

## MSC NOTICE 2002-38

### **Proposed Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions* and Proposed Adoption in Additional Jurisdictions**

**September 20, 2002**

#### **Publication for Comment**

The Manitoba Securities Commission (the "Commission") and the securities regulatory authorities in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan (the "Participating Jurisdictions") are publishing for a 60 day comment period, the following documents:

- Multilateral Instrument 45-103 *Capital Raising Exemptions*;
- Form 45-103F1 *Offering Memorandum for Non-Qualifying Issuers* ("Non QI OM");
- Form 45-103F2 *Offering Memorandum for Qualifying Issuers* ("QI OM");
- Form 45-103F3 *Risk Acknowledgement* ("Risk Acknowledgement");
- Form 45-103F4 *Report of Exempt Distribution* ("Report of Exempt Distribution");
- Form 45-103F5 *Risk Acknowledgement - Saskatchewan Close Personal Friends and Close Business Associates* ("Saskatchewan Risk Acknowledgement"); and
- 45-103CP *Companion Policy* (the "Companion Policy"),

collectively, "Proposed MI 45-103".

The Commission is publishing Proposed MI 45-103 under section 149 of *The Securities Act* (the "Act") with the intention of adopting it as a rule.

#### **Background**

On March 30, 2002 Multilateral Instrument 45-103 *Capital Raising Exemptions* ("Current MI 45-103") was adopted in Alberta and on April 3, 2002 it was adopted in British Columbia. Subsequently, each of the other Participating Jurisdictions expressed an interest in the instrument. Accordingly, a committee comprised of staff from each of the Participating Jurisdictions was formed to draft Proposed MI 45-103.

#### **Summary of Proposed MI 45-103**

If adopted, Proposed MI 45-103 will provide three largely harmonized exemptions from the prospectus and dealer registration requirements in securities legislation. Those exemptions are as follows:

- private issuer exemption;
- family, friends and business associates exemption; and
- accredited investor exemption.

In addition, Proposed MI 45-103 will provide an offering memorandum exemption that we believe, while not completely uniform, will nevertheless benefit industry. The forms of offering

memorandum and risk acknowledgement will be the same in all jurisdictions and the variations between jurisdictions will be clearly evident in a single instrument. The differences in the offering memorandum exemption among the jurisdictions primarily relates to whether a purchaser must meet certain eligibility criteria before investing.

The terms of the proposed exemptions are summarized in attached **Appendix A**.

### **Summary of Proposed Changes to the Current MI 45-103**

The Current MI 45-103 continues to be in force in Alberta and British Columbia. However, if the Proposed MI 45-103 is adopted, it will replace the Current MI 45-103. The most significant proposed amendments to the Current MI 45-103 are:

- the participation of the additional jurisdictions;
- the terms of the proposed offering memorandum exemption to be adopted in each of the Participating Jurisdictions;
- the proposed restrictions on commissions payable under the private issuer and family, friends and business associates exemption;
- the addition of a new Report of Exempt Distribution that will replace the local form (eg. ASC Form 20) when reporting distributions under exemptions in Proposed MI 45-103; and
- the addition of the Saskatchewan Risk Acknowledgement for use in Saskatchewan for distributions based on close personal friendship and close business association.

There are also various other minor amendments to the instrument to deal with issues that have been raised by the Participating Jurisdictions or the public since adoption of the Current MI 45-103. A summary of each of the proposed amendments to the Current MI 45-103 and the reasons for them are set out in **Appendix B**.

### **Consequential Local Statutory Amendments**

Following adoption of the Current MI 45-103, the Commission will consider recommending to the legislature, certain amendments to the Act and the *Securities Regulation*. We anticipate issuing a further notice when the timing of the statutory amendments is more certain. The proposed statutory amendments are described below.

#### **(a) *Repeal of Certain Statutory Prospectus and Registration Exemptions***

We will propose that the statutory exemptions provided under the following sections of the Securities Act, be repealed:

- section 192(i) - private issuer exemption,
- section 19(1)(c) - financial institutions and governments exemption,

We will recommend amendments to section 58 of the Act to repeal the corresponding prospectus exemptions.

In addition, we will recommend repeal of the registration and prospectus exemptions described in sections 91-93 of the *Securities Regulation* (the seed capital exemptions).

We will also recommended that the definition of “private company” in the Securities Act be repealed.

**(b) \$97,000 Exemption**

We intend to retain the \$97,000 exemption until we have had an opportunity to assess who is using that exemption and why it, rather than the accredited investor exemption, is being used. Currently, each of the Participating Jurisdictions has an exemption similar to the \$97,000 exemption, although in some jurisdictions the minimum aggregate acquisition cost is higher. If we determine that it is necessary to indefinitely retain the \$97,000 exemption, staff of the Participating Jurisdictions will recommend that a uniform exemption be adopted. Further details will be contained in the subsequent notice announcing the timing of the statutory amendments.

**(c) Proposed Amendment to Statutory Rights of Action**

Section 91(b) of the Securities Regulation provides a contractual right of action be given to a purchaser under an offering memorandum. Similar contractual rights are required under Proposed MI 45-103 if the legislation of a Participating Jurisdiction does not provide for statutory rights. The Commission will recommend that the statutory rights of action be added to the Act creating a statutory right of rescission or damages against the issuer and a statutory right of action for damages against the issuer’s directors, chief executive officer, chief financial officer and promoters if the offering memorandum contains a misrepresentation.

**Request for Comment**

Interested parties are encouraged to make comments on the Proposed MI 45-103. Please submit your comments in writing on or before November 19, 2002.

Although we are seeking comment on all proposed amendments to Proposed MI 45-103, we also invite you to comment specifically on the following three issues:

1. In the Current MI 45-103 and in Ontario Securities Commission Rule 45-501 *Exempt Distributions*, registered charities are included in the list of accredited investors. However, some concern has been expressed regarding whether being a registered charity necessarily indicates investment acumen or the ability to withstand the loss of an investment.
  - Is it appropriate for registered charities to be included in the list of accredited investors?
  - Are there additional conditions that should be imposed, e.g., a size threshold, to help ensure that a registered charity has the ability to withstand the loss of an investment?
2. Many of the prospectus exemptions in the Act and under Proposed MI 45-103 and, in particular, the accredited investor and \$97,000 exemption require that a purchaser be purchasing as principal. When trust companies purchase securities for accounts that are fully managed by them, they may not technically be purchasing as principal. Currently, section 58(2) of the Act addresses this by deeming and trust companies to be purchasing as principal when purchasing for accounts fully managed by them. Unfortunately, the definitions of trust company refers only to those registered or incorporated in Manitoba. The proposed amendments will have the effect of deeming portfolio managers and trust companies registered or incorporated elsewhere in Canada to also be deemed to be purchasing as principal when purchasing for accounts fully managed by them.

In British Columbia, under BCI 45-504 *Trades to Trust Companies, Insurers and Portfolio Managers Outside British Columbia* foreign portfolio managers may also be considered to be purchasing as principal if they manage investment portfolios on behalf of clients having a total asset value of not less than \$20,000,000 and file an additional undertaking and certification.

- Should the instrument be expanded to permit portfolio managers and trust companies registered or incorporated outside of Canada to be deemed to be purchasing as principal when purchasing for accounts fully managed by them?
  - If so, given that these foreign entities may not be subject to comparable regulatory regimes, what additional restrictions should be imposed on these foreign entities? Should we adopt the restrictions under BCI 45-504?
3. In British Columbia, section 74(1) of the *Securities Act* (British Columbia) deems not only portfolio managers and trust companies but also insurers to be purchasing as principal when purchasing for accounts fully managed by them.
  4. Should the Proposed MI 45-103 deem insurers (insurance companies) to be purchasing as principal when purchasing for accounts fully managed by them? Why or why not?
  5. The Commission is also considering amendments to the Act similar to British Columbia which would prohibit unfair practices in connection with a trade in securities. It is felt that as the exemptions are much more liberal in scope under the proposed rule that this is appropriate in the interest's of investor protection. In British Columbia, an "unfair practice" includes any of the following:
    - (a) putting unreasonable pressure on a person to purchase, hold or sell a security;
    - (b) taking advantage of the person's inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security;
    - (c) imposing terms or conditions that make a transaction inequitable.
  6. The Commission is currently considering retaining the exempt purchaser exemption in its current form as was done in British Columbia and Alberta as certain of our exempt purchasers may not qualify as an accredited investor. Do you think this is appropriate?
  7. The accredited investor definition includes portfolio managers acting on behalf of fully managed accounts. Will the current draft eliminate the need for sprinkling orders in Manitoba?
  8. The Commission is currently adopting the Alberta approach to the Offering Memorandum exemption which requires persons who buy more than \$10,000 in securities to get independent advice from an eligibility advisor. In British Columbia advice is never required. In Saskatchewan advice will always be required. Which do you believe is the most appropriate course which preserves some level of investor protections?

9. In Alberta the eligibility advisor must be a registrant. In Manitoba and Saskatchewan the eligibility advisor can be a registrant who can sell the particular type of security, a lawyer or accountant. Staff's experience under the s. 91(a) exemption is that lawyers and accountants are often used to provide independent advice. Should we continue to allow lawyers and accountants to give advice?

**Submissions**

Comment letters received on or before November 19, 2002 will be considered. Comment letters can be delivered in hard copy, by fax or by e-mail. Please address your submission to:

Chris Besko  
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The Manitoba Securities Commission  
1130-405 Broadway  
Winnipeg, Manitoba R3C 3L6  
Fax: (204) 945-0330  
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We will be sharing comment letters with the other Participating Jurisdictions and therefore cannot maintain confidentiality of submissions.

**Appendix A**  
**to the Notice**  
**Proposed Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions***  
**and Proposed Adoption in Additional Jurisdictions**

**- Summary of Prospectus and Registration Exemptions under Proposed MI 45-103 -**

**Private Issuer Exemption**

If an issuer meets the definition of private issuer under Proposed MI 45-103, trades in the securities of the issuer can be made by the issuer, or others, to certain specified persons. In general terms, trades can be made to:

- (a) the directors, senior officers, founders and control persons of the issuer,
- (b) spouses, parents, grandparents, siblings and children of the individuals referred to in (a) or of the individual's spouse,
- (c) close personal friends and close business associates of individuals referred to in (a),
- (d) spouses, parents, grandparents, siblings and children of the selling security holder or the selling security holder's spouse,
- (e) current holders of the issuer's designated securities,
- (f) accredited investors,
- (g) certain companies and trusts if one or more of the above individuals makes the investment decisions for the company or trust, and
- (h) a person or company that is not the public.

One aspect of the definition of private issuer in Proposed MI 45-103 is a requirement that the issuer have less than 50 "designated" security holders (excluding employees). Since the term "designated securities" excludes (non-convertible) debt securities, in calculating the number of designated security holders, holders of debt securities would generally be excluded.

The issuer can sell non-designated securities, such as debt, to purchasers who are not described in the list of permitted placees without losing its private issuer status. However, the private issuer exemption does not provide an exemption to permit trades of non-designated securities to these purchasers. The issuer would need to rely on another exemption, such as the accredited investor exemption or the offering memorandum exemption, in order to effect the distribution of non-designated securities.

