ALBERTA SECURITIES COMMISSION NOTICE
Revised Multilateral Instrument 45-103 *Capital Raising Exemptions*

June 13, 2003

Adoption and Effective Date
The securities regulatory authorities in Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan (the "Participating Jurisdictions") are adopting the following:

- Multilateral Instrument 45-103 *Capital Raising Exemptions*; (the "Rule")
- 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* ("Companion Policy"),

collectively, "Revised MI 45-103". In addition, Revised MI 45-103 is being adopted as a policy in New Brunswick and the Yukon Territory.

In Alberta, Revised MI 45-103 will be effective on **June 16, 2003** and will replace the original version of Multilateral Instrument 45-103 *Capital Raising Exemptions* (including all of the original forms and the companion policy) ("Original MI 45-103") adopted on March 30, 2002. However, the Commission has issued a Blanket Order dated June 13, 2003 that will allow a 12 month period in which trades and distributions that have already been commenced under Original MI 45-103 may be completed. The Revised MI 45-103 is also expected to become effective on June 16, 2003 in Manitoba, Nova Scotia and Saskatchewan and on June 30, 2003 in Prince Edward Island. For effective dates in British Columbia, Northwest Territories and Nunavut contact the local securities regulatory authority or refer to their websites.

Background
On March 30, 2002, Original MI 45-103 was adopted in Alberta and on April 3, 2002 it was adopted in British Columbia. Original MI 45-103 provided four new harmonized exemptions from the prospectus and registration requirements including the following:

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

Subsequently, each of the other Participating Jurisdictions expressed an interest in the instrument and a committee was formed to revise Original MI 45-103 to expand the instrument to include the other Participating Jurisdictions. The revisions to the instrument included reference to the new jurisdictions, certain additional conditions and restrictions to use of the exemptions in Saskatchewan, Northwest Territories and Nunavut, adoption of two proposed new forms and

various minor amendments. On or about September 20, 2002, the revised version of MI 45-103 was published for comment in all of the Participating Jurisdictions. Based on public comment received, the securities regulatory authorities in Saskatchewan, Northwest Territories and Nunavut determined to remove most of the additional conditions and restrictions in order to better harmonize the exemption regimes in those jurisdictions with the other Participating Jurisdictions. Consequently, in January 2003 the Saskatchewan securities regulatory authority published another version of MI 45-103 for comment.

Summary of Changes

The most significant differences between Original MI 45-103 and Revised MI 45-103 are:

- the addition of the Participating Jurisdictions to the instrument,
- the adoption of a new form, Form 45-103F4 *Report of Exempt Distribution* with which to report exempt distributions,
- a new reporting option for mutual funds using the accredited investor exemption that allows them to file a Form 45-103F4 annually to report on the use of the exemption,
- the adoption of a new form for use in Saskatchewan, Form 45-103F5 *Saskatchewan Risk Acknowledgement* in connection with the family, friends and business associates exemption,
- a restriction on the payment of commissions to directors, officers, founders and control persons under the private issuer and family, friends and business associates exemptions,
- a requirement for charities to receive investment advice to qualify as accredited investors,
- the inclusion of "founders" in the list of permitted placees under the private issuer and family, friends and business associates exemptions,
- reference within the instrument (rather than through ASC Rule 45-508 - *Interim Amendments To Certain Appendices To Multilateral Instrument 45-102 Resale of* Securities) to the resale restrictions applicable to securities acquired on exercise of convertible securities, and
- reference within the instrument (rather than through ASC Rule 45-802 *Implementing MI 45-103 Capital Raising Exemptions and Forms 45-103F1, F2 and F3*) to the applicable forms to be used under the instrument.

A summary of all the differences between Original MI 45-103 and Revised MI 45-103 is attached as Appendix **A** and blacklines showing the differences between the original and revised versions of the Rule and Companion Policy are attached as Appendix **B** and **C**. (Blacklines showing changes to the Non QI OM, the QI OM and the Risk Acknowledgement have not been provided as there have been so few changes.)

Summary of Comments

A summary of public comments and the corresponding responses is attached as Appendix **D**.

Questions

If you have any questions, please contact:

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APPENDIX A

Summary of Differences between Original MI 45-103 and Revised MI 45-103

1. MI 45-103, the rule

Amendments that were proposed in the September 20, 2002 publication and that are reflected in Revised MI 45-103 appear in italicized text. Minor changes that appear in Revised MI 45-103 that were made subsequent to the September 20, 2002 publication are in regular text.

Change	Reason for Change
s.1.1 - accredited investor definition, (c) - we added central cooperative credit societies for which an order has been made under the *Cooperative Credit Associations Act (Canada)*.	Two commentators requested this addition because these associations are not included under the definition of "Canadian financial institution" in NI 14-101 due to a technicality in the wording under the *Cooperative Credit Associations Act (Canada).*
s.1.1 - accredited investor definition, (k) - we 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". This was not the intended meaning so the word was 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 Original MI 45-103 did not allow individuals or general partnerships with $5 million in net assets to qualify as accredited investors. It was considered appropriate to extend this category to include those persons as the asset test in 1.1(k) only includes financial assets (cash and securities) and is therefore quite narrow. We concluded that an individual or general partnership 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 Original 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 intent. Other rules may restrict the ability of mutual funds and non-redeemable investment funds to invest unless they are currently in distribution; however, we did not consider it necessary to repeat the restrictions in the definition of accredited investor. To do so would be redundant and may create conflict and*

Change	Reason for Change
	confusion, if and when those other rules are changed.
s.1.1 - accredited investor definition, (p) & (q) - we added trust companies and portfolio managers trading for fully managed accounts to the list of accredited investors and added a new s.1.2 deeming these entities to be purchasing as principal.	*Not all of the Participating Jurisdictions have a provision (equivalent to s.132(1) of the Securities Act (Alberta) and s.74(1) of the Securities Act (British Columbia)) which deems trust companies and portfolio managers to be purchasing as principal therefore 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 were not be deemed to be purchasing as principal.*
s.1.1 - accredited investor definition, (p) and (q) - we extended these categories to include trust companies and portfolio managers registered or authorized to carry on business in foreign jurisdictions.	We had expressly asked industry to comment on whether we should extend this definition to include foreign trust companies and portfolio managers and received support to do so.
s.1.1 - accredited investor definition, (r) - we re-inserted registered charities into the list of accredited investors but added a condition requiring that they obtain advice from an eligibility adviser or registered adviser.	We requested comment on whether registered charities should be included as accredited investors. A number of commentators recommended that they be included. Many charities may meet another category in the definition, for example, persons or companies having $5 million in net assets. However, we are concerned that not all charities are sufficiently sophisticated. We believe that the change will allow registered charities to make investments while ensuring that they have the necessary advice.
s.1.1 - accredited investor definition, (t) - this section has been broadened to include corporations that would be wholly-owned by accredited investors, except that corporate legislation requires a certain number of shares to be held by the directors of the corporation.	We made this change to address concerns that the section was too restrictive because some corporate law requires that shares be held by directors.
s.1.1- definitions of control person and reporting issuer were added with the	Not all jurisdictions have these definitions in their legislation. A further minor amendment

Change	**Reason for Change**
September 2002 publication but have since been slightly amended to clarify which jurisdictions require the definitions.	was made to clarify which jurisdictions needed the definitions.
Definition of "eligibility adviser" was added and in SK and MB, lawyers and accountants can provide the advice.	*The concept of eligibility adviser exists in the Original MI 45-103 as part of the Alberta offering memorandum exemption (i.e., 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 Revised MI 45-103, the concept has been turned into a defined term. In addition, we understand that there may be very few investment dealers operating in SK & MB and consequently, lawyers and accountants are currently permitted to give advice under certain of the exemptions in SK & 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.*
Definition of "eligible investor" expanded to include persons referred to in the family, friends and business associates.	*This was done to give family, friends and business associates the option of investing under an offering memorandum if they choose. Under Original MI 45-103, 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.*
Definition of "founder" added.	*The definition of founder is similar to the statutory definition of promoter that currently exists in most securities legislation; however, the definition of founder requires that the individual must still be involved with the issuer. Promoters were not included in the family, friends and business associates*

