Chapter 6

Request for Comments

6.1 Request for Comments

6.1.1 Proposed OSC Rule 45-501 - Exempt Distributions

NOTICE OF PROPOSED RULE, POLICY AND FORMS UNDER THE SECURITIES ACT

RULE 45-501 EXEMPT DISTRIBUTIONS (REVISED)
COMPANION POLICY 45-501CP (REVISED)
FORM 45-501F1 (REVISED), FORM 45-501F2 (REVISED), FORM 45-501F3

AND

RESCISSION OF EXISTING RULE 45-501 AND COMPANION POLICY 45-501CP AND RULE 45-504 PROSPECTUS EXEMPTION FOR DISTRIBUTIONS OF SECURITIES TO PORTFOLIO ADVISERS ON BEHALF OF FULLY MANAGED ACCOUNTS

Introduction

A proposed Rule, three proposed Forms and a proposed Companion Policy, each of which is being published for comment, accompany this Notice. Proposed Rule 45-501 Exempt Distributions (Revised) (the "Proposed Rule") will replace existing Rule 45-501 Exempt Distributions and will deal with certain interpretation and other issues that have arisen in the context of that existing Rule. The Proposed Rule will also implement the recommendations, as modified as a result of public comment, contained in the Staff concept proposal entitled "Revamping the Regulation of the Exempt Market" ((1999) 22 OSCB 2835) (the "Concept Paper"). As part of the revisions to incorporate the Concept Paper recommendations, the exemptive relief contained in Rule 45-504 Prospectus Exemption for Distributions of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts, will be included in the Proposed Rule and Rule 45-504 will be repealed.

The Commission is also publishing for comment under a separate notice issued today, proposed Multilateral Instrument and Companion Policy 45-102 Resale of Securities (the "Resale Instrument"). The resale provisions in the Proposed Rule reflect the application, where appropriate, of the resale regime contained in the Resale Instrument.

Substance and Purpose of Proposed Rule and Forms

Concept Paper

In June 1994, the Ontario Securities Commission (the "Commission") established the Task Force on Small Business Financing (the "Task Force") with a mandate to make recommendations about the Ontario legislative and regulatory framework governing the raising of capital by small and medium-sized enterprises. In October 1996, the final Report of the Task Force on Small Business Financing (the "Task Force Report") was published. In 1997, the Commission established a staff committee to consider the Task Force Report and make recommendations for implementation. On May 7, 1999, the Commission published the Concept Paper. The Concept Paper was based on the recommendations contained in the Task Force Report and outlined the Commission's proposals for revamping the regulation of the exempt market.

Staff received many comments on the Concept Paper. A summary of those comments and the Commission's response is found in Appendix "A" to this Notice.

The Proposed Rule introduces several new exemptions (the "New Exemptions") reflecting the recommendations made in the Concept Paper, as modified by the Commission's consideration of the submissions made by commentators. The purpose of the New Exemptions is to create an approach to private market regulation that is more consistent with the needs of that market and its investors. The new regime will provide a more rational basis for exempt financings than the current exemptions. The Commission believes that the Proposed Rule represents a significant improvement over existing exempt market regulation.

The New Exemptions replace, among others, the private company exemption (paragraph 35(2)10 and subsection 73(1) of the Act), the private issuer exemption (section 2.17 of the existing Rule), the $150,000 exemption (paragraph 35(1)5 and clause 72(1)(d) of the Act), the seed capital exemption (paragraph 35(1)21 and clause 72(1)(p) of the Act) and the government incentive security exemption (section 2.4 of the existing Rule). The New Exemptions are as follows:

The Closely-Held Issuer Exemption - This exemption will permit issuers to raise a total of $3.0 million, through any number of financings, from up to 35 investors (excluding employees who acquire securities under a compensation or incentive plan) without concern for the "qualifications" of the investors.

The Family Member Exemption – This exemption will permit issuers to issue securities on an exempt basis to spouses, parents, grandparents or children of its officers, directors and promoters.

The Accredited Investor Exemption – This exemption will permit issuers to raise any amount at any time from any person or company that meets specified qualification criteria.

Resale Instrument

The Proposed Rule also includes various amendments and new provisions needed to ensure that securities acquired under the prospectus exemptions contained in the Proposed

Rule will be subject to the appropriate resale restrictions contained in the Resale Instrument. This will provide clarity as to the relationship between the Proposed Rule and the Resale Instrument.

Other Changes to Existing Rule

A number of other changes to existing Rule 45-501 are being proposed to deal with issues that have arisen since it came into effect in 1998. Specifically, the Proposed Rule would: (a) implement a statutory right of action in the context of certain exempt trades if an offering memorandum is provided to investors; (b) clarify the hold period applicable to exchangeable securities; and (c) require that the identity of the purchaser be disclosed on Form 45-501F1.

Substance and Purpose of Companion Policy

The purpose of the proposed Companion Policy (the "Policy") is to set forth the views of the Commission as to the manner in which the Proposed Rule and the provisions of the *Securities Act* (Ontario) (the "Act") relating to exempt distributions are to be interpreted and applied. The Policy will replace existing Companion Policy 45-501CP.

Summary of Proposed Rule and Forms

Definitions

Part I of the Proposed Rule contains definitions, many of which are the same as those contained in existing Rule 45-501. Two important new definitions have been included in section 1.1 of the Proposed Rule, being the terms "accredited investor" and "closely-held issuer". These definitions form the basis of the New Exemptions.

The "accredited investor" definition lists certain types of institutions, and certain categories of persons and companies that meet specific net worth criteria or have other qualifications. These investors are considered to have the capacity to obtain and analyze the information needed to assess a particular investment opportunity without the assistance provided by a prospectus and to have the financial ability to withstand the loss of the investment.

The "closely-held issuer" definition supersedes the "private company" definition in the Act and the "private issuer" definition in the existing Rule. This new term forms the basis of the new exemption for issuers having a maximum of 35 security holders, exclusive of accredited investors and employees holding securities acquired through compensation or incentive arrangements.

The definition of "government incentive security" in the existing Rule is being removed in accordance with the removal of the related exemption. A definition of "spouse" has been included in order to incorporate the changes made to the Act reflecting the Supreme Court of Canada decision in M. v. H. Amended terms define "Type 1 trade" and "Type 2 trade" for purposes of the Resale Instrument.
A definition of "financial assets" has been included for purposes of a category of accredited investor relating to an individual's net worth. Definitions of "managed account" and "portfolio adviser" have been added in order to incorporate the exemptive relief provided under existing Rule 45-504 in the accredited investor exemption in the Proposed Rule.