The private issuer exemption in Proposed MI 45-103 does not require that an offering memorandum or other disclosure document be provided to a potential investor. If an offering document is provided, it is not required to be in a prescribed form nor is it intended to trigger statutory rights of action for purchasers.

Under the Proposed MI 45-103, commissions and finder's fees cannot be paid to a director, officer, founder or control person of an issuer in connection with a trade under the private issuer exemption. In Saskatchewan, the proposed prohibition on commissions and finder's fees is broader and would prevent the payment of commissions or finder's fees to any person in connection with a trade to a Saskatchewan purchaser.

In Saskatchewan, if trades are made under this exemption to Saskatchewan purchasers based on close personal friendship or close business association, the issuer would also be required to have the purchaser complete a Saskatchewan Risk Acknowledgement.

### **Family, Friends and Business Associates Exemption**

This proposed exemption will permit trades in the securities of an issuer by the issuer, or others, to directors, officers, founders and control persons of the issuer as well as certain family members (including in-laws), close personal friends, and close business associates of the directors, senior officers, founders and control persons. There is no prescribed limit on the number of purchasers under this exemption. However, the issuer must still ensure that the purchaser, in fact, has the necessary relationship with a director, senior officer, founder or control person.

The exemption does not require that an offering memorandum or other disclosure document be provided to an investor. If an offering document is provided, it is not required to be in a prescribed form nor is it intended to trigger statutory rights of action for purchasers.

Commissions and finder's fees cannot be paid to a director, officer, founder or control person of an issuer in connection with a trade under the family, friends and business associates exemption. In Saskatchewan, commissions and finder's fees cannot be paid to any person under this exemption in connection with a trade to a Saskatchewan purchaser.

In addition, in Saskatchewan, if trades are made under this proposed exemption to Saskatchewan purchasers based on close personal friendship or close business association, the purchaser must complete a Saskatchewan Risk Acknowledgement.

### **Accredited Investor Exemption**

This exemption will permit trades in the securities of an issuer by the issuer, or others, to any person or company that qualifies as an "accredited investor". There is no required minimum or maximum dollar subscription. The term "accredited investor" exemption is a defined term and refers to a list of persons and companies, including a variety of institutions, registered investment dealers, persons or companies with \$5 million in net assets and certain wealthy individuals (e.g., \$1 million in net realizable financial assets or \$200,000 pre-tax net income).

The exemption does not require that an offering memorandum or other disclosure document be provided to an investor. If an offering document is provided, it is not required to be in a prescribed form nor is it intended to trigger statutory rights of action for purchasers.

The definition of accredited investor in MI 45-103 was drafted to generally harmonize with the definition in Ontario Securities Commission ("OSC") Rule 45-501 *Exempt Distributions*. Certain differences in terminology were necessary because the OSC used terms defined in Ontario securities legislation and interpretation statutes. Because MI 45-103 is to be effective in more than one jurisdiction, it cannot use definitions in local securities legislation. Instead, MI 45-103 relies on definitions provided by National Instrument 14-101 *Definitions*. Certain other minor differences also exist.

## **Offering Memorandum Exemption**

### ***(a) General***

Under the offering memorandum exemption, the issuer is required to deliver to a purchaser an offering memorandum (prepared in the required form) disclosing information about the issuer and to obtain from the purchaser a completed Risk Acknowledgement which bluntly reminds the purchasers of some of the risks of investing, including that the purchaser may lose the entire investment and may not be able to resell the securities.

### ***(b) Eligibility Criteria***

In British Columbia and Nova Scotia there are no additional purchaser eligibility criteria for use of the offering memorandum exemption. Any purchaser can invest as much as they want.

In Alberta and Manitoba any purchaser can invest up to \$10,000; however, to invest more than \$10,000 the purchaser must be an “eligible investor”. In each of Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan, every purchaser under an offering memorandum must be an “eligible investor” regardless of the amount invested.

The term “eligible investor” is defined in Proposed MI 45-103 to generally refer to a purchaser who

1. meets certain financial tests (eg. \$75,000 pre-tax net income or \$400,000 net assets), or
2. has obtained advice regarding the suitability of the investment from an eligibility adviser who is a registered investment dealer or, in Saskatchewan or Manitoba, who is a specified lawyer or accountant.

### ***(c) Additional Restrictions in Saskatchewan, Northwest Territories and Nunavut***

In each of Saskatchewan, Northwest Territories and Nunavut, it has been proposed that the total amount that can be raised from trades to purchasers in those jurisdictions under the offering memorandum exemption will be limited to \$1 million. This \$1 million limitation would be calculated by including all prior offerings under the new offering memorandum exemption. In addition, in those three jurisdictions, commissions and finder’s fees relating to purchasers in those jurisdictions will be permitted only if they are paid to registered dealers.

### ***(d) Required form of offering memorandum***

If an issuer is relying on the offering memorandum exemption in MI 45-103, it must prepare an offering memorandum in accordance with the Non-QI OM form unless the issuer is a “qualifying issuer” as defined under Multilateral Instrument 45-103 *Resale of Securities*. A qualifying issuer can use either the Non-QI OM form or the QI OM form.

A Non-QI OM is required to contain specified disclosure about the issuer, its business and management. It is also required to contain specified financial statements for the issuer and, in some cases, must also contain financial statements for businesses acquired or to be acquired by the issuer.

A QI OM contains minimal information about the issuer’s business and management and is not required to have financial statements attached. However, an issuer preparing an offering memorandum in accordance with the QI OM form must incorporate by reference specified documents from the issuer’s continuous disclosure base. For example, the issuer is required to



incorporate by reference into its offering memorandum, the financial statements it has filed via SEDAR

**(e) *Updating an Offering Memorandum***

There is no limit on the number of purchasers that may purchase under the MI 45-103 offering memorandum exemption. Once created, an offering memorandum may be used repeatedly for various offerings. However, the offering memorandum must be updated to incorporate annual financial statements and, in the case of a qualifying issuer, the current AIF (annual information form). The offering memorandum must also be updated if circumstances change such that the information in the offering memorandum contains a misrepresentation. This could occur, for example, if there was a material change in the issuer's business or affairs. An issuer cannot accept a subscription from a potential purchaser who was provided an earlier version of an offering memorandum until the update is provided.

An issuer must file a signed copy of each offering memorandum and each update with the Commission.

**(f) *Rights of action for purchasers under the Proposed MI 45-103 offering memorandum exemption***

A purchaser who purchases securities under a Non-QI OM or QI OM has certain rights of action.

1. An issuer will be required to provide a two day right of withdrawal to a purchaser who is sold securities under the Proposed MI 45-103 offering memorandum exemption. If securities legislation in the purchaser's jurisdiction does not statutorily provide this right, it must be given to the purchaser contractually.
2. An issuer must disclose in its offering memorandum any statutory rights of action available to a purchaser in the event that the offering memorandum contains a misrepresentation.
3. If a purchaser under the MI 45-103 offering memorandum exemption is in a jurisdiction that does not provide statutory rights of action, the issuer must provide the purchaser with the specified contractual rights of action to sue for damages or rescission.

**(g) *Exclusion of Mutual Funds***

Proposed MI 45-103 will provide that, except in British Columbia and Nova Scotia, certain mutual fund issuers cannot rely on the offering memorandum exemption. The mutual fund issuers that are precluded from using the MI 45-103 offering memorandum exemption are those issuers that, if they were conducting a prospectus offering, would be subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. MI 45-103 was conceived of as an initiative to assist small to medium-sized enterprises and consequently, the forms of offering memoranda are not well suited for mutual funds. We are considering whether it is appropriate to design a form of offering memorandum more suitable for mutual fund issuers and whether other exemptions for mutual fund issuers would be appropriate.

There is no prohibition on mutual funds using an offering memorandum under other exemptions and, in fact, certain other exemptions such as the \$97,000 exemption require a mutual fund to provide an offering memorandum in certain circumstances.

## Appendix B

### to the Notice

## Proposed Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions* and Proposed Adoption in Additional Jurisdictions

### - Summary of Proposed Amendments to Current MI 45-103-

Proposed Change	Reason for Change
s.1.1 - accredited investor definition, old (k) - removed registered charities from the definition of accredited investor.	Concern was expressed that some registered charities may be unsophisticated and should perhaps not be considered accredited investors. The Committee decided to seek public comment on whether it is appropriate to include registered charities in the list of accredited investors.
s.1.1 - accredited investor definition, (k) - removed “jointly” from financial asset test for individual accredited investors.	Concern was expressed that the word “jointly” suggested that the financial assets had to be held by the spouses as “joint tenants”. The Committee did not intend this interpretation so the word jointly has been removed.
s.1.1 - accredited investor definition, (m) - the category has been expanded to permit any person or company (other than a mutual fund or non-redeemable investment fund) with \$5 million in net assets to qualify as an accredited investor.	The provision in Current MI 45-103 does not allow individuals or general partnerships with \$5 million in net assets to qualify as accredited investors. The Committee felt there was no reason to exclude these persons from the definition of accredited investor. The asset test in 1.1(k) only includes financial assets (cash and securities) and is therefore quite narrow. The Committee felt that an individual with \$5 million in net assets should be considered sufficiently wealthy to withstand the loss of an investment.
s.1.1 - accredited investor definition, (o) - the section has been clarified to indicate that a mutual fund or non-redeemable investment fund is an accredited investor if it has ever filed a prospectus.	We understand that the provision in Current MI 45-103 may have been interpreted to mean that a mutual fund must be currently in distribution under a prospectus to qualify as an accredited investor. We amended the language to clarify that this was not our intention. Other rules may restrict the ability of mutual funds and non-redeemable investment funds to invest unless they are currently in distribution; however, it is not necessary for us to repeat the restrictions in the definition of accredited investor. To do so would be redundant and may create conflict and confusion if and when those other rules are changed.
s.1.1 - accredited investor definition, (p) & (q) - addition of trust companies and portfolio managers trading for fully managed accounts to the list of accredited investors and s.1.2 deeming these entities to be purchasing as principal.	<p>Not all jurisdictions have a provision (equivalent to s.132(1) of the <i>Securities Act</i> (Alberta) and s.74(1) of the <i>Securities Act</i> (British Columbia)) which deems trust corporations and portfolio managers to be purchasing as principal so s.1.2 was necessary. Furthermore, the current statutory wording only deems trust companies incorporated in the local jurisdiction and portfolio managers registered in the local jurisdiction to be purchasing as principal. The new sections 1.1(p) and (q) accommodate trust companies and portfolio managers across Canada. However, PEI trust company legislation may not be comparable to that which exists in other jurisdictions and therefore trust companies incorporated only in PEI are not deemed to be purchasing as principal.</p> <p>In BC, insurers are also deemed to be acting as principal for accounts fully-managed by them. In addition, in BC under BCI 45-504 <i>Trades to Trust Companies, Insurers and Portfolio Managers Outside British Columbia</i>, portfolio managers outside of Canada can purchase as principal if they manage investment portfolios on behalf of clients having a total asset value of not less than \$20,000,000 and</p>