Change	Reason for Change
	exemption in the Original 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 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 the new term, founder. The term founder requires that the individual be currently involved with the issuer.
s.1.1 - definition of founder amended to add the words "acting in concert with" and to change "continues to be" to "is".	Concern was expressed that the B.C. Securities Act uses the term "acting in concert" instead of "in conjunction with" and that the change in terminology might affect the meaning in the B.C. Securities Act. The wording "continues to be" also caused a temporal defect that could be corrected by using "is".
Definitions of "fully managed account", "MI 45-102" and "qualifying issuer" added.	*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.*
Section 1.2 - The heading of the section was changed from "Interpretation" to "Persons or companies deemed to be purchasing as principal".	The heading was not informative.
Section 2.1(c) & 3.1(c) - we 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 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 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*

Change	Reason for Change
	exemption. The requirement to be wholly owned can prevent investment by family trusts or holding companies in which various family members participate but not 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 2.2 & 3.2 - we added a restriction on the payment of commissions and finder's fees to directors, officers, founder and control persons in the private issuer and family, friends and business associates exemptions. In the September publication SK proposed to restrict the payment of any commissions and finder's fees under these exemptions; however, SK removed this provision with respect to the private issuer exemption.	*Concern was expressed that it was not appropriate to allow directors, officers, founders 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. As a result of comments received, SK reconsidered its prohibitions against all commissions being paid under the private issuer exemption.*
Sections 2.3 & 3.3 - In the September publication we added a new requirement to file a modified Saskatchewan risk acknowledgement when selling securities (under the private issuer or family, friends and business associates exemption) to Saskatchewan purchasers where the purchaser was investing on the basis of friendship or business association. SK determined to remove the requirement under the private issuer exemption.	*Prior to adoption of Revised MI 45-103 in SK, investors who invest based on a relationship of friendship or business association must be advised of the risks of investing and file a statement describing the relationship. A new form, Form 45-103F5 has been developed to address this issue. The form will only be required in SK with regard to sales to SK purchasers.*
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.	*This change was made to contemplate the various future legislative amendments.*
Section 4.5 – the 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 6.3 - we added resale restrictions 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*

Change	Reason for Change
	amend Multilateral Instrument 45-102 Resale of Securities. 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 - we 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 MB instrument. Subsequent to the September publication we slightly amended the wording to reflect the MB requirements.*
Section 7.1 - we removed the requirement for an investor to file a report of exempt distribution when selling securities under an exemption.	*BC has historically only required the issuer to file a report when relying on a prospectus exemption. Many of the other jurisdictions have required anyone relying on a specified exemption to file a report. We eliminated the requirement for a selling security holder to file a report. The issuer's reporting requirement remains.*
Section 7.1(3) - we have added a provision allowing a mutual fund or non-redeemable investment fund to file their report of exempt distribution under the accredited investor exemption use within 30 days of their financial year end rather than 10 days after the distribution.	We generally give exemptive relief in these circumstances. By providing it in MI 45-103, it will reduce the regulatory burden for these types of issuers.
Part 8 - we have added a section indicating that in BC the required forms are designated by the BC regulator.	All jurisdictions will require the same forms. In the September publication, BC was not referenced in Part 8 because the BCSC did not want to prescribe the forms as rules but would instead have the Executive Director prescribe the forms. The section now indicates this.
Part 9 - we have added an exemption provision so that either the securities regulatory authority or regulator can grant an exemption from the instrument.	Certain of the jurisdictions were concerned that their existing exemptive relief provisions were not broad enough to grant relief from all of the requirements of MI 45-103.

2. Form 45-103F1 Offering Memorandum for Non-Qualifying Issuers

- In the September 20, 2002 publication:
  - We amended Part 1 of the Form to change the various references to "available funds" and "use of available funds" 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 could be misleading, for example, if an issuer had a working capital deficiency but had no intention to use the net proceeds to reduce the working capital deficiency. Although working capital or a working 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 Part 1 of the forms requiring disclosure of such deficiency.

- We added a requirement to item 6 to provide information regarding RRSP eligibility.
- We created a new item 12 referring to financial statements. Some issuers that have filed non-qualifying issuer offering memoranda have not attached financial statements to the offering memoranda. Although the instructions to the form already clearly indicate financial statements are required, the additional item is intended to act as a reminder of the requirement to include the financial statements and that the financial statement disclosure is being certified as part of the offering memorandum.

- Since the September 20, 2002 publication:
  - The form has been amended to reflect the change to Manitoba's resale restrictions referred to in the rule.
  - Instruction 6 to the form has been amended to clarify who signs the offering memorandum when the issuer is a limited partnership or trust.

3. Form 45-103F2 Offering Memorandum for Qualifying Issuers

- In the September 20, 2002 publication:
  - We amended Part 1 of the Form to change the various references to "available funds" and "use of available funds" 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 could be misleading, for example, if an issuer had a working capital deficiency but had no intention to use the net proceeds to reduce the working capital deficiency. Although working capital or a working 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 Part 1 of the forms requiring disclosure of such deficiency.
  - We added a requirement to item 6 to provide information regarding RRSP eligibility.

- Since the September 20, 2002 publication
  - Instruction 8 to the form has been amended to clarify who signs the offering memorandum when the issuer is a limited partnership or trust.

4. Form 45-103F3

In the September 20, 2002 publication we added a statement 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.

The form previously told investors "you will not receive ongoing information". The form has been amended to indicate they "may not" receive the information.

5. Form 45-103F4 *Report of Exempt Distribution*

This was a new form that was published with the September 20, 2002 publication. It is a new report of exempt distribution. It is intended to replace the current report (Form 20).

Changes made since the September 20, 2002 publication are summarized below.

Change	**Reason for Change**
Section 5 and 6 - we have inverted the order of the new sections so that issuers first provide full details of the distribution on the schedule and then summarize the distribution in the main body of the form.	BC requested this change because they are proposing to make the form electronic. Under their electronic form, once the issuer completes the information on the schedule, the summary information will automatically be calculated for them. The reordering should make it easier for issuers to complete the form.
Section 6 (former s.5) - we amended the instructions to indicate that securities issued for payment of commissions and finder's fees should not be included in the table.	The change is for clarification and to avoid duplication. Securities issued for commissions and finder's fees are already required to be disclosed in the table under section 7.
Section 6 (former s.5) - we amended the table to clarify that in tabulating amounts per jurisdiction, the amounts raised from residents in the jurisdiction are added, not the amounts raised from distributions in the jurisdiction.	Some jurisdictions, such as BC and AB, consider distributions outside the jurisdiction by issuers within the jurisdiction to also be distributions in the jurisdiction. With the original language, this could make completing the form confusing for issuers. For example if a BC issuer conducted an offering in BC, AB and SK, they would have indicated in the BC category all purchasers in all jurisdictions and in the AB and SK categories, only the purchasers in those jurisdictions. The revised form clarifies that in the BC category, they would only list purchasers resident in BC.
Schedule A has been deleted.	Originally, BC wanted to publish information concerning purchases by insiders and registrants and required a separate schedule to do that. However, BC has determined not to do that and Schedule A is no longer necessary.

Schedule B has been amended to - indicate BC only requires non-reporting issuers using the offering memorandum exemption to identify the phone numbers and e-mail addresses of purchasers, - provide an instruction clarifying that securities issued as commissions and finder's fees need not be included in the schedule, - remove the reference to BC publishing Schedule A, - update the SK securities regulatory authority's name and address, - remove the reference to the SK requiring details of relationships based on close friendship or business association, and - update NWT's address.	- BC has determined that it is no longer necessary as part of their exempt market study to collect the phone numbers and e-mail addresses from purchasers of securities of reporting issuers. - Securities issued as commissions and finder's fees appear under section 7 so the instruction clarifies it is not necessary to duplicate the information. - As mentioned above, BC is no longer intending to publish the names of insiders and registrants purchasing securities. - The SK office moved and the Saskatchewan Securities Commission is now the Saskatchewan Financial Services Commission. - Based on public comment, the SK securities regulatory authority determined to remove the additional requirement. - The reference to the NWT office contained typographical errors.

