that the names of private investors not be published as the publication of their names can then result in their being cold called. The names of these persons should not be published. The disclosure of directors, officers and 10% holders is acceptable. • The commentator also recommended that the local BC Form 45-902F should be replaced with Form 45-103F4 to reduce confusion and simplify the process. If possible, the collection of personal phone numbers and e-mail addresses should be eliminated as the information is difficult to obtain and not relevant to the purchase of securities.	• None of the jurisdictions now intend to publish the names of investors. • In order to harmonize, the BCSC will adopt Form 45-103F4. However, as part of its monitoring program, the BCSC intends to request the phone numbers and e-mail addresses of investors under the offering memorandum exemption. The BCSC anticipates that this will be a temporary requirement.
SK specific comments	• One commentator recommended a policy, rule or order setting out the grounds on which the SSC will approve applications to be deemed a reporting issuer and suggested that issuers that have complied for a period (e.g. 2 years) with continuous disclosure requirements should more or less automatically be designated a reporting issuer.	• The SSC expects to consider this issue. A number of jurisdictions require that an issuer file a non-offering prospectus in order to attain reporting issuer status.

List of persons from whom written comments were received:

Addressed to ASC
1. Investment Dealers Association (IDA), Joseph Oliver

Addressed to BCSC
2. Watson Goepel Maledy, James Harris
3. Frank Russell Canada Limited , Edith Cassels
4. Cypress Capital Management, Cynthia Hawley
5. Science World, David Raffa
6. Endeavour Financial Ltd., Gordon Keep

Addressed to MSC
7. Taylor McCaffrey, Barristers & Solicitors, Ronald Coke
8. Bieber Securities Inc., Guy Bieber
9. Winnipeg Chamber of Commerce, Robert Kreis
10. Pitblado, Barristers & Solicitors, Thomas Kormylo
11. Aikins MacAulay & Thorvaldson, Steven London
12. Thompson Dorfman Sweatman, Bruce Thompson

Addressed to NSSC
12. IDA, Nova Scotia District Council, Joseph Oliver
13 CBA, Nova Scotia Branch, Securities Law Subsection, Jeannine Bakeeff and David Thompson14 Stewart McKelvey Stirling Scales, Barristers, Solicitors and Trademark Agents, Nova Scotia office, Andrew Burke
15. Nova Scotia Office of Economic Development, Robert MacKay

Addressed to SSC
16. Union Securities
    (a) Frank Stronach
    (b) Alan Cruickshank
17. Kanuka Thuringer, Laurance Yakimoswki,
18. Saskatchewan Agriculture Food and Rural Revitalization, Garth Lipinski
19. Saskatchewan Industry and Resources, Marv Weismiller
20 McKercher, McKercher & Whitmore, Paul Grant
21. McDougall Gauley
    (a) J.J. Dierker Q.C.
    (b) Bill Nickel

22. Moose Jaw REDA Inc., James Leier
23. Greystone Capital Management Inc., William Wheatley
24. Community Pork Ventures Inc., Charlene Wicks

Abbreviations used in summary of comments:

AB - Alberta
ASC - Alberta Securities Commission
BC - British Columbia
BCSC - British Columbia Securities Commission
CSA - Canadian Securities Administrators
IDA - Investment Dealers Association
MB - Manitoba
MSC - Manitoba Securities Commission
NS - Nova Scotia
NU - Nunavut
NWT - Northwest Territories
OSC - Ontario Securities Commission
RESP - registered education savings plan
RRIF - registered retirement income fund
RRSP - registered retirement savings plan
SK - Saskatchean
SSC - Saskatchewan Securities Commission, now the Saskatchewan Financial Services Commission

Addendum

After receipt of the initial comments, the securities regulatory authorities in Saskatchewan, Northwest Territories and Nunavut determined to eliminate many of the additional conditions that had been proposed in the September 22, 2002 publication of MI 45-103. The Saskatchewan Securities Commission considered that the changes it was making were material and that it therefore needed to republish the instrument for a further comment period. On January 17, 2003, a revised version of MI 45-103 was published for comment in Saskatchewan. Four comment letters were received. The comments and the response to those comments are summarized in the following table.