Registration and Prospectus Exemptions

Part 2 of the Proposed Rule provides for certain exemptions from the registration and prospectus requirements that supplement or replace exemptions contained in the Act. Certain exemptions in the existing Rule have been replaced by the New Exemptions and other exemptions have been modified, as discussed below. The following exemptions have been retained from the existing Rule with no material changes: Exemption for a Trade in a Variable Insurance Contract; Exemption for a Trade by a Control Person in a Security Acquired under a Formal Take-over Bid; Exemption for a Trade in Connection with a Securities Exchange Issuer Bid; Exemption for a Trade on an Amalgamation, Arrangement or Specified Statutory Procedure; Exemption for a Trade upon Exercise of Conversion Rights in a Convertible Security; Exemption for a Trade upon Exercise of Exchange Rights in an Exchangeable Security; Exemption for a Trade in a Security under the Execution Act; Exemption for a Trade in a Security Acquired in Connection with a Take-over Bid; Exemption for a Trade in an Underlying Security Where the Right to Purchase, Convert or Exchange is Qualified by Prospectus; and Exemption for a Trade in Debt of Conseil Scolaire de L'île de Montréal. The exemption for a trade in a "multiple convertible security", "convertible security" or "exchangeable security" acquired under certain exemptions has also been retained with modifications to make it subject to certain conditions in the Resale Instrument. For a more detailed history of these exemptions, please refer to the Notice that was published with the existing Rule ((1999), 22 O.S.C.B. 56).

Section 2.1 of the Proposed Rule creates a new exemption from the registration and prospectus requirements for trades in securities of a closely-held issuer. Under this exemption, the registration and prospectus requirements set out in sections 25 and 53 of the Act would not apply to a trade in securities of a closely-held issuer if: (i) the proceeds raised in reliance on this exemption, in any number of financings, do not exceed $3.0 million; (ii) an information statement in a prescribed form is provided to the purchaser if the issuer will have more than five holders of securities; (iii) no promoter of the issuer has acted as a promoter of any issuer that has used this exemption in the past 12 months; and (iv) the issuer has not engaged in any advertising of its securities and no selling or promotional expenses are being incurred in connection with the trade.

A new form, Form 45-501F3, is being prescribed as the form of information statement to be provided to investors in connection with most trades effected under the closely-held issuer exemption.

Section 2.3 of the existing Rule is being eliminated, as this exemption is no longer required. The existing section provides an exemption for trades among promoters of the issuer and among promoters and control persons. The new definition of accredited investor includes promoters.

Section 2.3 of the Proposed Rule creates an exemption from the registration and prospectus requirements if the purchaser falls within any of the categories in the definition of accredited investor and the purchaser purchases as principal.

In the Concept Paper, staff proposed that an individual could qualify as an accredited investor if that individual, either alone or jointly with a spouse, satisfied a "net worth" test. In the Proposed Rule, the Commission has: (i) replaced the "net worth" test with a test based on the value of the "financial assets" beneficially owned by the individual and, if applicable, the individual's spouse; and (ii) significantly lowered the applicable threshold from $2.5 million (which included all assets except for one-half the net equity of a personal residence) to $1.0 million (which includes cash, securities and bank deposits).

As noted above, the accredited investor exemption will exempt trades to accounts managed by portfolio advisers or trust corporations registered in Ontario. Therefore, Rule 45-504 Prospectus Exemption for Distribution of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts will be rescinded.

Section 2.4 of the Proposed Rule creates a new exemption from the registration and prospectus requirements for a trade in a security of an issuer if (i) the purchaser is a spouse, parent grandparent or child of an officer, director or promoter of the issuer; (ii) the purchaser purchases as principal; and (iii) no advertising is done and no selling or promotional expenses are incurred in connection with the trade.

Section 2.15 of the Proposed Rule confirms that trades by an individual or an associate to a registered retirement savings plan or registered retirement income fund established by or for the individual are exempt from the registration and prospectus requirements.

The government incentive and seed capital exemptions are being replaced in the Proposed Rule with the closely-held issuer and accredited investor exemptions.

Section 2.15 of the existing Rule is being eliminated, as it will no longer be needed with the inclusion of "promoter" in the accredited investor definition.

Section 2.17 and subsection 2.18(1) of the existing Rule are being eliminated, as these exemptions for securities of private issuers and British Columbia private companies will be superseded by the closely-held issuer exemption.

Removal of Exemptions

Part 3 of the Proposed Rule removes certain registration and prospectus exemptions in the Act that are being replaced by the new exempt market regime. This Part also provides for the removal of certain exemptions in the Act and the Proposed Rule if certain conditions are not met.

Section 3.1 of the Proposed Rule provides for the removal of the registration exemptions in paragraphs 3, 4, 5, 18 and 21 of subsection 35(1) of the Act and paragraph 10 of subsection 35(2) of the Act and the prospectus exemptions contained in clauses (a), (c), (d), (l) and (p) of subsection 72(1) and clause (a) of subsection 73(1) as it relates to paragraph 35(2) of the Act.

Sections 3.1 to 3.7, inclusive, and sections 3.10 and 3.11 of the existing Rule are all being eliminated, as these provisions refer to exemptions that are being replaced with new exemptions in the Proposed Rule or impose conditions that will be addressed in the proposed Resale Instrument.

Section 3.8 of the existing Rule is retained and renumbered as section 3.2. Section 3.9 of the existing Rule is retained and renumbered as section 3.3. Section 3.4 provides for the removal of the registration exemptions for market intermediaries as set out in subsection 2.2(2) and sections 2.1, 2.3, 2.4, 2.6, 2.7, 2.8, 2.9, 2.10 and 2.15. This is consistent with the provisions of the existing Rule.

Offering Memorandum

Part 4 of the Proposed Rule imposes certain requirements in respect of the use of an offering memorandum in connection with certain exempt distributions.

Currently, an offering memorandum must be delivered to purchasers of government incentive securities in connection with trades made in reliance upon the exemption in section 2.4 of existing Rule 45-501 and, if there has been any advertisement of the offered securities, trades made in reliance upon the exemption in clause 72(1)(d) of the Act or section 2.11 of existing Rule 45-501. Under the Proposed Rule, there is no longer a positive obligation to deliver an offering memorandum. However, if the issuer or selling security holder voluntarily delivers an offering memorandum pursuant to certain specified exemptions (i.e. the exemptions for securities of closely-held issuers and for trades to accredited investors and family members), the purchaser will have a statutory right of action which must be described in the offering memorandum for those exemptions to be available.

Specifically, section 4.1 of the Proposed Rule provides for the application of the statutory rights of action, as set out in section 130.1 of the Act, in respect of an offering memorandum delivered to a prospective purchaser in connection with a trade made in reliance upon a prospectus exemption in section 2.1, 2.3 or 2.4. Consequently, contractual rights of action are no longer necessary. Section 4.2 further states that the exemption provided for in section 2.1, 2.3 or 2.4 is not available unless any offering memorandum provided to a prospective purchaser describes the statutory right of action outlined in section 130.1 of the Act. Section 4.3 provides that a copy of any offering memorandum provided shall be delivered to the Commission within 10 days of the trade.

It should also be noted that the use of an offering memorandum in connection with trades to institutional investors under the accredited investor exemption in section 2.1 will give rise to the application of the statutory right of action in section 130.1 of the Act. This is broader than the scope of contractual rights of action under the existing private placement regime as an offering memorandum voluntarily delivered in respect of a trade made in reliance upon clause 72(1)(a) of the Act does not result in a requirement to provide a contractual right of action to the purchaser.

The Commission is considering extending the application of the statutory right of action to all offering memoranda that are voluntarily delivered in respect of exempt distributions and specifically requests comment on this proposal.

