

## ALBERTA SECURITIES COMMISSION NOTICE

### *NON-REDEEMABLE INVESTMENT FUNDS*

May 6, 2002

#### **Interpretation**

Certain provisions of securities law refer to “non-redeemable investment funds”. The term is defined in Ontario Securities Commission Rule 14-501 *Definitions*; however, the term is not defined in Alberta securities law. We anticipate that a statutory definition will be adopted if and when the *Securities Act* (Alberta) is amended in response to the civil remedies proposal described in CSA Notice 53-302 *Proposal for a Statutory Civil Remedy for Investors in the Secondary Market*.

In the interim, Commission staff interprets the term “non-redeemable investment fund” as follows:

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

The definition includes various issuers formed primarily to invest and includes issuers, such as investment companies, that might not ordinarily be considered funds.

#### **Effect on Multilateral Instrument 45-103 *Capital Raising Exemptions***

Multilateral Instrument 45-103 *Capital Raising Exemptions* (“MI 45-103”) is one of the rules in which the term “non-redeemable investment fund” is used. In that instrument, both mutual funds and non-redeemable investment funds are excluded from the definition of “private issuer” and, accordingly, cannot rely on the private issuer exemption in MI 45-103. Issuers created primarily to invest in other entities should refer to other exemptions such as the statutory private mutual fund exemption or the offering memorandum exemption under MI 45-103.

Clause (n) of the definition of “accredited investor” in MI 45-103 allows certain entities with \$5 million in net assets to be considered accredited investors. However, both mutual funds and non-redeemable investment funds are excluded from the class of entities that can rely on clause (n) of the definition of accredited investor. Issuers created primarily to invest in other entities should consider other exemptions or may wish to refer to clause (r) of the definition of accredited investor.

If you have any questions, please contact:

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