6. Form 45-103F5 *Saskatchewan Risk Acknowledgement*

The Saskatchewan risk acknowledgement form was a new form first published for comment on September 20, 2002. It has been modified from the September 20, 2002 publication to require the purchaser to identify the director, senior officer, founder or control person with whom the purchaser has the necessary relationship. It was also amended to refer to the new name and website address of the Saskatchewan securities regulatory authority.

APPENDIX B

- Blackline -
MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTIONS

MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTIONS

Part 1 Definitions

1.1 Definitions

In this ~~instrument~~ **Instrument**

"accredited investor" means

(a) a Canadian financial institution, or an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada),

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),

(c) an association under the *Cooperative Credit Associations Act* (Canada) located in Canada~~,~~ **or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act,**

(d) a subsidiary of any person or company referred to in paragraphs (a) to (c), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,

(e) a person or company registered under the securities legislation~~, or under the securities legislation of another~~ **of a** jurisdiction of Canada, as an adviser or dealer, other than a limited market dealer registered under the *Securities Act* (Ontario) **or the *Securities Act* (Newfoundland and Labrador)**,

(f) an individual registered or formerly registered under the securities legislation~~, or under the securities legislation of another~~ **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 ~~province~~**jurisdiction of Canada**, or any crown corporation ~~or~~**,** agency **or wholly owned entity** of the government of Canada or a ~~province~~**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 ~~provincial~~ pension commission or similar regulatory authority **of a jurisdiction of Canada**,

(k~~)~~ ~~a registered charity under the *Income Tax Act* (Canada),~~(l) an individual who, either alone or ~~jointly~~ 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,

(~~m~~**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,

(~~n~~) ~~a corporation, limited partnership, limited liability partnership, trust or estate~~**m) a person or company**, other than a mutual fund or non-redeemable investment fund, that ~~had~~**, either alone or with a spouse, has** net assets of at least ~~$5,000,000 as~~**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, ~~distributes its securities only to persons or companies that are accredited investors,~~(p) ~~a mutual fund or non-redeemable investment fund that, in the local jurisdiction, distributes~~**is**

distributing or has distributed its securities under ~~a prospectus~~**one or more prospectuses** for which the regulator has issued ~~a receipt,~~**receipts,**

(p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, trading as a trustee or agent on behalf of a fully managed account,

(q**) a person or company trading as agent on behalf of a fully managed account if that person or company is registered or authorized to carry on business under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction as a portfolio manager or under an equivalent category of adviser or is exempt from registration as a portfolio manager or the equivalent category of adviser,**

(r) a registered charity under the *Income Tax Act* (Canada) **that, in regard to the trade, has obtained advice from an eligibility adviser or other adviser registered to provide advice on the securities being traded,**

(s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) through (e) and paragraph (j) in form and function, or

(~~r~~**t**) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, **except the voting securities required by law to be owned by directors,** are persons or companies that are accredited investors;

"control person" has the meaning ascribed to that term in securities legislation except in Manitoba, Northwest Territories, Nova Scotia, Nunavut and Prince Edward Island, where "control person" means any person or company that holds or is one of a combination of persons or companies that holds

(a) a sufficient number of any of the securities of an issuer so as to affect materially the control of the issuer, or

(b) more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holding of those securities does not affect materially the control of that issuer;

"designated securities" means

(a) voting securities,

(b) securities that are not debt securities and that carry a residual right to participate in the earnings of the issuer or, on the liquidation or winding up of the issuer, in its assets, or

(c) securities convertible, directly or indirectly, into securities described in paragraph (a) or (b);

"eligible investor" means

(a) a person or company whose

(i) net assets, alone or with a spouse, exceed $400,000,

(ii) net income before taxes exceeded $75,000 in each of the two most recent years and who reasonably expects to exceed that income level in the current year, or

(iii) net income before taxes combined with that of a spouse exceeded $125,000 in each of the two most recent years and who reasonably expects to exceed that income level in the current year,

(b) a person or company of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,

(c) a general partnership ~~in~~**of** which all of the partners are eligible investors,

(d) a limited partnership ~~in~~**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, ~~or~~

(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~~, securities dealer~~ or ~~their~~ equivalent **category of registration**, registered under the securities legislation of the jurisdiction **of a purchaser and authorized to give advice with respect to the type of security being distributed, and**

(b) **in Saskatchewan or Manitoba, also means a lawyer who is a practising member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or management accountants in a jurisdiction of Canada provided that the lawyer or public accountant :**

(i) **does not have a professional, business or personal relationship with the issuer, or any of its directors, senior officers, founders or control persons, and**

(ii) **has not acted for or been retained personally or otherwise as an employee, senior officer, director, associate or partner of a person or company that has acted for or been retained by the issuer or any of its directors, senior officers, founders or control persons within the previous year**;

"financial assets" means cash and securities;

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

(a) **acting alone, in conjunction or in concert with one or more other persons or companies, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and**

(b) **at the time of the proposed trade, is actively involved in the business of the issuer;**

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

“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); ~~and~~

“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" in Northwest Territories, Nunavut and Prince Edward Island means a reporting issuer in a jurisdiction of Canada.

1.2 Persons or companies deemed to be purchasing as principal

(1) Subject to subsection (2), a trust company or trust corporation described in paragraph (p) of the definition of "accredited investor" is deemed to be purchasing as principal.

(2) Subsection (1) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(3) A person or company described in paragraph (q) of the definition of accredited investor is deemed to be purchasing as principal.

Part 2 Private issuer exemption

2.1 Private issuer exemption

(1) The dealer registration requirement does not apply to a person or company with respect to a trade in a security of a private issuer if the purchaser purchases the security as principal and is

(a) a director, officer, employee**, founder** or control person of the issuer,

(b) a spouse, parent, grandparent, brother, sister or child of a director, senior officer**, founder** or control person of the issuer,

(c) a **parent, grandparent, brother, sister or child of the spouse of a director, senior officer, founder or control person of the issuer,**

(d) a close personal friend of a director, senior officer**, founder** or control person of the issuer,

(~~d~~e) a close business associate of a director, senior officer**, founder** or control person of the issuer~~,(e) a spouse, parent, grandparent, brother, sister or child of the selling security holder~~,

(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,

(~~g~~**h**) an accredited investor,

(~~h~~**i**) a person or company ~~that is wholly-owned by any combination 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 person or company that is not the public.~~ **h),**

(j) a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs (a) to (h), or

(k) a person or company that is not the public.

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

2.2 Restrictions on commissions

No commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a trade under section 2.1 except a trade to an accredited investor.

Part 3 Family, friends and business associates exemption

3.1 Family, friends and business associates exemption

(1) ~~The~~**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,

(~~d~~**e**) a close business associate of a director, senior officer or control person of the issuer, or of an affiliate of the issuer, ~~or(e) a person or company that is wholly-owned by any combination of persons or companies described in paragraphs (a) to (d).~~

(f) a founder of the issuer or a spouse, parent, grandparent, brother, si ster, child, close personal friend or close business associate of a founder of the issuer,

(g) a parent, grandparent, brother, sister or child of the spouse of a founder of the issuer,

(h) a person or company of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons or companies described in paragraphs (**a) to (g), or**

(i) a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs (a) to (g).

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

3.2 Restrictions on commissions

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

(2) In Saskatchewan, no commission or finder's fee may be paid to any person or company, in connection with a trade to a purchaser in Saskatchewan under section 3.1.

3.3 Saskatchewan risk acknowledgement

(1) In Saskatchewan, the exemptions in section 3.1 are not available in relation to a trade to

(a) a person or company described in paragraph 3.1(1)(d) or (e),

(b) a close personal friend or close business associate of a founder of the issuer, or

(c) a person or company described in paragraph 3.1(1)(h) or (i) if the exempt trade is based in whole or in part on a close personal friendship or close business association,

unless the seller obtains from each close personal friend and close business associate a signed risk acknowledgement in the required form.