Certain International Offerings by Private Placement

In December 1993, the Commission granted a blanket ruling entitled *In the Matter of Regulation 1015, R.R.O. 1990, as amended and In the Matter of Certain International Offerings by Private Placement in Ontario* (1993), 16 OSCB 5931 (the "International Offering rule"), which provided relief for certain international offerings extended to Ontario investors by way of private placement under clause 72(1)(c) or (d) of the Act, from the requirement to provide a contractual right of action. At the same time, the Commission granted blanket relief entitled *Blanket Permission - International Offerings by Private Placement in Ontario - Subsection 38(3) of the Securities Act (Ontario)* (1993), 16 OSCB 5938 (the "Blanket Permission rule"), from the requirement in subsection 38(3) of the Act to obtain the Director's consent for listing representations in connection with offerings extended to Ontario investors in reliance upon the International Offering rule.

On March 1, 1997, these deemed rules, the International Offering rule and the Blanket Permission rule, were made into rules. The text of both of the rules provided that the rules would expire on the earlier of the date on which a new rule intended to replace them came into force and July 1, 1998. Effective June 30, 1998, the expiry date for both rules was extended to July 1, 1999 and effective June 21, 1999, the expiry date for both rules was extended to July 1, 2001.

The International Offering rule provides relief from the requirement to provide a contractual right of action for certain international offerings by foreign issuers made in Ontario under the exemption contained in clause 72(1)(c) or (d) of the Act.

Recent amendments to the Act ("More Tax Cuts for Jobs, Growth and Prosperity Act, 1999") introduced new section 130.1 which provides statutory civil liability for misrepresentations in offering memoranda.

The Commission has decided not to reformulate the International Offering rule as the Commission is of the view that the rule will no longer be required to facilitate extending international offerings to Ontario investors by private placement when contractual rights of action are replaced by statutory rights of action.

The International Offering rule also provides certain ancillary relief from the requirement to comply with National Policy Statement No. 48 Future-Oriented Financial Information ("NP 48") and National Policy Statement No. 14 Acceptability of Currencies in Material Filed with the Securities Regulatory Authorities ("NP 14").

NP 48 is being reformulated as proposed National Instrument 52-101 Future-Oriented Financial Information. Pending reformulation of NP 48, to facilitate extending international offerings to Ontario investors by private placement, the Commission would not object to delivery to Ontario investors of an offering memorandum that includes a U.S. prospectus containing FOFI presented in compliance with U.S. securities law requirements.

NP 14 is being reformulated as proposed National Instrument 52-102 Use of Currencies. Pending reformulation of NP 14, to facilitate extending international offerings to Ontario investors by private placement, the Commission would not object to delivery to Ontario investors of an offering memorandum disclosing financial information in a foreign currency other than the U.S. dollar without disclosure as to exchange rates between the foreign currency and the Canadian dollar, provided that disclosure as to exchange rates between the foreign currency and the U.S. dollar has been presented in accordance with U.S. securities law requirements. Further, the Commission would not object to presentation of supplementary disclosure about withholding taxes, foreign exchange controls and hyperinflationary effects in compliance with U.S. securities law requirements.

The Blanket Permission rule provides relief from the requirements of subsection 38(3) of the Act for certain listing representations made in connection with the International Offering rule. The recent amendments to the Act, referred to above, introduced revisions to subsection 38(3) which expressly permit listing representations to be made without Director consent if: (i) a listing/quotation application has been made and securities of the same issuer are listed or quoted; or (ii) approval to the representation has been obtained from an exchange/quotation reporting system. Consequently, the Commission does not intend to reformulate the Blanket Permission rule.

As mentioned above, the International Offering rule expires on July 1, 2001. It is possible that the Proposed Rule will not become effective before the International Offering rule expires. To address this potential gap, the Commission is publishing a revision to Rule 45-501 that would amend the existing Rule by providing for the application of statutory rights of action instead of contractual rights of action.

Dealer Registration

Part 5 of the Proposed Rule, which limits the availability of exemptions based on dealer involvement, is not changed materially from the corresponding Part in the existing Rule.

Resale Restrictions

Part 6 of the Proposed Rule provides for restrictions on subsequent trades in securities acquired under certain exemptions. The provisions of the Part in the existing Rule have been amended in order to subject securities acquired under prospectus exemptions in the Proposed Rule to the appropriate provisions of the Resale Instrument. In addition, the resale restrictions applicable to exchangeable securities have been modified to clarify that resale restrictions apply whether the underlying security has been issued or transferred to the security holder.

Filing Requirements and Fees

Part 7 of the Proposed Rule provides for the form of the reports to be filed and the amount of fees to be paid in connection with certain exempt distributions and the resale of securities acquired under such exempt distributions. Forms 45-501F1 and 45-501F2 have been revised to reflect the provisions of the Proposed Rule. In addition, Form 45-501F1 has been modified to require certain information about the identity of the purchaser under a private placement. Fees payable under the Proposed Rule will be subject to across-the-board reductions implemented by the Commission prior to its effective date.

Transitional Provisions

Part 8 of the Proposed Rule provides transitional provisions relating primarily to subsequent trades in securities acquired under the exemptions in the existing Rule that are being eliminated.

Summary of Policy

The Policy sets forth the views of the Commission as to the manner in which certain provisions of the Act and the rules relating to exempt distributions are to be interpreted and applied.

In section 2.1, the Commission recognizes that sellers of securities may continue to rely concurrently on different exemptions, subject to certain limitations. Section 2.2 of the Policy confirms the Commission's views regarding the availability of the closely-held issuer exemption in various respects, including matters concerning the $3.0 million maximum amount that may be raised using the exemption. Section 2.3 confirms the Commission's view that the closely-held issuer exemption provides the exemptive relief contemplated by certain "sunset" provisions that have historically been included in rulings exempting trades in additional pooled fund interests to existing investors. As a result, previous rulings with "sunset" provisions will expire and staff will cease recommending relief of this type when the Proposed Rule comes into effect.

Section 2.4 of the Policy sets out the Commission's view that clause 72(1)(i) of the Act is available in respect of trades in connection with amalgamations, arrangements or similar statutory proceedings taken under the laws of a jurisdiction other than Ontario. Section 2.5 of the Policy sets out the Commission's view that section 2.7 of the Proposed Rule extends to three-cornered amalgamations. Section 2.6 of the Policy clarifies that certain resale exemptions in the Proposed Rule operate as alternatives to the provisions of the Resale Instrument that would otherwise apply.

In light of recent changes to the definition of "reporting issuer" in the Act, the discussion in the existing Companion Policy regarding Securities Exchange Take-over Bids is no longer relevant and has been deleted.

Part 3 of the Policy sets out the Commission's views concerning the diligence that should reasonably be exercised by sellers for the purposes of the certification contained in Form 45-501F1.

Part 4 provides the views of the Commission as to the use of offering memoranda in connection with private placements.

Section 4.1 of the Policy provides that the statutory right of action contained in section 130.1 of the Act applies to offering memoranda delivered to prospective investors in connection with trades made in reliance upon the new prospectus exemptions contained in sections 2.1, 2.3 and 2.4 of the Proposed Rule. The Commission does not prescribe the form of such offering memoranda.