Proposed Change	Reason for Change
	<p>file a certificate with the BCSC.</p> <p>We are seeking public comment on whether insurers should also be deemed to be acting as principal for accounts fully managed by them. In addition, we are seeking public comment on whether foreign trust companies and portfolio managers should also be deemed to be purchasing as principal when purchasing for accounts fully managed by them.</p>
<p>s.1.1 Definitions of “control person”, “reporting issuer” and “non-redeemable investment fund” have been added.</p>	<p>Not all jurisdictions have these definitions in their legislation. The definition of “control person” does not override the statutory definition in those jurisdictions that do have a definition. The definition of reporting issuer contemplates a reporting issuer in any jurisdiction. Consequently, an issuer that otherwise met the definition of private issuer would not be considered to be a private issuer if it was a reporting issuer in some jurisdiction. The concept of “non-redeemable investment fund” comes from the civil liability proposal and proposed National Instrument 51-102 <i>Continuous Disclosure Obligations</i>.</p>
<p>Definitions of “fully managed account”, “MI 45-102” and “qualifying issuer” added.</p>	<p>The definition of fully managed account was added to help clarify when portfolio managers and trust companies acting on behalf of clients can be considered to be acting as principal under the accredited investor exemption. The definitions of MI 45-102 and qualifying issuer were added for drafting convenience and for better direction to readers of the instrument.</p>
<p>Definition of “eligibility adviser” has been added and in SK and MB, lawyers and accountants can provide the advice.</p>	<p>The concept of eligibility adviser exists in the Current MI 45-103 as part of the Alberta offering memorandum exemption (ie. investors who do not meet the financial tests in the eligible investor definition can invest more than \$10,000 if they obtain advice from a registered investment dealer). In the Proposed MI 45-103, the concept has been turned into a defined term. In addition, we understand that there may be very few investment dealers in SK &amp; MB and consequently, lawyers and accountants are currently permitted to give advice under certain of the exemptions in SK &amp; MB. The definition of eligibility adviser has been expanded to accommodate this. However, lawyers and accountants will not be considered to be acceptable advisers under the laws of any other jurisdictions.</p>
<p>Definition of “eligible investor” now includes persons included in the family, friends and business associates.</p>	<p>This was done to give family, friends and business associates the option of investing under an offering memorandum if they choose. Currently, a family member, friend or business associate can only invest under an offering memorandum if they meet the financial tests for an eligible investor. It seemed incongruous to the Committee that these persons are permitted to invest without any disclosure but only have a right to invest with the additional protections of an offering memorandum (and therefore statutory rights of action) if they meet certain financial tests or get advice. We do not want to mandate that these persons must get an offering memorandum but we do want to permit them that option, if they so choose.</p>
<p>Definition of “founder” added.</p>	<p>The definition of founder is similar to the statutory definition of promoter which currently exists in most securities legislation but clarifies that the individual must still be involved with the issuer. Promoters are not included in the family, friends and business associates exemption in the Current MI 45-03 because we thought that persons who would be promoters likely would also be directors or senior officers so reference to them was likely redundant. Furthermore, the definition of promoter has no clear time limit. We wanted to ensure that only promoters currently involved with the</p>

Proposed Change	Reason for Change
	issuer were included. Some of the Participating Jurisdictions have indicated that they require the concept of promoter to be included, as they see offerings in which individuals are promoters but not directors, senior officers or control persons. To accommodate this request but to ensure that the promoter is still involved with the issuer, we have adopted a new term, founder. The term founder requires that the individual be currently involved with the issuer.
Section 2.2 & 3.2 - restrictions on commissions in the private issuer and family, friends and business associates exemptions.	Concern was expressed that it was not appropriate to allow directors, officers and control persons of an issuer to get commissions for selling securities to their family, friends and business associates. Accordingly, a restriction has been added to preclude this. However, commissions may be paid for trades to accredited investors.
Section 2.2 & 3.2 - all commissions prohibited in SK except for trades to accredited investors.	This is a restriction that currently exists in SK. The provision will only apply in SK and in regard to sales to SK purchasers.
Sections 2.3 & 3.3 - new requirement to file a modified risk acknowledgement when selling securities (under the private issuer or family, friends and business associates exemption) to Saskatchewan purchasers if the purchaser is investing on the basis of friendship or business association.	Currently, in SK, investors who invest based on a relationship of friendship or business association must be advised of the risks of investing and to file a statement describing the relationship. A new form Form 45-103F5 has been developed to address this issue in the context of Proposed MI 45-103. The form will only be required in SK with regard to sales to SK purchasers.
Section 2.1(c) & 3.1(c) - expanded the exemptions to permit in-laws of directors, senior officers, founders and control persons to be included as permitted placees.	In SK in-laws are currently permitted to invest under the SK statutory family, close friends and business associates exemption. Proposed MI 45-103 has been expanded to also permit this. The Committee agreed to recommend expanding the group in our jurisdictions because the relationship appeared to be sufficiently close.
Sections 2.1(i) & (j) and 3.1(h) & (i) - expands the exemption to permit companies and trusts controlled by permitted placees to invest.	The wording in Current MI 45-103 requires that the issuer be wholly owned by any combination of permitted placees listed in the exemption. This can prevent investment by family trusts or holding companies in which various family members participate unless all family members are permitted placees. This was thought to be unnecessarily restrictive. We thought it sufficient if the company or trust was controlled by one of the permitted placees because the individual controlling the company or trust would have the necessary connection to the issuer to make the investment decision.
Section 4.1(5) - \$1 million restriction in Saskatchewan, Northwest Territories and Nunavut.	The statutory offering memorandum exemption that currently exists in SK restricts the total amount that can be raised to \$1 million. Under Proposed MI 45-103 this restriction will continue to exist in SK. Northwest Territories and Nunavut have indicated that they also propose to adopt this restriction.
Section 4.1(6) - added a restriction in Saskatchewan, Northwest Territories and Nunavut on the payment of commissions and finder's fees. They can only be paid to registered dealers.	This restriction currently exists in SK and will continue to apply in SK under Proposed MI 45-103.
Section 4.3(1) - added clarification that the 2 day right of withdrawal need only be provided by contract if it is not provided by securities legislation.	BC expects that the statutory 2 day right of withdrawal will be in place shortly. AB hopes that the statutory right will be available by Spring 2003. This change was made to contemplate the various future legislative amendments.
Section 4.5 – number of years that issuer must retain risk acknowledgement increased from 6 to 8 years.	This change was made because the limitation period in certain jurisdictions is 8 years not 6.
Section 4.8 – deleted reference to MI 45-102.	The reference was no longer necessary because we have defined “qualifying issuer”.

<b>Proposed Change</b>	<b>Reason for Change</b>
Section 6.3 - resale restrictions added to deal with underlying securities acquired on exercise of convertible securities.	MI 45-102 does not address the resale restrictions applicable to underlying securities acquired on exercise or conversion of convertible securities. This issue is dealt with in separate BC & AB local instruments that amend Multilateral Instrument 45-102 <i>Resale of Securities</i> . This new provision will allow the other jurisdictions to adopt MI 45-103 without amending MI 45-102 and will supercede the separate local BC & AB instruments.
Section 6.4 - added Manitoba resale restrictions.	MI 45-102 only applies in part in MB because MB is an open jurisdiction. Accordingly, we thought it appropriate to include in the rule the resale restrictions that apply in Manitoba rather than requiring readers to refer to a separate Manitoba instrument.
Section 7.1 - removal of requirement for an investor to file a report of exempt distribution when selling securities under an exemption.	BC only requires the issuer to file a report when relying on a prospectus exemption. Many of the other jurisdictions require anyone relying on a specified exemption to file a report. The Committee agreed to recommend eliminating the requirement for a selling security holder to file a report. The issuer's reporting requirement remains.
Part 8 - required forms.	All jurisdictions will require the same forms. However, BC is not referenced in Part 8 because BCSC does not want to prescribe the forms as rules. The Executive Director in BC is expected to prescribe the forms.
Offering memorandum forms - changes in Part 1 to refer to net proceeds and to add a new section dealing with working capital deficiencies.	The various references to available funds and use of available funds have been changed to refer to net proceeds and use of net proceeds. The calculation of available funds required that working capital be added or a working capital deficiency be deducted from the net proceeds. In some circumstances, disclosure of available funds may be misleading, for example, if an issuer has a working capital deficiency but has no intention to use the net proceeds to reduce the working capital deficiency. Although working capital or a working capital deficiency will now be excluded from sections 1.1 and 1.2, disclosure of any working capital deficiency is still considered material. Accordingly, a new section has been added to the Part 1 of the forms requiring disclosure of such deficiency.
Offering memorandum forms - addition in item 6 of a requirement to provide information regarding RRSP eligibility.	The issuer is required to either warn investors that not all securities are RRSP eligible or to provide advice regarding RRSP eligibility. Some jurisdictions expressed concerns that investors often incorrectly assume that their investment is RRSP eligible. The statement is designed to warn investors without necessarily compelling issuers to provide an RRSP eligibility opinion.
Non-qualifying issuer offering memorandum form - addition of a new item 12.	Some issuers that have filed non-qualifying issuer offering memoranda have not attached financial statements to the offering memorandum. Although the instructions to the form indicate financial statements are required, the additional item is intended to act as a reminder and clarify that the financial statement disclosure is also being certified.
Form 45-103F3 - statement added regarding advice and changed reference to securities commission to securities regulatory authority.	A statement has been added to clarify that except in BC and NS, the investor may be required to seek advice regarding the investment. The reference to securities commission has been changed to securities regulatory authority because in some jurisdictions there is no commission, just a division of a government department.
New Form 45-103F4.	This is a proposed new report of exempt distribution. It is intended to replace the current report (eg. in AB, Form 20) in relation to exempt distributions made under MI 45-103. BCSC intends to publish information relating to investment by insiders and registrants but not others. Accordingly, two schedules to the form have been prepared, so that only schedule A with information regarding

<b>Proposed Change</b>	<b>Reason for Change</b>
	<p>insiders and registrants will be made public. Schedule B will provide information on “public” investors and will be kept confidential.</p> <p>The SSC has requested that an additional column be added to the Form when the trade is made to an SK purchaser based on a close personal friendship or close business association. This is a requirement that currently exists in SK.</p> <p>BCSC will not adopt the new Form 45-103F4 as a rule. The Executive Director in BC will prescribe a separate BC form intended to be identical except that when reporting trades to purchasers under the offering memorandum exemption, the BCSC will require the purchaser’s e-mail address and telephone number to be provided. The BCSC is collecting this information for survey purposes so that they can contact investors under their monitoring program. The BCSC only intend to require this information for a temporary period so including it in Form 45-103F4 was not considered appropriate. However, the Form 45-103F4 published for comment will include a reference to the additional information to be required by the BCSC. In this way input from market participants in other jurisdictions can also be solicited.</p>
New Form 45-103F5 (Saskatchewan only)	This is Saskatchewan’s modified risk acknowledgement form - it is the form that will be required to be completed by investors investing on the basis of friendship or business association.

