

ALBERTA SECURITIES COMMISSION

NOTICE

Publication for Comment of Proposed Consequential Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions*

July 25, 2003

Publication for Comment

The Commission and the securities regulatory authorities in each of British Columbia, Manitoba, Newfoundland and Labrador, Northwest Territories, New Brunswick, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and the Yukon Territory are publishing for a 60-day comment period proposed amendments (collectively, the “Proposed Amendments”) to

- Multilateral Instrument 45-103 *Capital Raising Exemptions* (“MI 45-103”),
- Form 45-103F1 *Offering Memorandum for Non-Qualifying Issuers*,
- Form 45-103F2 *Offering Memorandum for Qualifying Issuers*, and
- 45-103 CP *Companion Policy*.

The Proposed Amendments will be required when the following proposals made by the Canadian Securities Administrators (the “CSA Proposals”) are implemented:

- Repeal and replacement of Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”). Published for comment on January 31, 2003; comment period expired on May 2, 2003.
- Proposed National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”). Published for comment on June 20, 2003; comment period expires on August 19, 2003.
- Proposed National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (“NI 52-107”). Published for comment on May 16, 2003; comment period expires on August 14, 2003.

The CSA Proposals can be found on the ASC website at www.albertasecurities.com

Summary of Proposed Amendments

Definition of “Qualifying Issuer”

MI 45-103 currently permits “qualifying issuers”, as defined in current MI 45-102, to use a shorter form of offering memorandum because those issuers have filed an annual information form (an “AIF”). Under proposed MI 45-102, the concept of “qualifying issuer” will be

removed and reporting issuers will not be required to file an AIF to rely on the four-month hold period. Instead, proposed MI 45-102 will rely on the continuous disclosure regime set out in proposed NI 51-102 as a basis for reducing all hold periods to four months.

As a result, the definition of “qualifying issuer” in MI 45-103 must be amended to refer to AIFs filed under NI 51-102 rather than under MI 45-102. The proposed amended definition of “qualifying issuer” would require an issuer to be a reporting issuer and SEDAR filer, to have filed an AIF, management’s discussion and analysis (“MD&A”) and annual financial statements under NI 51-102, and to have complied with any applicable continuous disclosure obligations under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*.

If a reporting issuer has filed a prospectus but has not yet filed or been required to file its AIF, MD&A and annual financial statements under NI 51-102, the issuer can use its prospectus as the base disclosure document for the shorter form of offering memorandum until it files its AIF, MD&A and annual financial statements under NI 51-102.

Venture Issuers

Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use the shorter form of offering memorandum, the venture issuer must voluntarily file an AIF under NI 51-102 so that it can incorporate that AIF into its offering memorandum.

The venture issuer’s prospectus (and for a venture issuer that is a capital pool company, the information circular or filing statement that it has filed for its qualifying transaction) can serve as a base disclosure document for the shorter form of offering memorandum until the venture issuer has filed, or has been required to file, its annual financial statements under NI 51-102. After that time, the venture issuer must file an AIF to continue to be able to use the shorter form of offering memorandum.

Offering Memorandum Exemption in Newfoundland and Labrador

The proposed amendment to section 4.1 of MI 45-103 moves “Newfoundland and Labrador” to subsections (1) and (2) from subsections (3) and (4). The jurisdictions of Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan require, among other conditions, that either a purchaser is an eligible investor as defined in the Instrument, or the aggregate acquisition cost to the purchaser not exceed \$10,000. If the proposed amendment to section 4.1 is made, purchasers in Newfoundland and Labrador (like purchasers in British Columbia and Nova Scotia) will not be subject to those conditions.

Manitoba Resale Restrictions

The proposed amendment to section 6.4 of MI 45-103 will mirror similar changes to the resale restrictions made in proposed MI 45-102, namely that an issuer be a reporting issuer in a jurisdiction of Canada, not just those jurisdictions previously listed in Appendix B of MI 45-102. Also some language has been added to the end of paragraph (d) to clarify that an exemption from the prospectus requirement is only necessary if a trade would be subject to a prospectus requirement.

Amendments to Offering Memorandum Forms

Significance Tests

Section C.2 of Form 45-103F1 sets out two tests that issuers must use to determine if they have to include in an offering memorandum the financial statements of a business that the issuer has acquired during the past two years, or that the issuer proposes to acquire (the “Significance Tests”). The Proposed Amendments will decrease the level of the Significance Tests from 50% to 40% to reflect the same level in proposed NI 51-102 for venture issuers that have acquired a business. This would result in a lower threshold for all issuers who want to use a non-qualifying issuer offering memorandum, whether or not an issuer is a reporting issuer, and whether or not the issuer has acquired the business or is proposing to acquire a business.

We also propose other consequential amendments to Form 45-103F1 and Form 45-103F2 as follows:

- revise the summary of the resale restrictions that issuers must state in their offering memorandum to reflect the resale restrictions in proposed MI 45-102,
- require that financial statements included in the offering memorandum comply with NI 52-107, whether or not an issuer is a reporting issuer,
- require incorporation by reference of business acquisition reports filed under NI 51-102 into the shorter form of offering memorandum, and
- amend the provision concerning acceptable alternative disclosure for an acquisition of a business that is an interest in an oil and gas property to mirror the similar provision in NI 51-102.

Specific Request for Comment:

Do you agree that we should lower the threshold for the Significance Tests from 50% to 40%? If not, why not?

How long of a transition period should we provide to allow issuers to continue to use their offering memorandum without including the financial statements of an acquired business or a business to be acquired that did not meet the Significance Test at 50% but would meet it at 40%?

Attachments

The Proposed Amendments and blacklines showing the amended documents are attached to this memo as follows:

- Appendix A: Amendments to MI 45-103
- Appendix B: Amendments to Forms 45-103F1 and 45-103F2
- Appendix C: Amendments to the Companion Policy.

Submissions

Comments submitted prior to **Wednesday, 24 September 2003** will be considered. Comment letters can be delivered in hard copy, by fax or by e-mail. Please address your submission to:

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We will be sharing comment letters with the other participating jurisdictions listed above and therefore cannot maintain confidentiality of submissions.