Part 5 of the Policy discusses the interaction of the Proposed Rule with the Resale Instrument.

Part 6 of the Policy indicates that offering material used by the vendors of securities who rely on private placement exemptions is not generally reviewed and commented upon by Commission staff.

Authority for the Proposed Rule and Forms

The following sections of the Act provide the Commission with authority to adopt the Proposed Rule and Forms. Paragraphs 143(1)8 and 20 authorize the Commission to make rules that provide for exemptions from the registration and prospectus requirements under the Act and for the removal of exemptions from those requirements. Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities and paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors. Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by this Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents and paragraph 143(1)43 authorizes the Commission to make rules prescribing fees.

Related Instruments

The Proposed Rule and the Policy are related in that they deal with the same subject matter. The Policy is related to Parts XII and XVII of the Act and Parts III and V of the Regulation.

Alternatives Considered

The Commission has relied upon the advice of the Task Force and its Report and has based the Proposed Rule on these considerations in addition to the views of Staff and the comments received on the Concept Paper.

Unpublished Materials

The Commission has not relied upon any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The principal benefit of the Proposed Rule, Policy and Forms will be to implement needed reforms to the private placement regime, in particular as it relates to the financing of small business. The Task Force engaged in an extensive study of exempt market regulation in Ontario and recommended extensive reform. The Proposed Rule will implement many of those recommendations.

Based on the foregoing, the Commission believes that the benefits of the Proposed Rule outweigh the costs, if any.

Rescission of Existing Rules and Companion Policy

Adoption of the Proposed Rule, Policy and Forms will result in the rescission of existing Rule 45-501 Exempt Distributions, existing Companion Policy 45-501CP and Rule 45-504 Prospectus Exemption for the Distribution of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts. The texts of the proposed rescissions will be as follows:

"Rule 45-501 Exempt Distributions and Companion Policy 45-501CP are hereby rescinded."

"Rule 45-504 Prospectus Exemption for Distribution of Securities to Portfolio Advisers on Behalf of Fully Managed Accounts is hereby rescinded."

Conflicting Regulations

In connection with the implementation of the Proposed Rule, it is the intention of the Commission to amend the Regulation under the Act to the extent that certain provisions of the Regulation require consequential amendment. The implementation of the Proposed Rule requires that the following amendments to the Regulation be made:

1. Subsections 149(1), (2) and (3), which deal with applications for exempt purchaser recognition, will be revoked since the exemptions for persons or companies that are exempt purchasers will no longer be available.

2. Clause 154(1)(c) refers to the exemptions from the prospectus requirement under clauses 72(1)(a), (c) and (d) of the Act, all of which will no longer be available. Clause 154(1)(c) will be amended to delete the references to these exemptions and to refer to the exemption for accredited investors as set out in the Proposed Rule.

3. The definition of "designated institution" in subsection 204(1) of the Regulation will be amended to delete clause (i), which refers to an exempt purchaser, and to add a new clause that refers to an accredited investor as defined in the Proposed Rule.

4. Subsection 45(1) of Schedule 1 – Fees will be revoked since applications for exempt purchaser recognition will no longer be accepted. Section 7.7 of the Proposed Rule prescribes the amount of fees payable in respect an application for accredited investor recognition.

5. Form 11, Application For Recognition As An Exempt Purchaser will be revoked since the related exemptions from the registration and prospectus requirements will no longer be available.

Comments

Interested parties are invited to make written submissions with respect to the Proposed Rule, Policy and Forms. Submissions received by December 8, 2000 will be considered.

Submissions should be made to:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

A diskette containing an electronic copy of the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions received cannot be maintained.

Questions may be referred to:

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Texts of the Proposed Rule, Policy and Forms

The texts of the Proposed Rule, the Policy and the three Forms follow, together with footnotes that are not part of the Proposed Rule, Policy or Forms but have been included to provide both background and explanation.

DATED: September 8, 2000.

APPENDIX A

SUMMARY OF COMMENTS RECEIVED BY THE COMMISSION ON THE CONCEPT PAPER "REVAMPING THE REGULATION OF THE EXEMPT MARKET"

The Commission received 40 submissions in response to the Concept Paper. A list of commentators is set out in Schedule A to this Summary. The Commission has considered all submissions received and thanks the commentators for providing constructive comments on the Concept Paper.

The following is a summary of the comments received, together with the Commission's corresponding responses.

GENERAL COMMENTS

The commentators generally were very supportive of the initiative to revamp the regulation of the exempt market.

Several commentators expressed the view that the initiative should have national scope to harmonize exempt market regulation across all Canadian jurisdictions and thereby simplify and reduce the costs of multijurisdictional capital-raising activities. Commentators indicated, however, that they preferred speedy implementation of the proposed changes in Ontario to national harmonization.

While the Commission agrees that harmonization is a worthy objective, the Commission agrees that timely local implementation takes precedence over harmonization.

Several commentators suggested abandoning the proposals in favour of a system identical to, or more similar to, that in the United States.

The Concept Paper's recommendations were based upon the Task Force Report's recommendations. The Task Force considered but rejected adopting the U.S. system due to the differences in the two jurisdictions' capital markets. The Commission supports the Task Force recommendations in this regard.

SPECIFIC COMMENTS - CLOSELY-HELD ISSUER EXEMPTION

Number of Security Holders

Several commentators questioned why the pool of unsophisticated investors was limited to 35 persons, given that the existing "private issuer" exemption permits 50 investors.

The "35 unaccredited investor" limit provided for in the proposed closely-held issuer exemption represents a balance between: (a) facilitating small companies' access to capital; and (b) limiting the potential risk assumed by unsophisticated investors. The closely-held issuer exemption is designed to be used by companies to raise investment capital from people and entities known by the company's principals and not through broad solicitations of potential investors. The private issuer exemption achieved a similar objective by prohibiting offers to the public. The closely-held issuer exemption is intended to remove the uncertainty surrounding this concept. Furthermore, the closely-held issuer exemptions may prove less numerically restrictive than the private issuer exemption because the following groups of investors would count toward the 50 investor limit for purposes of the private issuer exemption but would not count toward the 35 investor limit for purposes of the closely-held issuer exemption:

(1) accredited investors; and

(2) persons who fall within the scope of the new "family members" exemption.

Several commentators suggested that employees should not count toward the 35 investor limit. This was considered to be particularly important in the high technology and biotechnology sectors where the ability to reward and compensate employees with securities assists issuers in attracting and retaining employees, as well as facilitating cash conservation by such issuers.

The Proposed Rule excludes employees from the 35 investor limit, provided that the employee holds securities of the issuer issued under a compensation or incentive plan of the issuer or an affiliated entity of the issuer. The Proposed Rule would still include in the group of 35 those employees who make capital investments in the issuer.

One commentator was concerned that the 35 investor limit would impede liquidity since those required to approve the transfer may not do so if it affects the number of investors.

The effect on liquidity is substantially similar to that currently experienced with the private issuer exemption. One principal difference under the proposed regime, however, is the ability of investors who acquire securities under the closely-held issuer exemption to transfer securities to accredited investors without affecting the issuer's ability to raise additional capital using the closely-held issuer exemption.