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

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

**Part 1 Definitions**

**1.1 Definitions**

In this instrument

**"accredited investor"** means

- (a) a Canadian financial institution, or an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada),
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) an association under the *Cooperative Credit Associations Act* (Canada) located in Canada,
- (d) a subsidiary of any person or company referred to in paragraphs (a) to (c), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (e) a person or company registered under the securities legislation of a jurisdiction of Canada, as an adviser or dealer, other than a limited market dealer registered under the *Securities Act* (Ontario) or *Securities Act* (Newfoundland and Labrador),
- (f) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada, as a representative of a person or company referred to in paragraph (e),
- (g) the government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the government of Canada or a jurisdiction of Canada,
- (h) a municipality, public board or commission in Canada,
- (i) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (j) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada,
- (k) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000,
- (l) an individual whose net income before taxes exceeded \$200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the two most recent years and who, in either case, reasonably expects to exceed that net income level in the current year,
- (m) a person or company, other than a mutual fund or non-redeemable investment fund, that, either alone or with a spouse, has net assets of at least \$5,000,000, and unless the person or company is an individual, that amount is shown on its most recently prepared financial statements,



- (n) a mutual fund or non-redeemable investment fund that, in the local jurisdiction, distributes its securities only to persons or companies that are accredited investors,
- (o) a mutual fund or non-redeemable investment fund that, in the local jurisdiction, is distributing or has distributed its securities under one or more prospectuses for which the regulator has issued receipts,
- (p) a trust company or trust corporation registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada, trading as a trustee or agent on behalf of a fully managed account,
- (q) a person or company trading as agent on behalf of a fully managed account if that person or company is registered under the securities legislation of a jurisdiction of Canada as a portfolio manager or under an equivalent category of adviser or is exempt from registration as a portfolio manager or the equivalent category of adviser,
- (r) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) through (e) and paragraph (j) in form and function, or
- (s) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors;

**“control person”**, if not defined in the local jurisdiction, means any person or company that holds or is one of a combination of persons or companies that holds

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

**"designated securities"** means

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

**“eligible investor”** means

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

- (b) a person or company of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees are eligible investors,
- (f) an accredited investor,
- (g) a person or company described in section 3.1, or
- (h) a person or company that has obtained advice regarding the suitability of the investment and, if the person or company is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

**“eligibility adviser”** means

- (a) an investment dealer or equivalent category of registration, registered under the securities legislation of the jurisdiction of a purchaser and authorized to give advice with respect to the type of security being distributed, and
- (b) in Saskatchewan or Manitoba, also means a lawyer who is a 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 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, senior officers, founders or control persons, or
  - (ii) have acted for or been retained personally or otherwise as an employee, senior officer, director, associate or partner of a person or company that has acted for or been retained by the issuer or any of its directors, senior officers, founders or control persons within the previous year;

**“financial assets”** means cash and securities;

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

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

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

**“non-redeemable investment fund”** means an issuer,

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

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

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

“**private issuer**” means an issuer

- (a) that is not a reporting issuer, a mutual fund or a non-redeemable investment fund,
- (b) whose designated securities:
  - (i) are subject to restrictions on transfer that are contained in the issuer’s constating documents or security holders agreements; and
  - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons or companies, counting any 2 or more joint registered owners as one beneficial owner, and not counting employees and former employees of the issuer or its affiliates, and
- (c) that has distributed designated securities only to persons or companies described in section 2.1(1);

“**qualifying issuer**” means a qualifying issuer as defined in MI 45-102;

“**related liabilities**” means

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

“**reporting issuer**” means a reporting issuer in a jurisdiction of Canada.

## 1.2 Interpretation

- (1) Subject to subsection (2), a trust company or trust corporation described in paragraph (p) of the definition of accredited investor is deemed to be purchasing as principal.
- (2) Subsection (1) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.
- (3) A person or company described in paragraph (q) of the definition of accredited investor is deemed to be purchasing as principal.

## **Part 2 Private issuer exemption**

### **2.1 Private issuer exemption**

- (1) Subject to section 2.3, the dealer registration requirement does not apply to a person or company with respect to a trade in a security of a private issuer if the purchaser purchases the security as principal and is
  - (a) a director, officer, employee, founder or control person of the issuer,
  - (b) a spouse, parent, grandparent, brother, sister or child of a director, senior officer, founder or control person of the issuer,
  - (c) a parent, grandparent, brother, sister or child of the spouse of a director, senior officer, founder or control person of the issuer,
  - (d) a close personal friend of a director, senior officer, founder or control person of the issuer,
  - (e) a close business associate of a director, senior officer, founder or control person of the issuer,
  - (f) a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse,
  - (g) a current holder of designated securities of the issuer,
  - (h) an accredited investor,
  - (i) a person or company of which a majority of the voting securities are beneficially owned by or a majority of the directors are persons or companies described in paragraphs (a) to (h),
  - (j) a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs (a) to (h), or
  - (k) a person or company that is not the public.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

### **2.2 Restrictions on commissions**

- (1) No commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a trade under section 2.1 except a trade to an accredited investor.
- (2) In Saskatchewan, no commission or finder's fee may be paid to any person or company in connection with a trade to a purchaser in Saskatchewan under section 2.1 except a trade to an accredited investor.

### **2.3 Saskatchewan risk acknowledgement**

- (1) In Saskatchewan, the exemptions in section 2.1 are not available in relation to a trade to a person or company described in
  - (a) subsection 2.1(1)(d) or (e), or
  - (b) subsection 2.1(1)(i) or (j) if the exempt trade is based in whole or part on close personal friendship or close business association,unless the seller obtains from each close personal friend and close business associate a signed risk acknowledgement in the required form.

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

### **Part 3 Family, friends and business associates exemption**

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

- (1) Subject to section 3.3, the dealer registration requirement does not apply to a person or company with respect to a trade in a security of an issuer if the purchaser purchases the security as principal and is
  - (a) a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
  - (b) a spouse, parent, grandparent, brother, sister or child of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
  - (c) a parent, grandparent, brother, sister or child of the spouse of a director, senior officer or control person of the issuer or of an affiliate of the issuer,
  - (d) a close personal friend of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
  - (e) a close business associate of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
  - (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, close personal friend or close business associate of a founder of the issuer,
  - (g) a parent, grandparent, brother, sister or child of the spouse of a founder of the issuer,
  - (h) a person or company of which a majority of the voting securities are beneficially owned by or a majority of the directors are persons or companies described in paragraphs (a) to (g), or
  - (i) a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs (a) to (g).
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

#### **3.2 Restrictions on commissions**

- (1) No commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a trade under section 3.1.
- (2) In Saskatchewan, no commission or finder's fee may be paid to any person or company, in connection with a trade to a purchaser in Saskatchewan under section 3.1.

#### **3.3 Saskatchewan risk acknowledgement**

- (1) In Saskatchewan, the exemptions in section 3.1 are not available in relation to a trade to
  - (a) a person or company described in subsection 3.1(1)(d) or (e),
  - (b) a close personal friend or close business associate of a founder of the issuer, or

- (c) a person or company described in subsection 3.1(1)(h) or (i) if the exempt trade is based in whole or in part on a close personal friendship or close business association, unless the seller obtains from each close personal friend and close business associate, a signed risk acknowledgement in the required form.
- (2) The seller must retain the signed risk acknowledgement for 8 years after the distribution.

## **Part 4 Offering memorandum exemption**

### **4.1 Offering memorandum exemption**

- (1) In British Columbia and Nova Scotia, the dealer registration requirement does not apply to a person or company with respect to a trade by an issuer in a security of its own issue if the purchaser purchases the security as principal and, at the same time or before the purchaser signs the agreement to purchase the security, the issuer
  - (a) delivers an offering memorandum to the purchaser in compliance with sections 4.2 to 4.4, and
  - (b) obtains a signed risk acknowledgement from the purchaser in compliance with section 4.5(1).
- (2) In British Columbia and Nova Scotia, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).
- (3) Subject to subsection (5), in Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan, the dealer registration requirement does not apply to a person or company with respect to a trade by an issuer in a security of its own issue if
  - (a) the purchaser purchases the security as principal,
  - (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
    - (i) delivers an offering memorandum to the purchaser in compliance with sections 4.2 to 4.4, and
    - (ii) obtains a signed risk acknowledgement form from the purchaser in compliance with section 4.5(1),
  - (c) either
    - (i) the purchaser is an eligible investor, or
    - (ii) in Alberta and Manitoba, the purchaser's aggregate acquisition cost does not exceed \$10,000, and
  - (d) in the case of an issuer that is a mutual fund, it is one referred to in section 1.3 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.
- (4) In Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (3).
- (5) In each of Northwest Territories, Nunavut and Saskatchewan, the exemptions in subsections (3) and (4) are not available for a trade to a purchaser in that

jurisdiction once the issuer has raised a cumulative amount of \$1,000,000 from all trades under these exemptions to purchasers in that jurisdiction.

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

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

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

#### **4.3 Purchasers' Rights**

- (1) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under section 4.1 must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2<sup>nd</sup> business day after the purchaser signs the agreement to purchase the security.
- (2) 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, an offering memorandum delivered under section 4.1 must contain a contractual right of action against the issuer for rescission or damages that
  - (a) is available to the purchaser if the offering memorandum, or any record incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
  - (b) is enforceable by the purchaser delivering a notice to the issuer
    - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
    - (ii) in the case of an action for damages, before the earlier of:
      - A. 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
      - B. 3 years after the date the purchaser signs the agreement to purchase the security,
  - (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
  - (d) in the case of an action for damages, provides that the amount recoverable
    - (i) must not exceed the price at which the security was offered, and
    - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
  - (e) is in addition to and does not detract from any other right of the purchaser.

#### **4.4 Certificate**

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

“This offering memorandum does not contain a misrepresentation.”
- (2) A certificate under subsection (1) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity,
  - (b) on behalf of the directors of the issuer,
    - (i) by any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
    - (ii) by all the directors of the issuer, and
  - (c) by each promoter of the issuer.
- (3) A certificate under subsection (1) must be true
- (a) at the date the certificate is signed, and
  - (b) at the date the offering memorandum is delivered to the purchaser.
- (4) If a certificate under subsection (1) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless
- (a) the purchaser receives an update of the offering memorandum,
  - (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (2), and
  - (c) the purchaser re-signs the agreement to purchase the security.

#### **4.5 Risk acknowledgement**

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

#### **4.6 Consideration to be held in trust**

- (1) The issuer must hold in trust all consideration received from the purchaser in connection with a trade in a security under section 4.1 until midnight on the 2<sup>nd</sup> business day after the purchaser signs the agreement to purchase the security.
- (2) The issuer must return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under section 4.3(1).

#### **4.7 Filing of offering memorandum**

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

#### **4.8 Exemption for filing of technical reports for mineral projects**

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



- (a) an annual information form, prospectus, material change report or annual financial statement filed under securities legislation with a securities regulatory authority before February 1, 2001;
- (b) a previously filed technical report under NI 43-101; or
- (c) a report prepared in accordance with former National Policy 2-A, *Guide for Mining Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators* and filed with a securities regulatory authority before February 1, 2001.