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

Part 4 Offering memorandum exemption

4.1 Offering memorandum exemption

(1) In British Columbia **and Nova Scotia**, 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) In Alberta**, Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan**, the dealer registration requirement does not apply to a person or company with respect to a trade by an issuer in a security of its own issue if

(a) the purchaser purchases the security as principal,

(b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer

(i) delivers an offering memorandum to the purchaser in compliance with sections 4.2 to 4.4, and

(ii) obtains a signed risk acknowledgement form from the purchaser in compliance with section 4.5(1),

(c) either

(i) the purchaser is an eligible investor, or

(ii) the purchaser's aggregate acquisition cost **to the purchaser** does not exceed $10,000, and

(d) in the case of an issuer that is a mutual fund, it is one referred to in section 1.3 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

(4) In Alberta, **Manitoba, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan,** the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (3**).**

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

4.2 Required form of offering memorandum

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

4.3 Purchasers' Rightsrights

(1) An**If securities legislation where the purchaser is resident does not provide a comparable right, an** offering memorandum delivered under section 4.1 must provide that the purchaser may**with a contractual right to** cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(2) If 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**4.1, the offering memorandum** must contain a contractual right of action against the issuer for rescission or damages that

(a) is available to the purchaser if the offering memorandum, or any record incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,

(b) is enforceable by the purchaser delivering a notice to the issuer

(i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or

(ii) in the case of an action for damages, before the earlier of:

(A.**)** 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or

(B.**)** 3 years after the date the purchaser signs the agreement to purchase the security,

(c) is subject to the defence that the purchaser had knowledge of the misrepresentation,

(d) in the case of an action for damages, provides that the amount recoverable

(i) must not exceed the price at which the security was offered, and

(ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and

(e) is in addition to and does not detract from any other right of the purchaser.

4.4 Certificate

(1) An offering memorandum delivered under section 4.1 must contain a certificate that states the following:
"This offering memorandum does not contain a misrepresentation."

(2) A certificate under subsection (1) must be signed

(a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity,

(b) on behalf of the directors of the issuer,

(i) by any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or

(ii) by all the directors of the issuer, and

(c) by each promoter of the issuer.

(3) A certificate under subsection (1) must be true

(a) at the date the certificate is signed, and

(b) at the date the offering memorandum is delivered to the purchaser.

(4) If a certificate under subsection (1) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless

(a) the purchaser receives an update of the offering memorandum,

(b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (2), and

(c) the purchaser re-signs the agreement to purchase the security.

4.5 Risk acknowledgement

(1) A risk acknowledgement under section 4.1 must be in the required form.

(2) An issuer relying on section 4.1 must retain the signed risk acknowledgement for ~~6~~**8** years after the distribution.

4.6 Consideration to be held in trust

(1) The issuer must hold in trust all consideration received from the purchaser in connection with a trade in a security under section 4.1 until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(2) The issuer must return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under section 4.3(1).

4.7 Filing of offering memorandum

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

4.8 Exemption for filing of technical reports for mineral projects

If a qualifying issuer ~~as defined in Multilateral Instrument 45-102 *Resale of Securities*~~ 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;~~**2001,**

(b) a previously filed technical report under NI 43-~~101;~~**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

~~The~~**Except in Manitoba, the** first trade of a security distributed under the exemption in ~~section~~**subsection** 2.1(2) is subject to section 2.6 of ~~Multilateral Instrument 45-102 *Resale of Securities*~~**MI 45-102.**

6.2 Other exemptions

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

6.3 Convertible securities

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

(a) subsection 2.1(2) is subject to section 2.6 of MI 45-102, or

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

6.4 Manitoba resale restrictions

(1) In Manitoba, a security acquired under an exemption in subsection 3.1(2), 4.1(4) or 5.1(2) or through the exercise of a right to acquire, purchase, convert or exchange previously acquired under one of those exemptions must not be traded without the prior written consent of the regulator, unless

(a) at the time the security was acquired the issuer was a reporting issuer in a jurisdiction listed in Appendix B of MI 45-102,

(b) the issuer of the security subsequently has filed a prospectus with the securities regulatory authority in Manitoba with respect to the security and has obtained a receipt for that prospectus,

(c) if the issuer was not a reporting issuer in Manitoba at the time the security was acquired, the security has been held for at least 12 months, or

(d) the trade is made under an exemption from the prospectus and dealer registration requirements.

(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 ~~Filing Requirements~~Reporting requirements

7.1 Report ~~on Distribution~~of exempt distribution

(1) Subject to ~~subsection~~**subsections** (2) and (3), if ~~a person or company~~**an issuer** distributes a security **of its own issue** under an exemption in ~~section~~**subsection** 3.1(2), 4.1(2), 4.1(4)~~,~~ or 5.1(2), the ~~person or company~~**issuer** must file a report in the ~~required form in the~~**local** jurisdiction in which the distribution takes place on or before the 10th day after the distribution.

(2) ~~A person or company~~**An issuer** is not required to file the report under subsection (1) for a distribution under ~~section~~**subsection** 5.1(2) of an evidence of indebtedness to a Canadian financial institution as security for a loan made by the Canadian financial institution to the person or company.

(3) ~~In British Columbia, only an issuer distributing a security of its own issue is~~**A mutual fund or non-redeemable investment fund is not** required to file the report under subsection (1) **for a distribution under subsection 5.1(2) provided the report is filed not later than 30 days after the financial year end of the mutual fund or non-redeemable investment fund**.

7.2 Required form of report

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

Part 8 Required forms

8.1 Required forms of offering memorandum

(1) Except in British Columbia, the required form of offering memorandum under section 4.2 is Form 45-103F1.

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-103F2.

8.2 Required forms of risk acknowledgement

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

(2) In Saskatchewan, the required form of risk acknowledgement under section 3.3 is Form 45-103F5.

8.3 Required form of report of exempt distribution

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

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

8.4 Required forms in British Columbia

In British Columbia, the required forms are the forms specified by the British Columbia regulator under section 182 of the *Securities Act* (British Columbia).

Part 9 Exemption from instrument

9.1 Grant of exemptions

The regulator or the securities regulatory authority may grant an exemption from this instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

Document comparison done by DeltaView on Wednesday, June 11, 2003 14:39:02

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Document 2	file://Q:/SCC_ADM/AAWebsite/National Instruments/MI 45-103 Effective June 16-2003/#1182270 v2 - MULTILATERAL INSTRUMENT 45-103.doc
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Deletions	79
Moved from	4
Moved to	4
Style change	0
Format changed	1
Total changes	283

APPENDIX C

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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 ~~British Columbia and Alberta.~~ **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 Purchasing as principal**~~

~~Securities legislation deems certain persons or companies to be acting as principal when purchasing for accounts that are fully managed by them. Consult the securities legislation of the jurisdiction in which the trade is occurring to determine whether the person or company satisfies the conditions to be deemed to be purchasing as principal. For example, in British Columbia and Alberta, a portfolio manager (as defined in securities legislation) is deemed to be purchasing as principal when it purchases securities for accounts that are fully managed by it.~~ **1.5 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.

~~For example, section 50 of the *Securities Act* (B.C.) and section 92 of the *Securities Act* (Alberta) prohibit~~**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. ~~The sections~~**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.

~~1.6~~**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 ~~1.5~~**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.

~~1.7~~1.6 Advising

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

~~1.8~~1.7 Advertising and soliciting purchasers

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

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

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

1.8 Persons or companies created solely or primarily to use exemptions

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

circumstances, care should be taken to ensure that it is clear to the purchasers which issuer they will own securities in.

