



THE MANITOBA
SECURITIES
COMMISSION

MSC Notice 2004-59 Marketing Activities and Exempt Offerings

It has come to the attention of staff that there is confusion around what marketing activities are permissible in connection with the exemptions in MI 45-103, and in particular the accredited investor exemption in part 5 of that rule. This notice is intended as a reminder to issuers as to what their obligations are under MI 45-103 and the expectations of staff in meeting those obligations.

As a starting point issuers should review the Companion Policy to MI 45-103 which does provide guidance on permitted marketing activities.

As stated in the Companion Policy, issuers are also reminded that MI 45-103 does not relieve an issuer from the requirements of the Act other than to provide exemptions from the registration and prospectus requirements. Issuers should thus be familiar with the requirements generally.

Cold Calling

Staff has become aware that certain issuers have been cold calling potential investors in Manitoba in purported reliance on the accredited issuer exemption or the Offering Memorandum exemption. Section 68 of *The Securities Act* prohibits calling a person at their residence for the purpose of trading in a security with any member of the public. A breach of this provision is an offence under the Act and could lead to an administrative hearing before the Commission, charges being laid in Provincial Court, or both.

Identifying Accredited Investors

In staff's view, an issuer cannot contact a potential investor in reliance on the accredited investor exemption without a reasonable belief that the person contacted qualifies as an accredited investor. While the exemption does cover trading activity, which would include acts in furtherance of a trade, it is only available if the investor **is** an accredited investor. It cannot be relied upon for the purposes of determining whether an investor is or isn't an accredited investor.

Advertising

Advertising can be an act in furtherance of trade and as such can be activity for which registration, a prospectus or both are required. As such, other than where advertising is prohibited outright, if the offering being advertised is to be made relying on an exemption from the registration and prospectus requirements, the advertising must be done in a manner consistent with the exemption. As an example, an issuer who intends to rely on the close family, friends and business associates exemption should not be advertising at all, as this would bring into question whether the exemption is actually available in that instance.

Likewise, in those instances where advertising is permitted by the exemption, the advertising should be consistent with the exemption the issuer intends to rely on. For example, when relying on the offering memorandum exemption under part 4 of MI 45-103, any printed materials, verbal or electronic communications must be consistent with the offering memorandum.

Questions concerning this notice should be forwarded to:

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