## **Part 5 Accredited investor exemption**

### **5.1 Accredited investor exemption**

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

## **Part 6 Resale of securities**

### **6.1 Private issuer exemption**

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

### **6.2 Other exemptions**

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

### **6.3 Convertible securities**

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

- (a) section 2.1(2) is subject to section 2.6 of MI 45-102, or
- (b) section 3.1(2), 4.1(2), 4.1(4) or 5.1(2) is subject to section 2.5 of MI 45-102.

### **6.4 Manitoba resale restrictions**

- (1) In Manitoba, a security acquired under an exemption in section 2.1(2), 3.1(2), 4.1(4) or 5.1(2) or through the exercise of a right to acquire, purchase, convert or exchange previously acquired under one of those exemptions must not be traded without the prior written consent of the regulator, unless
  - (a) at the time the security was acquired the issuer was a reporting issuer in Manitoba,
  - (b) the issuer of the security has filed a prospectus with the securities regulatory authority in Manitoba with respect to the security and has obtained a receipt for that prospectus,
  - (c) if the issuer was not a reporting issuer in Manitoba at the time the security was acquired, the security has been held for at least 12 months, or

- (d) the trade is made under an exemption from the prospectus and dealer registration requirements.
- (2) The regulator will consent to a trade referred to in subsection (1) if the regulator is of the opinion that it would not be prejudicial to the public interest to do so.

## **Part 7 Reporting requirements**

### **7.1 Report of exempt distribution**

- (1) Subject to subsection (2), if an issuer distributes a security of its own issue under an exemption in section 3.1(2), 4.1(2), 4.1(4), or 5.1(2), the issuer must file a report in the local jurisdiction in which the distribution takes place on or before the 10<sup>th</sup> day after the distribution.
- (2) An issuer is not required to file the report under subsection (1) for a distribution under section 5.1(2) of an evidence of indebtedness to a Canadian financial institution as security for a loan made by the Canadian financial institution to the person or company.

### **7.2 Required form of report**

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

## **Part 8 Required forms**

### **8.1 Required forms of offering memorandum**

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

### **8.2 Required forms of risk acknowledgement**

- (1) Except in British Columbia, the required form of risk acknowledgement under section 4.5 is Form 45-103F3.
- (2) In Saskatchewan, the required form of risk acknowledgement under sections 2.3 and 3.3 is Form 45-103F5.

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

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

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

**Application**

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

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

**Background**

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

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

**Purpose**

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

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

**Part 1 General**

**1.1 Definitions**

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

## **1.2 Multijurisdictional trades**

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

## **1.3 Responsibility for compliance**

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

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

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

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

## **1.4 Prohibited Activities**

The definition of trade in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person or company who engages in such activities must comply with the securities legislation of each jurisdiction in which the trade occurs.

Securities legislation in certain of the jurisdictions prohibits any person or company from making certain representations to a purchaser, including an undertaking as to the future value or price of the securities. In certain of the jurisdictions, these provisions also prohibit a person or company from making any statement that the person or company knows, or ought reasonably to know, is a misrepresentation. Misrepresentation is defined in the securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

## **1.5 Responsibilities of registrants**

An exemption from the dealer registration requirement does not relieve a registrant from its responsibilities to purchasers under securities legislation. In particular, MI 45-103

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

## **1.6 Advising**

MI 45-103 does not provide an exemption from the adviser registration requirement. Only advisers registered or exempted from registration under securities legislation may act as advisers in connection with a trade made under MI 45-103.

## **1.7 Advertising and soliciting purchasers**

Advertising to solicit or find purchasers is not restricted under any of the exemptions in MI 45-103. However, issuers should review the securities legislation and securities directions for guidelines on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

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

Although MI 45-103 does not prohibit the use of registrants and finders, under the private issuer and family, friends and business associates exemptions, commissions and finder's fees are not permitted to be paid to directors, senior officers, founders and control persons except, under the private issuer exemption, in connection with a trade to an accredited investor. In Saskatchewan, no commissions or finder's fees may be paid to anyone in connection with a trade under these exemptions to a Saskatchewan purchaser except a trade to an accredited investor. In addition, in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a trade to a purchaser in one of those jurisdictions under the offering memorandum exemption.

## **Part 2 Private issuer exemption**

### **2.1 Meaning of "the public"**

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

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

Consult legal counsel if you need further guidance.

### **2.2 Meaning of "close personal friend"**

A close personal friend is an individual who has known the director, senior officer, founder or control person well enough and for a sufficient period of time to be in a position to assess the capabilities and trustworthiness of the director, senior officer, founder or control person.

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

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

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

### **2.3 Meaning of "close business associate"**

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

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

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

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

#### **2.4 Distribution of debt securities**

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

#### **2.5 Merger of private issuers**

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

#### **2.6 Acquisition of a private issuer**

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

#### **2.7 Ceasing to be a private issuer**

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

## **2.8 Non-corporate issuers**

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

## **2.9 Required Saskatchewan Risk Acknowledgement**

In Saskatchewan, any person or company trading securities under the private issuer exemption based on close personal friendship or close business association, must obtain from each Saskatchewan purchaser a Form 45-103F5 *Risk Acknowledgement - Saskatchewan Close Personal Friends and Close Business Associates*.

## **Part 3 Family, friends and business associates exemption**

### **3.1 Meaning of close personal friends and close business associates**

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

### **3.2 Number of purchasers**

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemption. However, if the issuer sells securities to a large number of persons under this exemption, this may create a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

### **3.3 Required Saskatchewan Risk Acknowledgement**

In Saskatchewan, any person or company trading securities under the family, friends and business associates exemption based on a close personal friendship or close business association must obtain from each Saskatchewan purchaser a Form 45-103F5 *Risk Acknowledgement - Saskatchewan Close Personal Friends and Close Business Associates*.

## **Part 4 Offering memorandum exemption**

### **4.1 Eligibility criteria in Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan**

Many of the jurisdictions impose eligibility criteria on persons or companies investing under the offering memorandum exemption in MI 45-103. Under Alberta and Manitoba securities legislation, anyone can purchase up to \$10,000 worth of securities in an



offering. However, if the purchaser's aggregate acquisition cost is more than \$10,000, the purchaser must be an eligible investor. Under Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan securities legislation, all purchasers under the offering memorandum exemption must be eligible investors. There are no eligibility criteria under British Columbia or Nova Scotia securities legislation for use of the offering memorandum exemption. In determining a purchaser's aggregate acquisition cost, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the aggregate acquisition cost unless the purchaser is legally obligated to exercise or convert the securities.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75,000 pre-tax net income or has \$400,000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is owing at the time of the trade. Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. In Alberta, Newfoundland and Labrador, Northwest Territories, Nunavut and Prince Edward Island, an eligibility adviser refers to a registered investment dealer (or some other category of unrestricted dealer in the purchaser's jurisdiction). In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers. A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. We do not consider an assessment of suitability by these dealers sufficient to qualify a purchaser as an eligible investor.

In each of Northwest Territories, Nunavut and Saskatchewan, an issuer may only use the offering memorandum exemption to raise a cumulative amount of \$1,000,000 from persons or companies in those jurisdictions. In calculating the \$1,000,000, the issuer must include proceeds from all of its prior distributions under the offering memorandum exemption in MI 45-103 to purchasers in those jurisdictions. However, the \$1,000,000 calculation is performed separately for each of those three jurisdictions. For example, if an issuer intends to conduct an offering under the offering memorandum exemption in Saskatchewan, Northwest Territories and Alberta, the issuer must first consider all previous offerings it has made under the offering memorandum exemption in MI 45-103 and calculate the amount that has previously been raised in each of Saskatchewan and Northwest Territories. If \$1,000,000 has already been raised from Saskatchewan purchasers, but only \$300,000 has previously been raised from purchasers in Northwest Territories, the issuer cannot use the offering memorandum exemption for any further distributions to purchasers in Saskatchewan; however, it can use the offering memorandum exemption to raise a further \$700,000 from purchasers in Northwest

Territories. The limits in Saskatchewan and Northwest Territories do not restrict the amount the issuer can raise from Alberta purchasers.

#### **4.2 Use of offering memorandum exemption by mutual funds**

Under Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan securities legislation, certain mutual fund issuers are precluded from using the offering memorandum exemption. This restriction does not apply in British Columbia and Nova Scotia.

#### **4.3 Form of offering memorandum**

There are two forms of offering memorandum. Qualifying issuers under Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”) may use Form 45-103F2. Form 45-103F2 permits qualifying issuers to incorporate by reference their annual financial statements, annual information form and subsequent specified continuous disclosure documents. All other issuers must use Form 45-103F1.

#### **4.4 Date of certificate and required signatories**

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers. Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in section 4.4 of MI 45-103.

The chief executive officer, chief financial officer, two directors and all promoters of the issuer must sign the certificate. If the issuer has more than two directors, any two directors who are authorized to sign the certificate, other than the chief executive officer and chief financial officer, may sign on behalf of all of the directors. “Promoter” is defined in the securities legislation to be a person or company who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with the founding, organization or substantial reorganization of the issuer. Under the securities legislation, persons or companies who receive consideration solely as underwriting commissions or in consideration of property who do not otherwise take part in the founding, organization or reorganization of the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person or company a promoter under this exemption.

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

#### **4.5 Consideration to be held in trust**

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

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

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

#### **4.6 Filing of offering memorandum**

The issuer is required to file the offering memorandum with the securities regulatory authority in each of the jurisdictions in which the issuer distributes securities under this exemption. The issuer must file the offering memorandum on or before the 10<sup>th</sup> day after the distribution. If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10<sup>th</sup> day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

#### **4.7 Purchasers' rights**

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

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

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

## **Part 5 Accredited investor exemption**

### **5.1 Meaning of accredited investor**

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

### **5.2 Application to individuals**

An individual is an accredited investor if the individual satisfies either the financial asset test in paragraph (k), the net asset test in paragraph (m) or the net income test in paragraph (l) of section 1.1. If the combined financial assets, net assets or net income of spouses exceeds the \$1 million, \$5 million or \$300,000 thresholds, either spouse (or both spouses together) qualifies as an accredited investor. If the combined net income of the spouses does not exceed \$300,000 but the net income of one of the spouses exceeds \$200,000, only the spouse whose net income exceeds \$200,000 qualifies as an accredited investor. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is owing at the time of the trade.

## **Part 6 Resale of securities**

### **6.1 Resale of securities**

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

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

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

## **Part 7 Reporting requirements**

### **7.1 Report of exempt distribution**

MI 45-103 requires an issuer relying on the family, friends and business associates exemption, the offering memorandum exemption or the accredited investor exemption to file a Form 45-103F4 report of exempt distribution within 10 days of the distribution.

### **7.2 Additional disclosure in British Columbia**

The required form of report of exempt distribution in British Columbia (the “BC Form”) is identical to Form 45-103F4 except that the BC Form requires the issuer to provide the telephone number and e-mail address of each purchaser identified in Schedule B to the form when reporting distributions under the offering memorandum exemption.