Part 2 Private issuer exemption

2.1 Meaning of "the public"

Section 2.1 of MI 45-103 provides exemptions from the dealer registration and prospectus requirements for trades in securities of a private issuer to those specific persons or companies listed in section 2.1(1)(a) to (i**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 "need to know" and "common bonds" tests that have developed in the common law, would not be a member of the public, section 2.1(1)(i**k**) permits trades to any person or company that is not the public. The**However, the** issuer, or any other person or company relying on the**this subsection of the private issuer** exemption, must satisfy itself that the purchaser is not a member of the public for purposes of the private issuer exemption**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 or control person.**, founder or control person. The term close personal friend can include family members not already listed in the exemption if the family member is in a position to assess the capabilities and trustworthiness of the director, senior officer, founder or control person.**

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

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

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

2.3 Meaning of "close business associate"

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

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

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

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

2.4 Distribution of debt securities

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

2.5 Merger of private issuers

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

2.6 Acquisition of a private issuer

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

2.7 Ceasing to be a private issuer

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

2.8 Non-corporate issuers

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

Part 3 Family, friends and business associates exemption

3.1 Meaning of close personal friends and close business associates

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

3.2 Number of purchasers

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

3.3 Required Saskatchewan Risk Acknowledgement

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

Part 4 Offering memorandum exemption

~~**4.1 Additional conditions in Alberta**~~

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

~~The~~**Each of the jurisdictions, except British Columbia and Nova Scotia, impose eligibility criteria on persons or companies investing under the** offering memorandum exemption in MI 45-~~103 differs under Alberta and British Columbia securities legislation. Under Alberta securities legislation, there is an additional condition, which requires that either the~~**103. In these jurisdictions, anyone can purchase up to $10,000 worth of securities in an offering. However, if the purchaser's** aggregate acquisition cost ~~to the purchaser be not~~**is** more than $~~10,000 or that the purchaser~~**10,000, the purchaser must** be an eligible investor. ~~In addition, certain mutual fund issuers are precluded from using the offering memorandum exemption under Alberta securities legislation.~~

In determining **the** aggregate acquisition cost **to a purchaser who is not an eligible investor**, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the aggregate acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. **The $10,000 maximum aggregate acquisition cost is calculated per**

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

A purchaser can qualify as an eligible investor under various categories **of the definition**, including ~~wherethe~~**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 ~~and purchase more than $10,000 is to obtain the advice of~~**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 securities~~ dealer (or some other category of unrestricted dealer in the purchaser's jurisdiction.) **In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.** A registered **investment** dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. We do not consider an assessment of suitability by these dealers sufficient to qualify a purchaser as an eligible investor.

4.2 Use of offering memorandum exemption by mutual funds

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

4.3 Form of offering memorandum

There are two forms of offering memorandum. Qualifying issuers under Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") may use Form 45-103F2. Form 45-103F2 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.

~~4.3~~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.

~~4.4~~4.5 Consideration to be held in trust

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

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

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

~~4.5~~4.6 Filing of offering memorandum

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

~~4.6~~4.7 Purchasers' rights

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

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

purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

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

Part 5 Accredited investor exemption

5.1 Meaning of accredited investor

The meaning of accredited investor under MI 45-103 is intended to be ~~substantially~~**very similar to** the ~~same as~~**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 ~~who is an individual must satisfy~~**if the individual satisfies** either the financial asset test **in paragraph (k), the net asset test in paragraph (m)** or the net income test ~~set out~~ in ~~paragraphs~~**paragraph** (l) ~~and (m)~~ of section ~~1.1 of MI 45-103.~~ **1.1.** If the combined financial assets**, net assets** or ~~combined~~ 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. ~~These~~**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 ~~Filing~~Reporting requirements

7.1 Report of exempt distribution

MI 45-103 requires ~~a person or company~~**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. ~~In British Columbia, only issuers have to comply with this requirement~~**If the distribution is made in more than one jurisdiction, the issuer may complete one form identifying all purchasers and file that form in each of the jurisdictions in which the distribution is made. The required filing fee is not affected by identifying all purchasers in one form**.

~~The form of report may differ in each jurisdiction in which the distribution takes place. Consult the securities legislation of each jurisdiction to determine the form requirements.~~

7.2 Additional disclosure in British Columbia

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

Part 8 Required forms

8.1 Required forms under the offering memorandum exemption

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

8.2 Real estate securities

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

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

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

8.4 Required form of report of exempt distribution

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

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

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

8.6 Fees payable on filing Form 45-103F4

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

Document comparison done by DeltaView on Wednesday, June 11, 2003 14:49:04

Input:	
Document 1	file://Q:/SCC_ADM/AAWebsite/National Instruments/MI 45-103 Cap Raising - March 28-2002/#941511 v1 - MI 45-103CP - Companion Policy.doc
Document 2	file://Q:/SCC_ADM/AAWebsite/National Instruments/MI 45-103 Effective June 16-2003/#1097891 v10 - MI 45-103CP.doc
Rendering set	ASC Standard no numbering

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	102
Deletions	48
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	152

APPENDIX D

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

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

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

Issue	Comment Summary	Response
		because they are investing either on the basis of a relationship of trust with a principal of the issuer or are able to withstand the loss of an investment and seek their own advice. · In the interests of harmonization, the Committee did not consider it necessary to impose statutory rights in respect of all exemptions in MI 45-103. However, this issue may be revisited in the context of the Uniform Securities Legislation project and, in particular, in light of the proposal for secondary market civil liability.
Harmonization	• Various comments were received commending the securities regulatory authorities for taking the initiative to harmonize the regulatory framework governing exemptions, thereby permitting more efficient private market financings and giving small business greater financing scope and flexibility. • One commentator expressed concern that the fact that MI 45-103 is not adopted in Ontario and Quebec will create regulatory burdens on issuers and a certain amount of confusion. An example of this is the differences between the private issuer exemption in MI 45-103 and the closely-held issuer exemption in OSC Rule 45-501 *Exempt Distributions*. • The commentator also expressed concern over the differences within MI 45-103 between jurisdictions, such as the eligibility criteria in the offering memorandum exemption.	• One of the goals in formulating MI 45-103 was to harmonize with OSC Rule 45-501 to the extent possible. We expect the two instruments to be revisited in the context of the Uniform Securities Legislation project and are hopeful that harmonization with Ontario and Quebec can be achieved at that time. • Harmonizing the regulation of the exempt market has been a challenging endeavour as there are some substantial differences in the nature of the capital markets in the various jurisdictions. Further, in many of the jurisdictions, MI 45-103 represents a significant change from the prior exempt market regimes. However, most of the differences between jurisdictions in MI 45-103 have now been eliminated. The Committee is hopeful that further differences may be eliminated as each jurisdiction gains experience with the instrument.
Existing local exemptions	• Although commentators supported adoption of MI 45-103, a number of commentators in MB, NS and SK recommended that existing local exemptions, e.g., the community ventures program, offering memorandum, informed purchaser, exempt purchaser, incorporator, control person, promoter, and $97,000 or $150,000 exemptions be retained.	• The MSC, NSSC and SSC do not anticipate immediately repealing existing local exemptions. Some jurisdictions anticipate monitoring or reviewing use of the new exemptions in MI 45-103 before recommending repeal of existing local exemptions. If it is determined that a $97,000 or $150,000 exemption should be retained indefinitely, the Committee is hopeful that a harmonized exemption can be adopted.
Advertising	• Two commentators believed that the ability to advertise in connection with use of the exemptions in MI 45-103 was beneficial as it allowed issuers to delay the preparation of costly offering documents until there was sense of whether investors would be interested in the offering.	• The Committee agrees.
Exemption:	**Private issuer**	
Restriction on commissions	• Three comments were received objecting to the restrictions on commissions. It was suggested that private issuers will not be aware of the restriction and that the matter is sufficiently dealt with in corporate law.	•The unique SK restriction prohibiting any commissions under the private issuer exemption has been removed. The restriction that remains does not prevent the payment of commissions in regard to trades to accredited investors nor does it restrict the payment of a commission to a party other than a director, officer, founder or control person. The Committee is of the