Dollar Limit

Several commentators viewed the $3 million cap as too restrictive. In their view, many preliminary stage issuers, particularly those in the real estate and high technology sectors, require significantly more capital. One commentator suggested that the $3 million cap be "refreshed" for a given issuer after a certain time period or upon the occurrence of specified events. Another commentator suggested that the 35 investors should be able to invest additional capital after the $3 million cap has been reached.

The Commission considers the $3 million dollar cap as striking the appropriate balance between providing small issuers with easy access to significant amounts of capital while managing the risk assumed by unsophisticated investors. It also should be noted that the$3 million cap applies only to capital raised through investments from the "group of 35" pursuant to the closely-held issuer exemption. There is no limit on the amount of capital that may be raised from accredited investors or family members. Furthermore, the value of securities issued to employees under a compensation or incentive plan of the issuer or an affiliate of the issuer does not count toward the $3 million cap.

Nature of Entity

Several commentators proposed that mutual funds should be able to rely upon the closely-held issuer exemption on the grounds, among others, that protection is provided to investors through regulatory requirements, the pooling of funds and professional advice and management.

Mutual funds are subject to a separate regulatory regime that more adequately meets the needs of that market and mutual fund investors.

Generic Information Statement

The Concept Paper proposed that an issuer with five or more investors must provide a generic form of information statement to potential investors. A few commentators suggested that this five investor limit was too low because many family-owned businesses will have five or more immediate family members as investors.

The five investor limit is designed to minimize securities regulatory requirements for companies that are very closely held. It is anticipated that trades to family members will be made in reliance upon the family member exemption, which does not require delivery of a generic information statement. Further, it is the Commission's view that the standard form information statement requirement is not onerous and is a necessary investor protection component of the exemption.

One commentator suggested that a sample form of the generic document, to be used as a guideline, be posted on the Commission's website.

A sample generic document is appended to the Proposed Rule and, when the Proposed Rule is finalized, will be available on the Commission's website.

One commentator suggested that the requirement to deliver the generic statement four days in advance of the trade provided too little time for potential investors to acquire and assimilate relevant information.

The Commission is of the view that, in many cases, the four day period will be sufficient for potential investors to acquire and analyze the information. However, it is anticipated that, if potential investors have not satisfied themselves concerning the potential investment within the four days, the trade can be delayed. At a minimum, the "four day" requirement will provide potential investors with time to consider the proposed investment and decide what information they will require prior to making an investment decision.

Anti-avoidance

The Concept Paper proposed to restrict the availability of the closely-held issuer exemption by applying the $3 million cap to all funds raised by issuers "in common enterprise". One commentator expressed concern about this anti-avoidance provision. The commentator indicated that an entrepreneur could have more than one legitimate business interest in his or her lifetime and each business should have full access to the closely-held issuer exemption.

The availability of the closely-held issuer exemption is restricted only where entities are engaged in common enterprise. If affiliated entities legitimately are carrying on different business activities, the closely-held issuer exemption is fully available to each entity. Furthermore, the Proposed Rule contains a provision whereby issuers that are engaged in common enterprise can apply to the Commission for relief from this requirement.

Promoters

One commentator expressed concern with the proposal to limit the closely-held issuer exemption's availability where a promoter of the issuer has acted as a promoter of another issuer that has issued securities in reliance upon the closely-held issuer exemption within the preceding calendar year.

This restriction is aimed at potential abusive conduct by promoters, such as a scenario in which a promoter establishes a series of issuers, each of which purports to raise $3 million in capital from unsophisticated investors in reliance upon the closely-held issuer exemption. If a promoter wishes to use the closely-held issuer exemption for another legitimate enterprise within the same twelve month period, the promoter can apply to the Commission for exemptive relief from the application of this prohibition.

Disclosure Documents and Liability

One commentator suggested that, in accordance with the Task Force Report, there should be deemed reliance upon all documents provided to potential investors regarding the purchase and sale of securities.

It is anticipated that much of the disclosure material provided to investors in connection with the closely-held issuer exemption will fall within the scope of the defined term "offering memorandum" contained in the Act. The Proposed Rule provides that the statutory rights of action contained in the Act apply in respect of an offering memorandum provided to investors under the closely-held issuer exemption.

One commentator suggested that small businesses should be permitted to hire professionals to assist in the marketing of securities since "angel" capital is difficult to raise without experience.

Market intermediaries may be employed in connection with trades made in reliance upon the accredited investor exemption. It is anticipated that the majority of "angel" investors would be accredited investors. Prohibiting market intermediaries from participating in trades made in reliance upon the closely-held issuer exemption will encourage investment by investors that are closely connected to the issuer or its principals.

One commentator expressed the view that the prohibition on advertising would be a significant barrier to the use of the Internet to obtain private financing, particularly since there is no restriction on the nature of the 35 investors or their relationship to the issuer.

Advertising is not prohibited in connection with the accredited investor exemption (although an issuer that advertises in

connection with any trade will be precluded thereafter from relying upon the closely-held issuer exemption). Advertising is prohibited for issuers who seek to rely upon the closely-held issuer exemption in order to ensure that trades made in reliance upon this exemption are made to persons or entities are closely connected in some way to the issuer or its principals.

SPECIFIC COMMENTS - ACCREDITED INVESTOR EXEMPTION

Summary

Some commentators felt that the income and net worth thresholds did not provide evidence of an adequate level of sophistication, nor did these criteria establish that such investors could afford a complete loss of their investment.

The Commission agrees with the Task Force's conclusion that an investor's sophistication should be measured primarily by the ability to withstand the loss of the investment. While using either a "net worth" test or an income test to determine whether a potential investor can afford to lose an investment cannot fully assess sophistication, such tests do provide a strong proxy for sophistication. They are also relatively easy to calculate. The Commission also notes that the statutory civil liability attaching to offering memoranda will provide further protection for investors.

Many commentators were concerned about the monetary thresholds for determining accredited investor status. In general, these comments expressed the view that the net worth and personal income thresholds were too high for individuals, thereby limiting the pool of potential investment capital for small businesses. The lower thresholds set out in the Task Force Report were considered to be more appropriate. Several commentators were concerned that the high thresholds proposed in the Concept Paper would exclude mid-level investors from participating in the exempt market. Certain commentators were concerned that investors would not be comfortable disclosing their full net worth or producing personal income tax returns in order to prove their status. Some commentators expressed concern about issuers' ability to use exempt market financing in smaller communities, which may have fewer high income investors. It also was suggested that income be calculated on "net income" basis, rather than a "taxable income" basis, since net income provides a more accurate reflection of wealth.

The Commission has considered the asset and income thresholds proposed in the Concept Paper for individual accredited investors and determined that the asset test should be restricted to the individual's liquid financial assets. Financial assets used for the purposes of the threshold would include cash, cash equivalents and marketable securities. The threshold has been reduced to $1 million from $2.5 million. Upon reconsideration, the Commission did not consider it appropriate to include assets in the net worth calculation that the investor cannot afford to lose. An example of such an asset may be an individual's principal residence. The income thresholds have not been altered.

Many commentators requested that immediate family members of officers, directors and promoters be included in the definition of accredited investor.