### **7.3 Additional disclosure in Saskatchewan**

In Saskatchewan, if an issuer files a Form 45-103F4 reporting an exempt distribution to a Saskatchewan purchaser and the exempt distribution is based on close personal friendship or close business association, additional columns must be added to Schedule B to the form disclosing with whom the necessary relationship exists, that individual’s role with the issuer or an affiliate of the issuer and a detailed description of the nature of the relationship. It is not sufficient to simply state that the relationship exists. This requirement only applies when reporting trades to Saskatchewan purchasers.

## **Part 8 Required forms**

### **8.1 Required forms under the offering memorandum exemption**

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

### **8.2 Real estate securities**

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

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

In Saskatchewan, a risk acknowledgement is also required under sections 2.1 and 3.1 of MI 45-103 if the exempt distribution is based on close personal friendship or close business association. The required form of risk acknowledgement under these sections is Form 45-103F5.

**8.4 Required form of report of exempt distribution**

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

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

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

**8.6 Fees payable on filing Form 45-103F4**

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

**Form 45-103F1**  
***Offering Memorandum for Non-Qualifying Issuers***

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

**The Issuer**

Name:

Head office: Address:

Phone #:

E-mail address:

Fax #:

Currently listed or quoted? [Yes/No. If yes, state where, e.g., TSX/TSX Venture Exchange.]

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

SEDAR filer? [Yes/No]

**The Offering**

Securities offered:

Price per security:

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

Payment terms:

Proposed closing date(s):

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

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

**Resale restrictions**

State: "You will be restricted from selling your securities for [4 months/12 months/an indefinite period]. See item 10."

**Purchaser's rights**

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

State in bold type:

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

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

**Item 1 Use of Net Proceeds**

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

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit.)	\$	\$
D	Net proceeds: $D = A - (B+C)$	\$	\$

1.2 **Use of Net Proceeds** - Using the following table, provide a detailed breakdown of how the issuer will use the net proceeds. If any of the net proceeds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the net proceeds to be applied to the working capital deficiency

Description of intended use of net proceeds listed in order of priority	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$

1.3 **Reallocation** - The net proceeds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the net proceeds may be reallocated, include the following statement:

“We intend to spend the net proceeds as stated. We will reallocate funds only for sound business reasons.”

1.4 **Working Capital Deficiency** - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of net proceeds, state how the issuer intends to eliminate or manage the deficiency.

**Item 2 Business of [name of issuer or other term used to refer to issuer]**

2.1 **Structure** - State the business structure (e.g., partnership, corporation or trust), the statute and the province, state or other jurisdiction under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.



2.2 **Our Business** - Describe the issuer's business. For a non-resource issuer this may include principal products or services, operations, market and marketing plans and strategies. For a resource issuer this will require a description of principal properties (including interest held) and may include disclosure of the stage of development, reserves, geology, operations, production and mineral or resource being explored or developed. Generally, this description should not exceed 2 pages.

2.3 **Development of Business** - Describe (generally, in one or two paragraphs) the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include the major events that have occurred or conditions that have influenced (favourably or unfavourably) the development of the issuer.

2.4 **Long Term Objectives** - Disclose the issuer's long term objectives.

2.5 **Short Term Objectives and How We Intend to Achieve Them** -

(a) Disclose the issuer's objectives for the next 12 months.

(b) Using the following table, disclose how the issuer intends to meet those objectives for the next 12 months.

What we must do and how we will do it	Target completion date or, if not known, number of months to complete	Our cost to complete
		\$
		\$
		\$

2.6 **Insufficient Proceeds**

If applicable, disclose that the proceeds of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available.

2.7 **Material Agreements** - Disclose the key terms of all material agreements

(a) to which the issuer is currently a party, or

(b) with a related party

including the following information:

(i) if the agreement is with a related party, the name of the related party and the relationship,

(ii) a description of any asset or property or interest acquired, disposed of, leased, under option, etc.,

(iii) purchase price and payment terms (e.g., paid in instalments, cash, securities or work commitments),

(iv) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate,

(v) the date of the agreement,

- (vi) the amount of any finder’s fee or commission paid or payable to a related party in connection with the agreement, and
- (vii) any material outstanding obligations under the agreement.

**Item 3 Directors, Management, Promoters and Principal Holders**

3.1 **Compensation and Securities Held** - Using the following table, provide the specified information about each director, officer and promoter of the issuer and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a “principal holder”). If the principal holder is not an individual, state in a note to the table the name of any person or company that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

Name and municipality of principal residence	Positions held (e.g., director, officer, promoter and/or principal holder) and the date of obtaining that position	Compensation paid by issuer in the most recently completed financial year (or, if the issuer has not completed a financial year, since inception) and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of min. offering	Number, type and percentage of securities of the issuer held after completion of max. offering

3.2 **Management Experience** - Using the following table, disclose the principal occupations of the directors and senior officers over the past five years. In addition, for each individual, describe any relevant experience in a business similar to the issuer’s.

Name	Principal occupation and related experience

3.3 **Penalties, Sanctions and Bankruptcy**

- (a) Disclose any penalty or sanction (including the reason for it and whether it is currently in effect) that has been in effect during the last 10 years against
  - (i) a director, senior officer or control person of the issuer, or
  - (ii) an issuer of which a person or company referred to in (i) above was a director, senior officer or control person at the time.
- (b) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, that has been in effect during the last 10 years with regard to any
  - (i) director, senior officer or control person of the issuer, or

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

**Item 4 Capital Structure**

4.1 **Share Capital** - Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

4.2 **Long Term Debt** - Using the following table, provide the required information about outstanding long term debt of the issuer. If the securities being offered are debt securities, add a column to the table disclosing the amount of debt that will be outstanding after both the minimum and maximum offering. If the debt is owed to a related party, indicate that in a note to the table and identify the related party.

Description of long term debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at [a date not more than 30 days prior to the offering memorandum date]
			\$
			\$

4.3 **Prior Sales** - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the last 12 months, use the following table to provide the information specified. If securities were issued for assets or services, describe in a note to the table the assets or services that were provided.

	Type of security issued	Number of securities issued	Price per security	Total funds received
			\$	\$
			\$	\$
			\$	\$

## **Item 5            Securities Offered**

- 5.1    ***Terms of Securities*** - Describe the material terms of the securities being offered, including:
- (a)    voting rights or restrictions on voting,
  - (b)    conversion or exercise price and date of expiry,
  - (c)    rights of redemption or retraction, and
  - (d)    interest rates or dividend rates.
- 5.2    ***Subscription Procedure*** -
- (a)    Describe how a purchaser can subscribe for the securities and the method of payment.
  - (b)    State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).
  - (c)    Disclose any conditions to closing, e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met.

## **Item 6            Income Tax Consequences and RRSP Eligibility**

- 6.1    State: “You should consult your own professional advisers to obtain advice on the tax consequences that apply to you.”
- 6.2    If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide
- (a)    a summary of the significant income tax consequences to Canadian residents, and
  - (b)    the name of the person or company providing the tax disclosure in (a).
- 6.3    Provide advice regarding the RRSP eligibility of the securities and the name of the person or company providing the advice or state “Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities.”

## **Item 7            Compensation Paid to Sellers and Finders**

If any person or company has or will receive any compensation (e.g., commission, corporate finance fee or finder’s fee) in connection with the offering, provide the following information to the extent applicable:

- (a)    a description of each type of compensation and the estimated amount to be paid for each type,
- (b)    if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c)    details of any broker’s warrants or agent’s option (including number of securities under option, exercise price and expiry date), and
- (d)    if any portion of the compensation will be paid in securities, details of the securities

(including number, type and, if options or warrants, the exercise price and expiry date).

## **Item 8 Risk Factors**

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
  - arbitrary determination of price,
  - no market or an illiquid market for the securities,
  - resale restrictions, and
  - subordination of debt securities.
- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
  - insufficient funds to accomplish the issuer's business objectives,
  - no history or a limited history of sales or profits,
  - lack of specific management or technical expertise,
  - management's regulatory and business track record,
  - dependence on key employees, suppliers or agreements,
  - litigation, and
  - political risk factors.
- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
  - environmental and industry regulation,
  - product obsolescence, and
  - competition.

## **Item 9 Reporting Obligations**

9.1 Disclose the documents that will be sent to purchasers on an annual or on-going basis.

9.2 If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

## **Item 10 Resale Restrictions**

10.1 **General Statement** - For trades in Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan, state:

“These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation.”

10.2 **Restricted Period** - For trades in Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan, state one of the following, as applicable:

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

“Unless permitted under securities legislation, you cannot trade the securities before the earlier of the date that is 12 months and a day after the date [name of issuer or other term used to refer to the issuer]

- 1. becomes a reporting issuer in the Canadian province or territory in which you reside, or
- 2. first becomes a reporting issuer in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec or Saskatchewan, and a SEDAR filer.”

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

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

- (c) If, at the distribution date, the issuer is not a “qualifying issuer” and is a reporting issuer in the Canadian province or territory in which the purchaser resides, state:

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

- (d) If, at the distribution date the issuer is a “qualifying issuer”, state:

“Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 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 Manitoba at the time the security is acquired by the purchaser state:

“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 2<sup>nd</sup> 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 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 45-103F1  
*Offering Memorandum for Non-Qualifying Issuers*

**A. General Instructions**

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
3. The issuer may include additional information in the offering memorandum other than that specifically required by the form. However, the offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus.
4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
5. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
6. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about “directors”, provide disclosure for the general partner(s) and trustee(s). If a general partner or trustee is a corporation, state the names of the directors of the general partner or trustee.
7. When the term “related party” is used in this form, it refers to:
  - (a) a director, officer, promoter or control person of the issuer,
  - (b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence,
  - (c) in regard to a person referred to in (a) or (b), his or her spouse or a person with whom he or she is living in a marriage-like relationship,
  - (d) an insider of the issuer,
  - (e) a company controlled by one or more individuals referred to in (a) to (d), and
  - (f) in the case of an insider, promoter or control person that is not an individual, any person or company that controls that insider.

(If the issuer is not a reporting issuer, the reference to “insider” includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.)