Issue	Comment Summary	Response
		view that it is not appropriate to pay commissions to directors, officers, founders and control persons in respect of sales to their family, friends and business associates or to other people who are not the public.
Permitted placees	• It was suggested that the list of permitted placees be expanded to include other in-laws, cousins and persons approved by the securities regulatory authority. • It was suggested that the exemption permit securities to be issued on acquisitions or mergers of private issuers. • It was also suggested that a private issuer should be permitted to rely on other exemptions without losing its private issuer status.	•We have not specifically added in-laws and cousins to the list of permitted placees. However, the companion policy now clarifies that those close family members not specifically listed, can be considered "close personal friends" if they have known the director, senior officer, founder or control person well enough and for a sufficient period of time to be in a position to assess his or her capabilities and trustworthiness. • Using the exemption in connection with the merger of private issuers is addressed in the companion policy. •The Committee disagreed with the suggestion that the list of permitted placees should be further expanded. The main advantages to an issuer of retaining private issuer status is that the issuer is not required to file a report of exempt distribution and its designated security holders are permitted to trade securities amongst themselves. These advantages are provided in order to minimize the regulation of private issuers. However, if the issuer sells designated securities to persons or companies not listed in the exemption, the Committee considers it appropriate that the issuer cease to have the advantages of a private issuer such that it must report those trades and its holders of designated securities should lose the ability to trade the securities amongst themselves.
Exclusion of mutual funds	• Mutual funds that are otherwise private issuers should not be excluded from the definition of private issuer.	•Mutual funds have been excluded from the definition of private issuer in a number of jurisdictions for many years. However, in many jurisdictions, an additional exemption exists for the sale of securities of a private mutual fund. The Committee is not aware of a reason why mutual funds need to rely on the private issuer exemption.
Definition of private issuer	• It is unclear whether the reference to securityholders' agreement requires an agreement between all or just some of the security holders.	•The Committee believes the section, as currently worded, clearly requires that all the designated securities be subject to restrictions on transfer.
SK risk acknowledgement	• A number of commentators recommended the elimination of the SK risk acknowledgement form under the private issuer exemption.	• The SSC will harmonize with the other jurisdictions, eliminating the requirement for a risk acknowledgement form under the private issuer exemption.
MB local provisions	• The term "senior officer" needs to be defined in Manitoba if it is to be used in this exemption.	• The term is defined in Manitoba securities legislation.

Exemption:	**Family, friends and business associates**	
Permitted placees	• The list of permitted family members should be expanded to include other relatives such as cousins, aunts, uncles, sisters-in-law and brothers-in-law. •One commentator asked whether a company could qualify as a close personal friend.	• As indicated above in respect of the private issuer exemption, we have not added in-laws and cousins to the list of permitted family members. However, the companion policy now clarifies that close family members that are not specifically listed as permitted placees, can be considered as falling within the term "close personal friend" if the necessary relationship exists with that family member. • The Committee does not believe that companies would constitute close personal friends; however, companies controlled by individuals with the necessary relationship are specifically referred to as permitted placees under the exemption.
Restrictions on commissions	• Directors and officers should be permitted to obtain commissions for selling to family and friends provided that the investor acknowledges the fee in writing.	• The Committee disagrees with allowing directors, officers, founders and control persons to obtain commissions for selling securities to their family, friends and business associates. The rationale for the exemption is that the purchaser has a relationship with a director, officer, founder or control person that permits an assessment of their capabilities and trustworthiness and that the purchaser will rely on that relationship to obtain the information necessary to make an investment decision. The payment of a commission increases the risk of a conflict of interest and may impact the ability of the purchaser to rely on that relationship to obtain information.
SK unique provisions	• A number of commentators believed that the proposed SK risk acknowledgement form was an improvement over the current system in SK. Other commentators questioned the need for a SK risk acknowledgement form. • A number of commentators strongly opposed the requirement to describe (on the report of exempt distribution) the nature of the relationship. • One commentator recommended the removal of the Saskatchewan two day cancellation right for trades to friends and business associates.	• The SSC believes that the SK risk acknowledgement form is necessary and will require a SK risk acknowledgement form from SK purchasers under the family, friends and business associates exemption. However, the risk acknowledgement form will not require a description of the relationship, just a statement of the person with whom the necessary relationship exists and his or her position with the issuer. • The SSC will not require a description of the nature of the relationship on the report of exempt distribution. • To harmonize with the other jurisdictions, the SSC will not impose a two day cancellation right with regard to trades under the family, friends and business associates exemption.
Exemption:	**Offering memorandum**	
Balancing investor protection and efficient capital raising	• One commentator expressed concern that under the new offering memorandum exemption, retail investors may be exposed to significant risk because there is no requirement for a registrant to be involved. The commentator believed that registrants provide additional investor protection because they are required to comply with the "know your client" rule and to only recommend securities suitable to the investment objectives and risk tolerance of clients.	• Issuers advised that mandating registrant involvement was not a viable option as many registrants are not interested in assisting with small private financings and that this is particularly so if the issuer is not public and has no immediate plans to become public. The risk acknowledgement form is intended to alert investors to the potential risks of investing and, in particular, the fact that no one is assessing the suitability of investment for the investor. It advises potential investors that they can seek advice and tells

	However, the commentator conceded that allowing non-registrants to sell exempt securities augments the effectiveness of capital raising as non-registrants are more inclined to actively participate in small sized private placements than dealer registrants. The commentator suggested that the involvement of non-registrants may reduce the up-front costs but may increase the back end costs if something goes wrong. • The commentator recommended that the securities regulatory authorities carefully monitor financing activity under the exemption to assess its effectiveness and the associated risks to investors.	them to contact the IDA for a list of registered investment dealers in the area. In addition, except in BC and NS, an investor under the offering memorandum exemption is limited to a $10,000 investment unless the investor meets certain financial tests or obtains advice from a registered dealer. The jurisdictions believe these protections will serve investors. • Since implementation of MI 45-103 in AB and BC, the ASC and BCSC have been monitoring use of the offering memorandum exemption. A number of the other jurisdictions anticipate that they will also monitor its use once adopted.
Offering memoranda - financial statement requirement	• Three MB commentators questioned the need for audited financial statements in the non-qualifying issuer offering memorandum and thought that the requirement was too onerous. They recommended that the financial statements be subject to a review engagement report by an independent professional accountant and that the investor acknowledge that the statements are not audited. • One of those commentators observed that previous research has suggested that investors in small business tend to focus primarily on the business acumen of the principals and the perceived prospects for the small business in the context of the market it is trying to service. The commentator believes that these additional costs will operate as a serious deterrent to small business offerings. It was suggested that the requirement for an audit might be triggered if a certain dollar amount was being raised.	• The offering memorandum exemption in MI 45-103 requires audited financial statements for businesses that have been in operation for a year or more. Currently, in MB, audited financial statements are not necessarily required for the sale of securities under the local offering memorandum exemption. The Committee determined that, in the interests of uniformity, the requirement in MI 45-103 for audited financial statements would be maintained. However, the MSC intends to retain the existing local prospectus exemptions for a period of time. The local exemptions will co-exist with the exemptions in MI 45-103. Some of the jurisdictions may monitor the impact of the financial statement requirements in MI 45-103 and it is expected that the issue will also be considered by the CSA's proportionate regulation committee.
Offering memoranda - material contracts	• A comment was made suggesting that the disclosure of material contracts required in Form 45-103F1 be the same as in the prospectus form and, in particular, that contracts entered into in the ordinary course of business not be required to be disclosed.	• Only material contracts are required to be disclosed in an offering memorandum. The prospectus form may require disclosure of other contracts. The Committee believes the distinction between the offering memorandum and prospectus forms is appropriate. If a material contract is properly disclosed elsewhere in an offering memorandum, it only needs to be listed in the material contract section with a cross-reference to where in the offering memorandum the appropriate disclosure is contained.
Exclusion of mutual funds from use of exemption	• Two MB commentators recommended that mutual funds be permitted to use the offering memorandum exemption and suggested that a separate simplified disclosure form should be created as soon as possible for mutual fund issuers.	• At this time, BC and NS will permit mutual funds to use the offering memorandum exemption. However, BC and NS may reconsider this position. Concern exists that if mutual funds are permitted to use the offering memorandum exemption they can avoid ever becoming a reporting issuer and providing continuous disclosure. In connection with other projects, certain of the jurisdictions expect to consider the use of exemptions by mutual funds and may develop alternative regimes for mutual funds.