Issue	Comment Summary	Response
Harmonization	• One commentator commended the securities regulatory authorities for the efforts at harmonization and the SSC for removing many of the differences that existed in the September 2002 publication. However, the commentator was very disappointed that differences continue to exist between jurisdictions within MI 45-103 and that there is not complete uniformity, for example, the different treatment afforded to mutual funds. The commentator called for all the securities regulatory authorities to reach complete uniformity as the lack of it ultimately increases cost to investors and decreases investment opportunities.	• The Committee is hopeful that further harmonization will be achieved with the Uniform Securities Legislation project after each of the jurisdictions have had an opportunity to become more comfortable with MI 45-103.
Change in definition of private issuer	• One commentator noted that the definition of private issuer in MI 45-103 differs from the current SK definition. In the current SK definition, the issuer's articles must prohibit invitations to the public, however, if an issuer has sold securities to the public, it may still technically meet the definition of private issuer. Under the definition of private issuer in MI 45-103, an invitation to the public is not prohibited; however, to rely on the exemption, the issuer must not have actually traded securities to anyone other than those on the list of permitted placees. There is a change in the test from " to whom are the securities offered" to one of "who holds the securities". This new test requires the issuer to police secondary trades of securities to ensure that there is a sufficient nexus with	• The definition has been changed to harmonize with other jurisdictions. The Committee does not think it appropriate for an issuer to distribute designated securities to purchasers other than those on the list of permitted placees and still retain private issuer status. Under the current SK definition, we believe the prohibition on "invitations to the public" was intended to prohibit both advertisements and sales to the public. The expectation would be that an issuer that sold securities to the public would need to amend its articles and would then cease to be a private issuer. Whether it is technically possible or not, it does not seem appropriate that an issuer might sell securities to the public but retain its private issuer status by not amending its articles. The new definition of private issuer seems

Issue	Comment Summary	Response
	subsequent holders of its shares so as not to lose its private issuer status. • The commentator was concerned that a small business that is no longer a private issuer may not be able to engage in a sale of its business by shares. • The commentator recommended that the list of permitted placees include someone who the SSC has determined, on application, is acceptable.	appropriate as it eliminates this possibility. • The SSC has adopted the private issuer in this form to be uniform with other jurisdictions. Other exemptions will continue to be available to an issuer that is not a private issuer that wishes to conduct a sale of all of its shares. The SCC will monitor complaints in this regard and address the issue if it becomes an unfair restriction on issuers. The SCC will also bring this issue up again in the context of the Uniform Securities Legislation project. • We do not think the application process suggested is necessary as the SSC already has in its legislation the ability to grant exemptions for transactions.
Restrictions on commissions under the family, friends and business associates exemption	• One commentator urged the SSC to reconsider the prohibition on commissions under the friends, family and business associates exemption and adopt the prohibition on payment to "insiders" of the issuer only as is the case in other jurisdictions. Reference was made to paying a person to prepare the business plan and the payment for the plan being tied to the amount of funds raised.	• The SSC continues to be of the view that this restriction is important. There is no prohibition on the reimbursement of the actual costs of sellers. The restriction only applies to the payment of commissions or finder's fees to sellers and would not effect the payment in the example provided. There is concern about the development of an industry of unregistered persons who sell only securities under this exemption and are paid on a commission or finder's fee basis. Such an industry would not be subject to the proficiency or know your client and suitability requirements that registrants are subject too.
SK risk acknowledgement under the family, friends and business associates exemption	• One commentator urged the SSC to remove this unique requirement. The commentator indicated that until the other jurisdictions felt this was needed it should not be required as it was a burden on small issuers.	• The SSC believes that the SK risk acknowledgement form is necessary and will require a SK risk acknowledgement form from SK purchasers under the family, friends and business associates exemption. However, the risk acknowledgement form will not require a description of the relationship, just a statement of the person with whom the necessary relationship exists and his or her position with the issuer. • The SSC will not require a description of the nature of the relationship on the report of exempt distribution. • The SSC believes that the requirement provides an

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		appropriate balance between investor protection and the needs of issuers to raise capital.
Restrictions on commissions under the offering memorandum exemption	• Two commentators were pleased that the SSC had removed many of the restrictions set out in the September 2002 publication. However, one commentator urged the SSC to reconsider the prohibition on commissions under the offering memorandum exemption except to registered dealers. The commentator indicated that smaller issuers are often unable to attract a registered dealer to act as agent and need some way to provide an incentive to sales staff. Further, because the prohibition does not exist in other jurisdictions, the commentator expressed concern that SK issuers were at a disadvantage compared to other issuers. The commentator thought that because of the restriction, SK might be by passed in multi-jurisdictional offerings.	• The SSC continues to be of the view that this restriction is important. There is no prohibition of the reimbursement of the actual costs of sellers. There is concern about the development of an industry of unregistered persons who sell only securities under this exemption and are paid on a commission or finder's fee basis. Such an industry would not be subject to the proficiency or know your client and suitability requirements that registrants are subject too.
Accredited investor exemption - definition of financial assets	• One commentator urged the SSC to reconsider the definition of "financial assets" which is restricted to cash and securities. This definition in effect limits clause (k) of the definition of accredited investor (and therefore the accredited investor exemption with respect to these individuals) to an individual who has a $1million dollars in cash and securities. The commentator felt this was to restrictive and that non personal use assets like income producing real estate should be included in the definition.	• The accredited investor exemption was designed by the Committee to be uniform as far as possible with a sister instrument in Ontario. This definition was used in that instrument. We are not inclined to move away from that approach at this time. The SCC will bring this issue up again in the context of the Uniform Securities Legislation project.

List of written comments received in relation to Saskatchewan's republication:

1. McKercher, McKercher & Whitmore, Paul Grant
2. McDougall Gauley, Bill Nickel
3. Investment Funds Institute of Canada, John Mountain
4. Regina Regional Economic Development Authority, Peter Tyerman