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
9. Securities legislation restricts what can be told to investors about the issuer’s intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
10. If an issuer uses this form in connection with a distribution under an exemption other than section 4.1 of Multilateral Instrument 45-103 *Capital Raising Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser’s rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

## **B. Financial Statements - General**

1. Any financial statements included in the offering memorandum must be prepared in accordance with Canadian generally accepted accounting principles (Canadian GAAP). Differential reporting, as discussed in section 1300 of the CICA Handbook, is not acceptable for financial statements of either the issuer or of a business for which financial statements are required in the offering memorandum.
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 3, 6 or 9 month interim period that ended more than 60 days before the date of the offering memorandum, and ended after the date of the financial statements required under B.4(a), and

- (d) a balance sheet dated as at the ending date of the statements required by B.4(c).
5. If financial statements of the issuer for a more recent annual or interim period than those required by B.3 or B.4 have been prepared, include those more recent financial statements in the offering memorandum.
  6. If the issuer has changed its year end, refer to National Policy 51 *Changes in the Ending Date of a Financial Year and in Reporting Status* for guidance concerning interim periods in a transition year. Financial statements for the most recently completed interim period in a transition year should be provided to satisfy B.4(c).
  7. If the issuer has completed two or more financial years that ended more than 120 days from the date of the offering memorandum, the annual financial statements required under B.4(a) and (b) must include comparatives for the prior year. The interim financial statements required under B.4(c) and (d) may exclude comparatives if financial statements for the comparative periods were not previously prepared.
  8. The annual financial statements required under B.4(a) and (b) must be audited in accordance with Canadian generally accepted auditing standards (Canadian GAAS) and the audit report must be included in the offering memorandum. The financial statements required under B.3, B.4(c) and (d) and B.5 and the comparatives required by B.6 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.
  9. Each page of any 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 120<sup>th</sup> day following the financial year end.
  11. The offering memorandum does not have to be updated to include interim financial statements for periods completed after the date 60 days prior to the date of the offering memorandum. However, it may be necessary to include the interim financial statements in the offering memorandum 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 for the business if the test in C.2 is met, irrespective of how the issuer accounts for the acquisition.
2. Include the financial statements for a business referred to in C.1 if either:
  - (a) the issuer's proportionate share of the consolidated assets of the business exceeds 50% of the consolidated assets of the issuer calculated using the most recent annual financial statements of each of the issuer and the business before the date of the acquisition or proposed date of acquisition, or
  - (b) the issuer's consolidated investments in and advances to the business as at the date of the acquisition or the proposed date of acquisition exceeds 50% of the consolidated assets of the issuer as at the end of the issuer's most recently completed financial year that ended before the date of the acquisition or proposed date of acquisition.
3. Where an issuer or a business referred to in C.1 has not yet completed a financial year or has completed its first financial year that ended within 120 days of the offering memorandum date and financial statements for that year are not yet available, use the financial statements referred to in B.3(b) or B.4(d) to make the calculations in C.2.
4. If a business referred to in C.1 meets either of the threshold tests in C.2, include in the offering memorandum the following financial statements of the business:
  - (a) If the business has not completed one financial year include
    - (i) statements of income, retained earnings and cash flows for the period from inception to a date not more than 60 days before the date of the offering memorandum, and
    - (ii) a balance sheet dated as at the ending date of the statements required by C.4(a)(i).However, if the date of acquisition for a business precedes the ending date of the period referred to in C.4(a)(i), then provide financial statements for the period from inception to the date of acquisition or a date not more than 30 days before the date of acquisition.

- (b) If the business has completed one or more financial years include
  - (i) statements of income, retained earnings and cash flows for the most recently completed financial year that ended before the date of acquisition and more than 120 days before the date of the offering memorandum,
  - (ii) a balance sheet dated as at the ending date of the statements required by C.4(b)(i),
  - (iii) statements of income, retained earnings and cash flows for either:
    - A. the most recently completed 3, 6 or 9 month interim period that ended before the date of acquisition and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under C.4(b)(i), or
    - B. the period from the first day after the financial year referred to in C.4(b)(i) to the date of acquisition or a date not more than 30 days before the date of acquisition, and
  - (iv) a balance sheet dated as at the ending date of the statements required by C.4(b)(iii).
- 5. The annual financial statements required under C.4(b)(i) and (ii) must be audited in accordance with Canadian GAAS and the 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, 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.

**D. Financial Statement - Exemptions**

1. An issuer will satisfy the financial statement requirements of this form if it includes the financial statements required by securities legislation for a prospectus.
2. An audit report on financial statements contained in an offering memorandum may contain a reservation relating to opening inventory unless the issuer previously filed an audit report on financial statements for the same entity for a prior year in which there was a reservation relating to inventory.
3. The financial statements of a person or company incorporated or organized in a jurisdiction outside of Canada that are included in an offering memorandum, may be prepared in accordance with a body of generally accepted accounting principles, other than Canadian GAAP, if those accounting principles are as comprehensive as Canadian GAAP (e.g., U.S. GAAP) and cover substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements (“foreign GAAP”), if the notes to the financial statements
  - (a) explain and quantify the effect of material differences between Canadian GAAP and foreign GAAP that relate to measurements and those differences are not so pervasive as to render the financial statements misleading, and
  - (b) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.
4. The financial statements of a person or company incorporated or organized in a jurisdiction outside of Canada that are included in an offering memorandum, may be audited in accordance with a body of generally accepted auditing standards, other than Canadian GAAS, provided that
  - (a) those auditing standards are substantially equivalent to Canadian GAAS, requiring audit work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS, and
  - (b) the auditor’s report is accompanied by a statement of the auditor
    - (i) disclosing any material differences in the form and content of the foreign auditor’s report as compared to a Canadian auditor’s report, and
    - (ii) unless the auditing standards are U.S. GAAS, confirming that the auditing standards applied are substantially equivalent to Canadian GAAS.
5. If an acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the CICA Handbook, financial statements for a business required by C.4 are not required to be included in the offering memorandum if:
  - (a) the offering memorandum includes disclosure for the periods for which financial statements are required under Part C that:
    - (i) summarizes the assets, liabilities and results of operations of the business, and

- (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
- (b) the financial information provided under D.5(a) for any completed financial year has been audited, or has been derived from audited financial statements of the business; and
- (c) the offering memorandum discloses that:
  - (i) the financial information provided under D.5(a) for any completed financial year has been audited, or identifies the financial statements from which the financial information provided under D.5(a) has been derived; and
  - (ii) the audit opinion with respect to the financial information or financial statements referred to in D.5(c)(i) was issued without a reservation of opinion.

If the financial information included in an offering memorandum under D.5(a) has been derived from financial statements of a business incorporated or organized in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information must be accompanied by a note that explains and quantifies the effect of material differences between Canadian GAAP and the foreign GAAP.

6. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if:
- (a) the required financial statements do not exist,
  - (b) the acquisition was not or will not be accounted for as a "reverse take-over" as defined in the CICA Handbook,
  - (c) the property did not or does not constitute a "reportable segment" of the seller, as defined in section 1701 of the CICA Handbook, at the time of acquisition and
  - (d) the offering memorandum contains alternative disclosure for the property which includes at least an operating statement (which must be accompanied by an audit report if it is prepared as an alternative to audited annual financial statements) presenting, at a minimum, the following line items:
    - (i) gross revenue,
    - (ii) royalty expenses,
    - (iii) production costs,
    - (iv) operating income, and
    - (v) if a material fact,
      - A. information with respect to reserve estimates and estimates of future net revenue and production volumes and other relevant information regarding the property,
      - B. actual production volumes of the property for the most recently completed year, and
      - C. estimated production volumes of the property for the next year, based on information in the reserve report.



7. Financial statements for a business that is an interest in an oil and gas property or for the acquisition or proposed acquisition by an issuer of a property are not required to be audited if:
- (a) the property was acquired prior to December 31, 2000, and the offering memorandum states that, despite making reasonable efforts, the issuer was unable to obtain audited operating statements because the seller refused to provide such audited statements or to permit access to the information necessary to audit the statements, or
  - (b) during the 12 months preceding the date of the acquisition or the proposed date of an acquisition, the daily average production of the property on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil) is less than 20 per cent of the total daily average production of the seller for the same or similar periods and:
    - (i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,
    - (ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and
    - (iii) the offering memorandum discloses
      - 1. 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.7(b)(ii), and
      - 4. that the results presented in the operating statements may have been materially different if the statements had been audited.

**Form 45-103F2**  
***Offering Memorandum for Qualifying Issuers***

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

**The Issuer**

Name:

Head office: Address:

Phone #:

E-mail address:

Fax #:

Where currently listed or quoted? [e.g., TSX/TSX Venture Exchange]

**The Offering**

Securities offered:

Price per security:

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

Payment terms:

Proposed closing date(s):

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

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

**Resale restrictions**

State: "You will be restricted from selling your securities for 4 months. See item 10".

**Purchaser's rights**

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

State in bold type:

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

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

**Item 1 Use of Net Proceeds**

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

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$
D	Net proceeds: $D = A - (B+C)$	\$	\$

1.2 **Use of Net Proceeds** - Using the following table, provide a detailed breakdown of how the issuer will use the net proceeds. If any of the net proceeds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the net proceeds to be applied to the working capital deficiency.

Description of intended use of net proceeds listed in order of priority.	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$

1.3 **Reallocation** - The net proceeds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the net proceeds may be reallocated, include the following statement:

“We intend to spend the net proceeds as stated. We will reallocate funds only for sound business reasons.”

1.4 **Working Capital Deficiency** - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of net proceeds, state how the issuer intends to eliminate or manage the deficiency.

1.5 **Insufficient Proceeds** - If applicable, disclose that the proceeds of the offering either may not or will not be sufficient to accomplish all of the issuer’s proposed objectives and that there is no assurance that alternative financing will be available.

**Item 2 Information About** [name of issuer or other term used to refer to issuer]

2.1 **Business Summary** - Briefly (in one or two paragraphs) describe the business intended to be carried on by the issuer over the next 12 months. State whether this represents a change of business. If the issuer is a non-resource issuer, describe the products that the issuer is or will be developing or producing and the stage of development of each of the products. If the issuer is a natural resource issuer, state: whether the issuer’s principal properties are primarily in the exploration or in the development or production stage; what resources the issuer is engaged in exploring, developing or producing; and the locations of the issuer’s principal properties.

2.2 **Existing Documents Incorporated by Reference** - State:

“Information in the documents listed in the table below has been incorporated by reference into this offering memorandum from documents filed with securities regulatory authorities in Canada. The documents incorporated by reference are available for viewing on the SEDAR website at [www.sedar.com](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 C.2.2):

Description of document (In the case of material change reports, provide a brief description of the nature of the material change)	Date of document

2.3 **Existing Documents Not Incorporated by Reference** - State:

“Other documents available on the SEDAR website (for example, most press releases, take-over bid circulars, prospectuses and rights offering circulars) are not incorporated by reference into this offering memorandum unless they are specifically referenced in the table above. Your rights as described in item 11 of this offering memorandum apply only in respect of information contained in this offering memorandum and documents or information incorporated by reference.”

2.4 **Existing Information Not Incorporated by Reference** - Certain specified information (as

outlined in Instruction C.2.4) contained in the documents incorporated by reference may be, but is not required to be, incorporated by reference into the offering memorandum. If the issuer does not wish to incorporate that information into the offering memorandum, the issuer must state that and include a statement in the offering memorandum identifying:

- (a) the information that is not being incorporated by reference, and
- (b) the document in which the information is contained.

2.5 ***Future Documents Not Incorporated by Reference*** - State:

“Documents filed after the date of this offering memorandum are not deemed to be incorporated into this offering memorandum. However, if you subscribe for securities and an event occurs, or there is a change in our business or affairs, that makes the certificate to this offering memorandum no longer true, we will provide you with an update of this offering memorandum, including a newly dated and signed certificate, and will not accept your subscription until you have re-signed the agreement to purchase the securities.”