$1 million cap in SK, NWT and NU	• Most commentators recommended that the cap be increased to $5 million or eliminated. The commentators believe the $1 million cap results in under funding and that small businesses often need a number of rounds of financing. A number of SK commentators recommended that certain continuous disclosure obligations, (e.g., annual and semi-annual financial statements) as currently imposed in SK, apply to a non-reporting issuer if the issuer has raised over a certain amount of money. • One commentator recommended that all jurisdictions should impose a $1 million cap unless an investment dealer sells the offering.	• SK, NWT and NU determined that it was appropriate to increase the maximum amount that could be raised under the offering memorandum exemption and, in the interests of harmonization, determined not to impose a maximum. • In the interests of harmonization, the SSC will not impose continuous disclosure obligations on non-reporting issuers. • The Committee considers that there are sufficient other investor protections in the instrument that it is not necessary to require the involvement of an investment dealer in offerings over $1 million. Prior consultation with market participants has suggested that investment dealers may not be interested in smaller offerings and that this requirement could be a barrier to capital formation.
Only eligible investors can purchase over $10,000	• Most commentators recommended that any investor should be permitted to invest up to $10,000. One commentator suggested that any investor should be permitted to invest any amount. One commentator suggested that all investors should be required to be eligible investors.	• BC and NS have determined to permit any investor to invest any amount under the offering memorandum exemption. Each of the other jurisdictions has determined to permit any investor to invest up to $10,000 and to only permit eligible investors to invest over that amount.
Definition of "eligible investor"	• Certain commentators in MB expressed concerns that the financial tests for eligible investors were too high and should be revised downwards to reflect local demographics. • One commentator requested guidance as to how to establish that an investor is an eligible investor	• In the interests of harmonization, the Committee determined to maintain the existing financial tests for eligible investors in MI 45-103. However, certain jurisdictions acknowledged that the financial tests might be somewhat high in their jurisdictions. In certain of the jurisdictions, some existing local exemptions will be retained to address this issue. In addition, in some circumstances a local application for discretionary relief may be considered. • The companion policy provides guidance as to how to establish that an investor is an eligible investor.
Definition of "eligibility adviser"	• All SK and MB comments on this issue supported allowing lawyers and accountants to provide independent advice. One commentator suggested that the proposed restrictions on their ability to provide advice when they have acted for the issuer in the past should be reconsidered because of the relatively small size of the professional community and that the issue of conflict of interest is addressed by professional conduct rules	Lawyers and accountants will continue to qualify as eligibility advisers in SK and MB. The proposed restrictions on prior involvement by the lawyer or accountant with the issuer were considered appropriate and have been retained.
Resale restrictions	• Two commentators expressed concern that MI 45-103 imposes resale restrictions where none currently exist. One commentator suggested that the MB resale restrictions should be no more onerous than they are currently and no more onerous than exist in BC and Alberta and considered hold periods necessary for control persons and insiders.	• The MB resale restrictions in MI 45-103 have been amended to more accurately track the current resale restrictions in the MB seed capital exemptions.

Exemption:	**Accredited investor**	
Threshold income or asset tests for accredited investors	• Five commentators believed that the threshold income and asset tests were too high relative to the average net worth and net income levels in certain local jurisdictions.	• In the interests of harmonization, the Committee determined to maintain the existing financial tests for accredited investors. However, certain jurisdictions acknowledged that the financial tests may be somewhat high in their jurisdictions. In certain of the jurisdictions, some of the existing local exemptions, including the $97,000 or $150,000 minimum purchase exemption, will be retained, at least for a period of time, while the use of these exemptions is monitored.
Portfolio managers and trust companies	• Most commentators supported expanding the deeming provision to allow foreign portfolio managers and trust companies to be deemed to be purchasing as principal when purchasing for fully managed accounts and considered that it was not necessary to impose any additional restrictions on the foreign portfolio managers and trust companies. • One commentator suggested that the foreign portfolio manager should either be required to be registered in a jurisdiction of Canada or meet the tests in BC Instrument45-504 *Trades to Trust Companies, Insurers and Portfolio Managers Outside British Columbia*. • One commentator noted that allowing foreign portfolio managers to be deemed to be purchasing as principal would not provide an exemption from the requirement to be registered to trade in securities or advise in relation to securities.	• MI 45-103 has been revised to permit foreign portfolio managers and trust companies to be deemed to be purchasing as principal when purchasing for accounts that are fully managed by them. • The Committee agrees that this change does not in any way suggest that a foreign portfolio manager or trust company is exempted from the requirement to be registered to advise or trade and, accordingly, a statement to that effect has been added to the companion policy.
Insurance companies	• Seven commentators recommended allowing insurance companies to also be deemed to be purchasing as principal when purchasing for accounts fully managed by them because insurance companies invest on behalf of accounts and have investment expertise. One commentator recommended that it be restricted to insurance companies organized in Canada.	• Insurance companies have not been deemed to be purchasing as principal when purchasing for accounts fully managed by them. The Committee understands that insurance companies purchase securities on behalf of segregated accounts but do so as principal. Accordingly, a deeming section is not necessary.
Registered charities	• A number of commentators recommended that registered charities be included as accredited investors. The commentators advised that charities receive donations of shares and stock options and that if these donations constitute trades, there needs to be a way for charities to obtain these securities. • Two commentators suggested that although some charities have sophisticated boards of trustees, not all charities do and that accordingly, charities should only be included as accredited investors if they meet certain size tests or have demonstrated investment acumen.	• The Committee believes that many charities may meet the accredited investor definition without an additional specific reference in the definition. For example, the definition of accredited investor includes persons or companies with $5 million in net assets. A charity that had $5 million in net assets may be able to rely on this prong of the definition. A charity that is a trust may also qualify under the current definition of an accredited investor. However, to enable other charities to qualify as accredited investors while addressing concerns that not all charities have sophisticated boards of trustees, MI 45-103 will provide that a registered charity is an accredited investor if it receives investment advice from an eligibility adviser or a registrant qualified to provide advice on the securities distributed.

Credit unions	• Two commentators requested that credit unions and associations under the *Cooperative Credit Associations Act* (Canada) be included as accredited investors. Bill C-8 has defined the term "association" to only include associations incorporated under that Act and not to central cooperative credit societies registered under that Act. Consequently, Credit Union Central of Saskatchewan is no longer an association for the purposes of the definition of accredited investor.	• The definition of accredited investor includes Canadian financial institutions. That term is defined in National Instrument 14-101 *Definitions* to include a credit union authorized to carry on business in Canada or a jurisdiction of Canada. However, to address the concern, the definition of accredited investor has been amended to also include "an association under the *Cooperative Credit Associations Act* (Canada) located in Canada or a central cooperative credit society for which an order has been made under subsection 473(1) of that Act."
Other categories of accredited investor	• A NS commentator requested that the definition of accredited investor be expanded to include a Nova Scotia Community Economic Development Investment Fund that has received a letter of non-objection and closed on an offering. A SK commentator recommended that the definition of accredited investor be expanded to include type A venture capital companies under *The Labour-sponsored Venture Capital Corporations Act* (Saskatchewan), Indian bands, capital pool companies and venture capital companies with net assets of less than $5 million.	• In the interests of uniformity and because full details of the nature of each of the funds or pools is not known, the definition of accredited investor in MI 45-103 has not been expanded to incorporate each of the unique local funds or pools. However, some of these entities may constitute accredited investors under the existing definition. Applications by entities that have a status equivalent to that of an accredited investor will be considered on a case-by-case basis. In some jurisdictions, an application for exempt purchaser status may also be considered. • The BCSC is considering designating VCCs registered under BC's SBVC Act as exempt purchasers.
General		
RRSPs	• One commentator recommended that a general exemption permitting trades to RRSP accounts should be available provided that the annuitant is an eligible investor.	• The definition of accredited investor includes trusts. Accordingly, RRSPs that are trusts may qualify as accredited investors. Under the private issuer exemption, family, friends and business associates exemption and offering memorandum exemption, trades may be made by the issuer to a trust or estate in which all of the beneficiaries or a majority of the trustees are permitted placees. Furthermore, under the private issuer exemption and family, friends and business associates exemption, trades from a permitted placee to his or her RRSP may also be allowed if the trade is to a trust or estate in which all of the beneficiaries or a majority of the trustees are permitted placees. The Committee believes that providing an exemption in other circumstances is beyond the scope of MI 45-103. It is anticipated that this broader issue will be addressed in the context of the Uniform Securities Legislation project. In the interim, the BCSC has issued a statement indicating that it does not consider transfers to RRSPs to constitute trades. The ASC has issued a rule that provides exemptions for certain trades to RRSPs, RRIFs and RESPs. Certain other jurisdictions will consider issuing a local statement or ruling.
Closely-held issuer exemption	•Two commentators recommended adoption of the OSC's closely-held issuer exemption. However, the commentators acknowledged that the exemption may permit certain abuses and that additional restrictions may be necessary.	• We believe that the exemptions in MI 45-103 provide a flexible method by which closely-held issuers may raise seed capital while still providing adequate investor protection. We do not believe it is appropriate to provide an exemption that requires no relationship with the principals of an issuer,