The Commission has provided a separate exemption from the prospectus and registration requirements for trades in securities of an issuer where the purchaser purchases as principal and is a spouse, grandparent, parent or child of an officer, director or promoter of the issuer or an RRSP or RRIF of such family members. Family members were not included in the definition of accredited investor because the Commission believes it is inappropriate to involve market intermediaries in trades to family members. Like the closely-held issuer exemption, the family member exemption prohibits advertising and the payment of promotional or selling expenses.

One commentator asked that the Commission consider adding non-profit housing organizations and building co-operatives, especially those without charitable status, to the definition of accredited investor.

The Commission is not prepared to include these entities as accredited investors. Unlike registered charities, the investment activity of these entities is not subject to regulation.

One commentator requested that credit unions incorporated under the *Co-operative Credit Associations Act* (Canada) and comparable provincial legislation be included within the definition of accredited investor since these associations are comparable to banks, trust and loan companies and credit unions.

The definition of accredited investor has been amended in the Proposed Rule to include the entities referred to above as accredited investors.

Some commentators also requested that the definition of accredited investor to be extended to include entities other than corporations.

The Commission has extended the definition in the Proposed Rule to include non-corporate entities.

The existing seed capital exemption permits trades to investors in certain circumstances where, among other things, the investors are able to evaluate the prospective investment, either by virtue of their "net worth and investment experience" or by virtue of consultation with or advice from a registered adviser or dealer. One commentator recommended that the new regime retain an exemption for the "well-advised" category of investors.

With respect to the category of individual accredited investors, the Commission believes that qualification as an "accredited investor" should turn on whether the individual can afford to withstand the loss of his or her entire investment. This strikes the appropriate balance between facilitating capital-raising activities and protecting investors.

One commentator recommended that the new exempt market scheme permit accredited investors to certify their status as such in order to protect issuers and relieve them of the burden of verifying the status of potential investors.

The Commission believes that it should remain the issuer's responsibility to ensure that it is complying with securities regulatory requirements when it sells its securities.

Benefits of Having a Complete Accredited Investor List

A few commentators were concerned about the proposal to repeal Rule 45-504 - Prospectus Exemption for Distributions of Securities to Portfolios Advisers on Behalf of Fully Managed Accounts ("Rule 45-504").

Managed accounts have been included as accredited investors in the Proposed Rule. In keeping with Rule 45-504, managed accounts only will be considered accredited investors and therefore able to avail themselves of the accredited investor exemption if they are not acquiring securities of a mutual fund or non-redeemable investment fund.

Disclosure Documents and Civil Liability

Some commentators indicated that including a contractual right of action in, or attaching statutory liability to, offering memoranda is unnecessary for accredited investors since they are able to negotiate appropriate protections.

The Commission believes that it is appropriate to attach statutory civil liability to all offering memoranda provided to investors in connection with trades made in reliance upon the accredited investor, closely-held issuer and/or family member exemptions. With respect to the closely-held issuer and family member exemptions, potential investors may not be in a position or have the experience to negotiate the appropriate protections. Furthermore, not all accredited investors necessarily have the ability to negotiate protections. Providing for statutory civil liability in respect of offering memoranda ensures consistent protections for all investors acquiring securities under any of these exemptions.

Registration Exemption: Accredited Investors

One commentator suggested that the registration exemption should be extended to cover those persons in non-corporate issuers, such as partnerships and trusts, acting in similar capacities to directors and officers, in order to bring the treatment of non-corporate issuers in line with the treatment of corporate issuers.

The Proposed Rule includes registration and prospectus exemptions for officers and directors of issuers. The exemptions, together with the broad definitions of director and officer in the Act, generally provide exemptive relief for trades to persons who, in respect of non-corporate issuers, act in capacities similar to those of corporate officers or directors.

One commentator recommended that mutual and investment funds that distributed securities pursuant to a discretionary order permitting sprinkling among managers' accounts should be "grandfathered" under the new exempt market regime.

The $150,000 exemption, upon which these orders were premised, is being removed by the Proposed Rule. Therefore, it is inappropriate to grandfather these issuers.

One commentator proposed that group RRSPs, commonly used by employers in place of registered pension plans, should be treated in the same manner as pension plans.

Unlike pension plans, group RRSPs are not subject to regulation regarding the suitability of investments. Accordingly, the Commission does not believe it is appropriate to treat group RRSPs in the same manner as pension plans under the Proposed Rule.

Some commentators were concerned about a statement in the Concept Paper regarding the proposed elimination of the "limited market dealer" category of registration. These commentators generally emphasized that limited market dealers provide a valuable service in facilitating capital-raising by small and medium size businesses.

The Concept Paper indicated that the category of "limited market dealer" registration would be re-examined. This re-examination is now being undertaken as part of a general re-examination of the categories of registration and is not reflected in the Proposed Rule.

Proposed Repeal of Existing Exemptions

Several commentators indicated that the existing "government incentive securities" exemption should not be eliminated because it is useful for natural resources issuers.

The accredited investor exemption should allow natural resource issuers to continue to raise capital through the issuance of government incentive securities on substantially the same basis as under the government incentive securities exemption. The existing government incentive securities exemption, like the accredited investor exemption, requires purchasers to be sophisticated. It should be noted, however, that unlike the government incentive securities exemption, the accredited investor exemption does not: (i) require the delivery of an offering memorandum; (ii) prohibit advertising; (iii) restrict the number of accredited investors; or (iv) require the security in question to meet the definition of a "government incentive security".

Certain commentators expressed the view that the accredited investor exemption is more restrictive than the private placement exemption and could impede private capital-raising activities.

The Task Force Report concluded that the $150,000 minimum investment requirement for the private placement exemption is not an adequate proxy for sophistication and has the unfortunate effect of defining a minimum risk exposure for investors relying upon that exemption. Defining sophistication through the definition of accredited investor provides flexibility in the level of investment by sophisticated investors. This flexibility could facilitate increased access by issuers to the "angel" market.

Certain commentators were concerned about the effect that removing the private company exemption will have on tax and estate planning and/or corporate reorganizations.

The closely-held issuer exemption should not change significantly the way in which corporations are used for tax and estate planning purposes.

The Concept Paper proposed that a company, 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 million as of the date of its most recent audited financial statements would qualify as an accredited investor. One commentator asked why trusts needed to have audited financial statements in order to qualify as accredited investors.

The comparable provision in the Proposed Rule uses a "$5 million in net assets" test, as of the date of the entity's most recent financial statements. The requirement that the financial statements be audited has been eliminated.

One commentator was concerned that certain recognized exempt purchasers that otherwise would not qualify as accredited investors under the *Proposed* Rule would be required to apply for accredited investor status.

A transitional provision in the Proposed Rule will operate to temporarily "grandfather" investors recognized by the Commission as exempt purchasers at the time the Proposed Rule comes into effect. This transitional provision will apply for a one-year period after the Proposed Rule comes into effect. Once this one-year transitional period expires, these exempt purchasers will have to apply to be recognized as accredited investors if they do not fit into one of the existing categories and to continue participating in the exempt market. It is anticipated, however, that many persons and companies who currently have been recognized as exempt purchasers will fit within the new definition of "accredited investor" in the Proposed Rule.