**Item 3 Directors, Officers, Promoters and Principal Holders**

3.1. Using the following table, provide information about each director, senior officer, promoter and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a “principal holder”). If the principal holder is not an individual, state in a note to the table the name of any person or company that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

Name and municipality of principal residence	Position(s) with the issuer

3.2 State: “You can obtain further information about directors and senior officers from [insert the name and date of the document(s) with the most current information, e.g., management information circular, annual information form or material change report].”

3.3 State: “Current information regarding the securities held by directors, senior officers and principal holders can be obtained from [refer to the SEDI website at [www.sedi.ca](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 tax consequences that apply to you”.
- 6.2 If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide
  - (a) a summary of the significant income tax consequences to Canadian residents, and
  - (b) the name of the person or company providing the tax disclosure in (a).
  
- 6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person or company providing the advice or state “Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities.”

**Item 7 Compensation Paid to Sellers and Finders**

If any person or company has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

- (a) a description of each type of compensation and the estimated amount to be paid for each type,
- (b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date), and
- (d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

**Item 8 Risk Factors**

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
  - arbitrary determination of price,
  - no market or an illiquid market for the securities,
  - resale restrictions, and
  - subordination of debt securities.
- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
  - insufficient funds to accomplish the issuer's business objectives,
  - no history or a limited history of sales or profits,
  - lack of specific management or technical expertise,
  - management's regulatory and business track record,
  - dependence on key employees, suppliers or agreements,
  - litigation, and
  - political risk factors.
- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
  - environmental and industry regulation,
  - product obsolescence, and
  - competition.

## **Item 9 Reporting Obligations**

- 9.1 Disclose the documents that will be sent to purchasers on an annual or on-going basis.
- 9.2 If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

## **Item 10 Resale Restrictions**

For trades in Alberta, British Columbia, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan state:

“These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation.

Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date.”

## **Item 11 Purchasers’ Rights**

State the following:

“If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

1. **Two Day Cancellation Right** - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2<sup>nd</sup> 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 45-103F2  
Offering Memorandum for Qualifying Issuers

**A. General Instructions**

1. Only a “qualifying issuer” as defined in Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) may use this form.
2. An issuer using this form to draft an offering memorandum must incorporate by reference certain parts of its existing continuous disclosure base. An issuer that does not want to do this must use Offering Memorandum Form 45-103F1.
3. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
4. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
5. The issuer may include additional information in the offering memorandum other than that specifically required by the form. However, the offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus.
6. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
7. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
8. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about “directors”, provide disclosure for the general partner(s) and trustee(s). If a general partner or trustee is a corporation, state the names of the directors of the general partner or trustee.
9. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
11. If an issuer uses this form in connection with a distribution under an exemption other than section 4.1 of Multilateral Instrument 45-103 *Capital Raising Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

**B. Financial Statements**

1. Any financial statements incorporated by reference into the offering memorandum must be prepared in accordance with Canadian generally accepted accounting principles. Any audit must be conducted in accordance with Canadian generally accepted auditing standards.
2. Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum.

**C. Required Updates to the Offering Memorandum**

1. If the offering memorandum does not incorporate by reference either
  - (a) the audited financial statements for the issuer's most recently completed financial year (including the audit report), or
  - (b) the issuer's current AIF (as defined in MI 45-102),update the offering memorandum to incorporate by reference the document as soon as the document is filed on SEDAR but, in any event, no later than the 120<sup>th</sup> day following the financial year end.
2. Except for documents referred to in C.1, the offering memorandum does not have to be updated to incorporate by reference interim financial statements or other documents referred to in D.2.2 unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.

**D. Specific Instructions**

**Item 2: Information about the Issuer**

- 2.2 ***Existing Documents Incorporated by Reference*** - In addition to any other document that an issuer may choose to incorporate by reference, the issuer must incorporate the following documents:
  - (a) the issuer's current AIF (as defined in MI 45-102),

- (b) material change reports, except confidential material change reports, filed after the commencement of the issuer's current financial year,
- (c) the interim financial statements for the issuer's most recently completed financial period for which the issuer prepares interim financial statements that are required to be filed,
- (d) the financial statements, together with the accompanying report of the auditor, for the issuer's most recently completed financial year for which annual financial statements are required to be filed,
- (e) if, before the offering memorandum is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under 2.2(c) and (d) is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication,
- (f) management's discussion and analysis (MD&A) for the annual comparative financial statements referred to in 2.2(d),
- (g) MD&A for the issuer's interim financial statements, to the extent that the issuer is required to file interim MD&A with a Canadian securities regulatory authority,
- (h) except as provided in D.2.4, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings that, in each case, are required to be filed after the commencement of the issuer's current financial year,
- (i) if the issuer has a mineral project, technical reports, certificates and consents required to be filed under NI 43-101 that, in each case, are required to be filed after the commencement of the issuer's current financial year, and
- (j) on implementation of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, technical reports, certificates, consents and other documents that, in each case, are required under that instrument to be filed after the commencement of the issuer's current financial year.

An issuer may incorporate any additional document provided that the document is available for viewing on the SEDAR website and that, on request by a purchaser, the issuer provides a copy of the document to the purchaser, without charge.

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

- (a) under securities legislation, in an information circular or annual filing of:
  - (i) the repricing downward of options or free standing stock appreciation rights,
  - (ii) the composition of the compensation committee of the board of directors of the issuer and its report on executive compensation, or
  - (iii) a graph comparing the yearly percentage change in the issuer's cumulative total shareholder return on publicly traded securities with the cumulative total return of a broad equity market index of a published industry or line-of-business index or other issuers,

- (b) by an exchange or other market on which the issuer's securities trade, in the issuer's information circular regarding the issuer's corporate governance practices.

FORM 45-103F3

**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 or 12] months. *[Instruction: Delete if issuer is not reporting]*
- 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 or company 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.

WARNING

**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, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island 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 will 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.*]**



**Form 45-103F4**

**Report of Exempt Distribution**

**Issuer information**

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. If this report is filed by a vendor, other than the issuer, also state the full name and address of the vendor.
2. State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

**Details of distribution**

3. State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.
4. For each security distributed:
  - (a) describe the type of security, and
  - (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.
5. Complete the following table for each Canadian and foreign jurisdiction where securities were distributed. Provide a total dollar value of all securities distributed in all jurisdictions.

Each jurisdiction where securities are distributed	Price per security (Canadian \$)	Total dollar value of distribution in jurisdiction (Canadian \$)
Total dollar value of distribution in all jurisdictions (Canadian \$)		

6. Provide details of the distribution by completing schedules A and B.

**Commissions and finder's fees**

7. Provide the following information for each person who is being compensated in connection with the distribution(s). When disclosing compensation paid or to be paid, include discounts, commissions or other fees or payments of a similar nature directly related to the distribution. Do not include payments for services incidental to the trade, such as clerical, printing, legal or accounting services.

Full name and address of person being compensated	Compensation paid (in Canadian \$ and, if applicable, number and type of securities)	Exemption relied on and date of distribution (if applicable)	Price per share (Canadian \$)

**Certificate**

On behalf of the issuer (or vendor), I certify that the statements made in this report and in each schedule to this report are true.

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

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

\_\_\_\_\_  
Print name and position of person signing

\_\_\_\_\_  
Signature

**Schedule A**

Provide the following information on a separate page attached to this report for each type of security distributed to a director, senior officer, control person, promoter or insider of the issuer and, if known to the issuer, to any person or company registered under the securities legislation of a jurisdiction of Canada. If this report is being filed for securities distributed on more than one distribution date, add a column to identify the dates the securities were distributed to each purchaser. **This information will be made available to the public under the securities legislation in British Columbia.**

Full name of purchaser, municipality and jurisdiction of residence	Position with issuer or type of registration under securities legislation	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on

### Schedule B

Provide the following information on a separate page attached to this report for each type of security distributed. **The information in this schedule will not be placed on the public file of any securities regulatory authority.**

If the report is being filed for securities distributed on more than one distribution date, add a column to identify the dates the securities were distributed.

In British Columbia, for distributions under the exemptions in Part 4 of Multilateral Instrument 45-103 *Capital Raising Exemptions*, also give the telephone number and e-mail address of the purchaser. If the purchaser has refused to provide this information, the issuer must include a statement to this effect in the report.

In Saskatchewan, for exempt distributions based on the purchaser's close personal friendship or close business association with a director, senior officer, founder or control person of the issuer or an affiliate of the issuer, add a column identifying the name and position of the relevant director, senior officer, founder or control person of the issuer or affiliate of the issuer for purchasers in Saskatchewan. Add a second column describing in detail the nature of the relationship between the purchaser and the relevant director, senior officer, founder or control person of the issuer or affiliate of the issuer. It is not sufficient to simply state that the relationship exists.

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

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

#### INSTRUCTION:

1. File this report and the applicable fee with the securities regulatory authority in each jurisdiction in which the issuer has distributed securities on or before the 10<sup>th</sup> day after the distribution of the security.
2. If distributions have not occurred within 10 days of each other, separate reports must be filed.
3. In order to determine the fee payable, consult the securities legislation of each jurisdiction. In some jurisdictions, the fee is calculated as a percentage of the proceeds realized by the issuer from, or total dollar value of, the securities distributed in that jurisdiction, as set out in item 5 of 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 for the purposes of the administration and enforcement of the securities legislation. In British Columbia, all of the information required under this form, except for the information contained in schedule B, is made available to the public. Freedom of information legislation in certain jurisdictions may require the securities regulatory authority to make this information available if requested. As a result, the public may be able to obtain access to the information.

If you have any questions about the collection and use of this information, contact the securities regulatory authorities in the jurisdictions where the form is filed, at the address(es) set out below.

**Alberta Securities Commission**

4<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue SW  
Calgary, AB T2P 3C4  
Telephone: (403) 297-6454  
Facsimile: (403) 297-6156

**British Columbia Securities Commission**

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

**The Manitoba Securities Commission**

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

**Securities Commission of Newfoundland**

P.O. Box 8700  
2<sup>nd</sup> Floor, West Block  
Confederation Building  
St. John's, NFLD A1B 4J6  
Telephone: (709) 729-4189  
Facsimile: (709) 729-6187

**Northwest Territories**

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

**Nova Scotia Securities Commission**

2<sup>nd</sup> Floor, Joseph Howe Building  
1690 Hollis Street  
Halifax, NS B3J 3J9  
Telephone: (902) 424-7768  
Facsimile: (902) 424-4625

**Government of Nunavut**

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

**Prince Edward Island Securities Office**

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

**Saskatchewan Securities Commission**

800 – 1920 Broad Street  
Regina, SK S4P 3V7  
Telephone: (306) 787-5879  
Facsimile: (306) 787-5899

FORM 45-103F5

**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 or 12] 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 ie. founder, director, senior officer or control person] of \_\_\_\_\_ [state name of issuer or its affiliate].

**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.

WARNING

**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 will 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 Securities Commission's website at <http://www.ssc.gov.sk.ca>.

[*Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.*]