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

List of persons from whom written comments were received:

Addressed to ASC

1. Investment Dealers Association (IDA), Joseph Oliver

Addressed to BCSC

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

Addressed to MSC

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

Addressed to NSSC

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

Addressed to SSC

16. Union Securities
    (a) Frank Stronach
    (b) Alan Cruickshank
17. Kanuka Thuringer, Laurance Yakimoswki,
18. Saskatchewan Agriculture Food and Rural Revitalization, Garth Lipinski
19. Saskatchewan Industry and Resources, Marv Weismiller
20 McKercher, McKercher & Whitmore, Paul Grant
21. McDougall Gauley
    (a) J.J. Dierker Q.C.
    (b) Bill Nickel
22. Moose Jaw REDA Inc., James Leier
23. Greystone Capital Management Inc., William Wheatley
24. Community Pork Ventures Inc., Charlene Wicks

Abbreviations used in summary of comments:

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

Addendum

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

Issue	Comment Summary	Response
Harmonization	· One commentator commended the securities regulatory authorities for the efforts at harmonization and the SSC for removing many of the differences that existed in the September 2002 publication. However, the commentator was very disappointed that differences continue to exist between jurisdictions within MI 45-103 and that there is not complete uniformity, for example, the different treatment afforded to mutual funds. The commentator called for all the securities regulatory authorities to reach complete uniformity as the lack of it ultimately increases cost to investors and decreases investment opportunities.	· The Committee is hopeful that further harmonization will be achieved with the Uniform Securities Legislation project after each of the jurisdictions have had an opportunity to become more comfortable with MI 45-103.
Change in definition of private issuer	• One commentator noted that the definition of private issuer in MI 45-103 differs from the current SK definition. In the current SK definition, the issuer's articles must prohibit invitations to the public, however, if an issuer has sold securities to the public, it may still technically meet the definition of private issuer. Under the definition of private issuer in MI 45-103, an invitation to the public is not prohibited; however, to rely on the exemption, the issuer must not have actually traded securities to anyone other than those on the list of permitted placees. There is a change in the test from " to whom are the securities offered" to one of "who holds the securities". This new test requires the issuer to police secondary trades of securities to ensure that there is a sufficient nexus with subsequent holders of its shares so as not to lose its private issuer status. · The commentator was concerned that a small business that is no longer a private issuer may not be able to engage in a sale of its business by shares. · The commentator recommended that the list of permitted placees include someone who the SSC has determined, on application, is	· The definition has been changed to harmonize with other jurisdictions. The Committee does not think it appropriate for an issuer to distribute designated securities to purchasers other than those on the list of permitted placees and still retain private issuer status. Under the current SK definition, we believe the prohibition on "invitations to the public" was intended to prohibit both advertisements and sales to the public. The expectation would be that an issuer that sold securities to the public would need to amend its articles and would then cease to be a private issuer. Whether it is technically possible or not, it does not seem appropriate that an issuer might sell securities to the public but retain its private issuer status by not amending its articles. The new definition of private issuer seems appropriate as it eliminates this possibility. · The SSC has adopted the private issuer in this form to be uniform with other jurisdictions. Other exemptions will continue to be available to an issuer that is not a private issuer that wishes to conduct a sale of all of its shares. The SCC will monitor complaints in this regard and address the issue if it becomes an unfair restriction on issuers. The SCC will also bring this issue up again in the context

	include someone who the SSC has determined, on application, is acceptable.	of the Uniform Securities Legislation project. · We do not think the application process suggested is necessary as the SSC already has in its legislation the ability to grant exemptions for transactions.
Restrictions on commissions under the family, friends and business associates exemption	· One commentator urged the SSC to reconsider the prohibition on commissions under the friends, family and business associates exemption and adopt the prohibition on payment to "insiders" of the issuer only as is the case in other jurisdictions. Reference was made to paying a person to prepare the business plan and the payment for the plan being tied to the amount of funds raised.	· The SSC continues to be of the view that this restriction is important. There is no prohibition on the reimbursement of the actual costs of sellers. The restriction only applies to the payment of commissions or finder's fees to sellers and would not effect the payment in the example provided. There is concern about the development of an industry of unregistered persons who sell only securities under this exemption and are paid on a commission or finder's fee basis. Such an industry would not be subject to the proficiency or know your client and suitability requirements that registrants are subject too.
SK risk acknowledgement under the family, friends and business associates exemption	· One commentator urged the SSC to remove this unique requirement. The commentator indicated that until the other jurisdictions felt this was needed it should not be required as it was a burden on small issuers.	• The SSC believes that the SK risk acknowledgement form is necessary and will require a SK risk acknowledgement form from SK purchasers under the family, friends and business associates exemption. However, the risk acknowledgement form will not require a description of the relationship, just a statement of the person with whom the necessary relationship exists and his or her position with the issuer. · The SSC will not require a description of the nature of the relationship on the report of exempt distribution. · The SSC believes that the requirement provides an appropriate balance between investor protection and the needs of issuers to raise capital.
Restrictions on commissions under the offering memorandum exemption	· Two commentators were pleased that the SSC had removed many of the restrictions set out in the September 2002 publication. However, one commentator urged the SSC to reconsider the prohibition on commissions under the offering memorandum exemption except to registered dealers. The commentator indicated that smaller issuers are often unable to attract a registered dealer to act as agent and need some way to provide an incentive to sales staff. Further, because the prohibition does not exist in other jurisdictions, the commentator expressed concern that SK issuers were at a disadvantage compared to other issuers. The commentator thought that because of the restriction, SK might be by passed in multi-jurisdictional offerings.	· The SSC continues to be of the view that this restriction is important. There is no prohibition of the reimbursement of the actual costs of sellers. There is concern about the development of an industry of unregistered persons who sell only securities under this exemption and are paid on a commission or finder's fee basis. Such an industry would not be subject to the proficiency or know your client and suitability requirements that registrants are subject too.
Accredited investor exemption -	· One commentator urged the SSC to reconsider the definition of "financial assets" which is restricted to cash and securities. This	· The accredited investor exemption was designed by the Committee to be uniform as far as possible with a sister instrument in Ontario.

definition of financial assets	definition in effect limits clause (k) of the definition of accredited investor (and therefore the accredited investor exemption with respect to these individuals) to an individual who has a $1million dollars in cash and securities. The commentator felt this was to restrictive and that non personal use assets like income producing real estate should be included in the definition.	This definition was used in that instrument. We are not inclined to move away from that approach at this time. The SCC will bring this issue up again in the context of the Uniform Securities Legislation project.

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

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