

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

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

Part 1 Private issuer exemption

- 1.1 (1) The registration requirement does not apply to a trade in the securities of a private issuer to
- (a) a director, officer, employee or control person of the issuer,
 - (b) a spouse, parent, brother, sister or child of a director, senior officer or control person of the issuer,
 - (c) a close personal friend of a director, senior officer or control person of the issuer,
 - (d) a close business associate of a director, senior officer or control person of the issuer,
 - (e) a spouse, parent, brother, sister or child of the selling security holder,
 - (f) an accredited investor, as defined in section 4.2,
 - (g) a person or company that is wholly-owned by any combination of persons described in paragraphs (a) to (f), or
 - (h) a person or company that is not the public.
- (2) The prospectus requirement does not apply to a distribution of securities in the circumstances referred to in subsection (1).
- 1.2 **"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 organizational documents or security holders agreements; and
 - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons, 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 1.1(1).
- 1.3 **"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).

Part 2 Family, friends and business associates exemption

- 2.1 (1) The registration requirement does not apply to a trade in the securities of an issuer to
- (a) a director, senior officer or control person of the issuer,
 - (b) a spouse, parent, brother, sister or child of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
 - (c) a close personal friend of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,

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

Part 3 Offering memorandum exemption

- 3.1** (1) The registration requirement does not apply to a trade by an issuer in its own securities if, before the purchaser signs the agreement to purchase the securities, the issuer
- (a) delivers an offering memorandum to the purchaser in compliance with sections 3.2 and 3.3, and
 - (b) obtains a signed risk acknowledgement from the purchaser in compliance with section 3.4.
- (2) The prospectus requirement does not apply to a distribution of securities in the circumstances referred to in subsection (1).

Required form of offering memorandum

- 3.2** The offering memorandum must be in Form 45-103F1, except that a qualifying issuer under Multilateral Instrument 45-102 *Resale of Securities* may use Form 45-103F2.

Certificate

- 3.3** (1) The offering memorandum must contain a certificate that states the following:
"This offering memorandum does not contain a misrepresentation."
- (2) The certificate must be signed
- (a) by the issuer's chief executive officer and chief financial officer, or persons acting in that capacity,
 - (b) on behalf of the directors of the issuer,
 - (i) by any 2 directors who are duly authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) by all the directors of the issuer, and
 - (c) by any promoter of the issuer.
- (3) The certificate must be true
- (a) at the date the certificate is signed,
 - (b) at the date the offering memorandum is delivered to the purchaser, and
 - (c) at the date the purchaser signs the agreement to purchase the securities.

Risk acknowledgement

- 3.4** (1) If an issuer distributes securities to a person or company under section 3.1, the issuer must, before the person or company signs the agreement to purchase the securities, obtain from the person or company a signed risk acknowledgement in Form 45-103F3.
- (2) The issuer must give a copy of the signed risk acknowledgement to the person or company immediately after it has been signed.
- (3) The issuer must retain the signed risk acknowledgement for 6 years after the distribution.

Consideration to be held in trust

- 3.5** The issuer must ensure that every person or company who receives consideration from the purchaser in connection with an agreement to purchase securities under section 3.1 will hold the consideration in trust for the purchaser until midnight on the 2nd business day after the agreement is signed by the purchaser.

Filing of offering memorandum

- 3.6** If an issuer distributes securities under section 3.1, the issuer must file a copy of the offering memorandum on or before the 10th day after each distribution with the securities regulatory authority of each jurisdiction in which the distribution took place.

Part 4 Accredited investor exemption

- 4.1** (1) The registration requirement does not apply to a trade in securities if the purchaser is an accredited investor and purchases the securities as principal.
- (2) The prospectus requirement does not apply to a distribution of securities in the circumstances referred to in subsection (1).

4.2 "accredited investor" means

- (a) a Canadian financial institution, or an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada),
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) an association under the *Cooperative Credit Associations Act* (Canada) located in Canada,
- (d) a subsidiary of any person or company referred to in paragraphs (a) to (c), where 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 jurisdiction of Canada, as an adviser or dealer, other than a limited market dealer registered under the *Securities Act* (Ontario),
- (f) an individual registered or formerly registered under the securities legislation, or under the securities legislation of another jurisdiction of Canada, as a representative of a person or company referred to in paragraph (e),
- (g) the government of Canada or a province, or any crown corporation or agency of the government of Canada or a province,
- (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,
- (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) 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, other than a mutual fund or non-redeemable investment fund, that had net assets of at least \$5,000,000 as shown on its most recently prepared financial statements,
 - (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 its securities under a prospectus for which the regulator has issued a receipt,
 - (q) a fully managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund,
 - (r) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) through (e) in form and function, or
 - (s) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons that are accredited investors.

4.3 "financial assets" means cash and securities.

4.4 "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.

Part 5 Resale restrictions

5.1 The first trade of any securities distributed under the exemption in section 1.1(2) is subject to the resale restrictions in section 2.6 of Multilateral Instrument 45-102 *Resale of Securities*.

5.2 The first trade of any securities distributed under the exemptions in sections 2.1(2), 3.1(2) or 4.1(2) is subject to the resale restrictions in section 2.5 of Multilateral Instrument 45-102 *Resale of Securities*.