SCHEDULE A – List of Commentators

1. ARC Financial Corporation
2. Aur Resources Inc.
3. Barclays Global Investors Canada Limited
4. Bennett Jones
5. British Columbia Securities Commission
6. Burgundy Asset Management Ltd.
7. Canada Trustco Mortgage Company, CT Investment Management Group Inc. and CT Securities Inc.
8. Canadian Global Finance Group
9. Canadian Venture Capital Association
10. Connor, Clark & Lunn Investment Management Ltd.
11. Credit Union Central of Canada
12. Dumont Nickel Inc.
13. GENSEL Biotechnologies Ltd.
14. Gundy and Associates, Limited et al.
15. Industry Canada on behalf of The Seven Ontario Demonstration Projects under the Canada Community Investment Plan
16. Integra Capital Corporation
17. Investment Counsel Association of Canada
18. Investment Dealers Association of Canada
19. The Investment Funds Institute of Canada
20. Jeffrey D. Stacey & Associates Ltd.
21. John D. Hillery Investment Counsel Inc.
22. KPMG Corporate Finance Inc. (Stephen M. Smith)
23. KPMG Corporate Finance Inc. (John P.R. Kingston)
24. Lafleur Brown
25. Lang Michener
26. Jeffrey G. MacIntosh
27. Manitoba Securities Commission
28. McElvaine Investment Management Ltd.
29. Northern Securities Inc.
30. Osler, Hoskin & Harcourt
31. Prentice Yates & Clark Management Consultants
32. Saskatchewan Securities Commission
33. Securities Subcommittee of the Business Law Section of the Canadian Bar Association (Ontario)
34 Sentron Capital Group
35. Sharwood and Company
36. Sheldon Huxtable
37. State Street Trust Company Canada
38. Stikeman, Elliott
39. Strategic Analysis (1994) Corporation (C. Ross Healy)
40. Tory Tory DesLauriers & Binnington

ONTARIO SECURITIES COMMISSION RULE 45-501

EXEMPT DISTRIBUTIONS
(REVISED)

PART 1 DEFINITIONS

1.1 Definitions - In this Rule

"accredited investor"[1] means

(a) a bank listed in Schedule I or II or an authorized foreign bank branch listed in Schedule III of the *Bank Act* (Canada);

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

(c) a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or under the *Trust and Loan Companies Act (Canada)*, or under comparable legislation in any other jurisdiction;[2]

(d) a credit union central, federation of caisses populaires, credit union or league, or regional caisse populaire located, in each case, in Canada;

(e) a company licensed to do business as an insurance company in any jurisdiction;

(f) a subsidiary of any company referred to in paragraph (a), (b), (c), (d) or (e), where the company owns all of the voting shares of the subsidiary;

(g) a person or company registered under the Act or securities legislation in another jurisdiction as an adviser or dealer, other than a limited market dealer;

(h) the government of Canada or any jurisdiction or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government;

(i) any Canadian municipality or any Canadian provincial or territorial capital city;

(j) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof;

(k) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission;

(l) a registered charity under the *Income Tax Act* (Canada);

(m) an individual who, either alone or jointly with a spouse, beneficially owns financial assets having an aggregate net realizable value exceeding $1.0 million;[3]

(n) an individual whose net income exceeded $200,000 in each of the two most recent years or whose joint net income with a spouse exceeded $300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year;

(o) an individual who has been granted registration under the Act or securities legislation in another jurisdiction as a representative of a person or company referred to in paragraph (g), whether or not the individual's registration is still in effect;

(p) an officer, director or promoter of the issuer, an affiliated entity of a promoter of the issuer, or a RRSP or a RRIF established by or for an officer, director or promoter of the issuer or under which the officer, director or promoter is a beneficiary;[4]

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1 This is a new definition created to implement the exemption regime presented in the OSC Staff Concept Paper entitled "Revamping the Regulation of the Exempt Market" as published for comment at (1999), 22 OSCB 2829 (the "Concept Paper"). The language used to describe some of the accredited investor categories has been revised from that used in the Concept Paper to achieve greater consistency with the definition of "qualified party" in the reproposed OTC Derivatives Rule published by the Commission. One effect of this approach is that institutions regulated under similar laws of other provinces and territories in Canada would qualify as accredited investors in Ontario.

2 The term "jurisdiction" is defined in Multilateral Instrument 14-101 Definitions as "a province or territory of Canada".

3 In the Concept Paper, Staff proposed that an individual would qualify as an accredited investor if that individual, either alone or jointly with a spouse, has a net worth (including registered retirement savings plans but excluding one-half of the net equity of such individual's personal residence(s) at the time of purchase) exceeding $2.5 million. This proposed accredited investor category has been refined by: (i) replacing the "net worth" test with a test based on the net realizable value of the **"**financial assets" beneficially owned by the individual and, if applicable, the individual's spouse; and (ii) significantly reducing the threshold from $2.5 million to $1.0 million.

4 Paragraph (p) overlaps with the exemption in Rule 45-503 Trades to Employees, Executives and Consultants in respect of trades by an issuer of securities of the issuer's own issue to executives. The exemption in Rule 45-503 is broader in certain respects because it extends to trades with executives of an affiliate of the issuer as well as trades to an executive administrator of the issuer.

(q) a person or company that, in relation to the issuer, is a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the Act;[5]

(r) an issuer that is acquiring securities of its own issue;[6]

(s) a company, 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 million as of the date of its most recent financial statements;

(t) a person or company that is recognized by the Commission as an accredited investor;[7]

(u) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors;

(v) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities under a prospectus for which a receipt has been granted by the Director, if the prospectus discloses

(i) that the fund may purchase securities in reliance upon the exemption in section 2.3; and

(ii) any restrictions on the fund's ability to rely upon that exemption;

(w) a managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund;[8]

(x) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (a) through (g) in form and function; and

(y) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors;

"closely-held issuer"[9] means an issuer, other than a mutual fund or non-redeemable investment fund, whose outstanding securities

(a) have not been offered or sold by advertisement;

(b) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements among the issuer and the holders of its securities; and

(c) are beneficially owned, directly or indirectly, by not more than 35 persons or companies, exclusive of

(i) persons or companies that are, or at the time they last acquired securities of the issuer were, accredited investors;

(ii) current or former employees of the issuer or an affiliated entity of the issuer, or current or former consultants as defined in Rule 45-503 Trades to Employees, Executives and Consultants, in either case who beneficially own only securities of the issuer that were issued as compensation by, or under an incentive plan or arrangement of, the issuer or an affiliated entity of the issuer;[10] and

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5 Paragraph (q) is intended to replace subsection 2.2(a) of existing Rule 45-501. The new provision is broader in scope since it exempts any trade to a control person rather than being limited to trades among control persons.

6 Paragraph (r) is intended to replace subsection 2.2(b) of existing Rule 45-501.

7 The registration and prospectus exemptions for exempt purchasers in paragraph 35(1)4. and clause 72(1)(c), respectively, of the Act have been removed since the definition of "accredited investor" provides broad relief to persons or companies with significant net worth and since paragraph (t) of that definition provides the Commission with residual discretionary authority to recognize a person or company as an "accredited investor" in other appropriate circumstances. Note that section 8.1 of the revised Rule provides transitional relief by extending the definition of "accredited investor" to include a person or company recognized as an exempt purchaser during the 12 month period following the effective date of the revised Rule. As well, it is proposed that the definition of "designated institution" in subsection 204(1) of the Regulation will be amended to provide that accredited investors are treated as designated institutions after the effective date of the revised Rule.

8 Paragraph (w) facilitates consolidation of the prospectus exemption in Rule 45-504 with the accredited investor exemption so that Rule 45-504 may be repealed. The requirement to provide a contractual right of action is not carried forward because statutory rights of action in section 130.1 of the Act will supercede contractual rights. See section 4.1.

9 This is a new definition included for the purpose of implementing the exemption regime presented in the Concept Paper.

10 The exclusion of certain employees and consultants from the 35 shareholder limit represents a change from the proposal in the Concept Paper. The scope of this exclusion is qualified to ensure that employees who acquire securities outside of a compensation or incentive arrangement are included for purposes of the 35 shareholder limit.

(iii) spouses, parents, grandparents or children of current or former officers, directors or promoters of the issuer;[11]

provided that:

(A) two or more persons who are the joint registered holders of one or more securities of the issuer shall be counted as one beneficial owner of those securities; and

(B) a corporation, partnership, trust or other entity shall be counted as one beneficial owner of securities of the issuer unless the entity has been created or is being used primarily for the purpose of acquiring or holding securities of the issuer, in which event each beneficial owner of an equity interest in the entity or beneficiary of the entity, as the case may be, shall be counted as a separate beneficial owner of those securities of the issuer;

"convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase, or of the issuer to cause the purchase of, a security of the same issuer;

"entity" means a company, syndicate, partnership, trust or unincorporated organization;

"exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase, or of the exchange issuer to cause the purchase of, a security of another issuer that is a reporting issuer;

"exchange issuer" means an issuer that distributes securities of a reporting issuer held by it in accordance with the terms of an exchangeable security of its own issue;

"financial assets" means cash, securities and any evidence of deposit that is not a security for purposes of the Act;

"managed account" means

(a) an investment portfolio account of a client established in writing with a portfolio adviser that makes investment decisions for the account and has full discretion to trade in securities of the account without requiring the client's express consent to a transaction; or

(b) an account that is fully managed by a trust corporation registered under the *Loan and Trust Corporations Act*; [12]

"multiple convertible security" means a security of an issuer that is convertible into or exchangeable for, or carries the right of the holder to purchase, or of the issuer or exchange issuer to cause the purchase of, a convertible security, an exchangeable security or another multiple convertible security;

"MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;

"portfolio adviser" means

(a) a portfolio manager; or

(b) a broker or investment dealer exempted from registration as an adviser under subsection 148(1) of the Regulation if that broker or investment dealer is not exempt from the by-laws or regulations of The Toronto Stock Exchange or the Investment Dealers' Association of Canada referred to in that subsection;

"Previous Rule" means Rule 45-501 Exempt Distributions as it read when it was published on January 8, 1999 at (1999) 22 OSCB 56;

"spouse", in relation to an individual, means another individual to whom that individual is married, or another individual of the opposite sex or the same sex with whom that individual is living in a conjugal relationship outside marriage;

"Type 1 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the Act, or section 2.3[13] or 2.4[14] of this Rule, or section 2.4, 2.5 or 2.11 of the Previous Rule;[15]

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11 A separate new exemption is provided for trades to certain family members. Accordingly, these persons are excluded from the 35 shareholder limit. See section 2.4 for the new exemption.

12 Paragraph (b) is intended to replace subsection 72(2) of the Act which will no longer have application after the prospectus exemption in clause 72(1)(a) is removed.

13 Section 2.3 is the new exemption for trades to "accredited investors".

14 Section 2.4 is the new exemption for trades to certain family members of officers, directors and promoters.

15 This definition and the next definition have been renamed to anticipate the adoption of Multilateral Instrument 45-102 Resale of Securities (the "proposed Resale Instrument"). Note that the definition of "Type 1 trade" refers to sections 2.4, 2.5 and 2.11 in existing Rule 45-501, none of which are included in the revised Rule. Sections 2.3 and 2.4 of the revised Rule are replacing certain 72(4) trades and therefore have been included in this definition in the revised Rule.

"Type 2 trade" means a trade in a security under an exemption from the prospectus requirement in clause 72(1)(f) (other than a trade to an associated consultant or investor consultant as defined in Rule 45-503 Trades to Employees, Executives and Consultants), (h),(i),(j),(k) or (n) of the Act, or section 2.6 or 2.7 of this Rule; and

"underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.

1.2 Interpretation

(1) In this Rule a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other, or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.

(2) In this Rule a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Rule a person or company is considered to be a subsidiary entity of another person or company if

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more persons or companies each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

PART 2 EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS OF THE ACT

2.1 Exemption for a Trade in a Security of a Closely-held Issuer[16] - Sections 25 and 53 of the Act do not apply to a trade in a security of a closely-held issuer if

(a) following the trade, the issuer will be a closely-held issuer and the aggregate proceeds received by the issuer, and any other issuer engaged in common enterprise with the issuer, in connection with trades made in reliance upon the exemption in this section will not exceed $3,000,000;

(b) an information statement substantially similar to Form 45-501F3 is provided to the purchaser of the security at least four days prior to the date of the trade unless, following the trade, the issuer will have not more than five holders of its securities;

(c) no promoter of the issuer has acted as a promoter of any other issuer that has issued a security in reliance upon this exemption within the twelve months preceding the trade; and

(d) no advertising is done and no selling or promotional expenses are paid or incurred in connection with the trade.

2.2 Exemption for a Trade in a Variable Insurance Contract[17]

(1) Sections 25 and 53 of the Act do not apply to a trade by a company licensed under the

[16] Section 2.1 is one of two new exemptions created to implement the exemption regime presented in the Concept Paper. It provides an exemption for certain trades in securities of a "closely-held issuer" as defined in the revised Rule.

[17] Section 2.2 of existing Rule 45-501 has been deleted. That section provided exemptions for trades among control persons and trades to the issuer. In the revised Rule, these trades are addressed in clauses (q) and (r) of the definition of "accredited investor".

Insurance Act in a variable insurance contract that is

(a) a contract of group insurance;

(b) a whole life insurance contract providing for the payment at maturity of an amount not less than three quarters of the premiums paid up to age 75 for a benefit payable at maturity;

(c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds; or

(d) a variable life annuity.

(2) For the purposes of subsection (1), "contract", "group insurance", "life insurance" and "policy" have the respective meanings ascribed to them by sections 1 and 171 of the *Insurance Act*.

2.3 Exemption for a Trade to an Accredited Investor[18] - Sections 25 and 53 of the Act do not apply to a trade in a security if the purchaser is an accredited investor and is purchasing as principal**.**

2.4 Exemption for a Trade to a Family Member of an Officer, Director or Promoter of the Issuer[19] - Sections 25 and 53 of the Act do not apply to a trade in a security of an issuer if

(a) the purchaser is a spouse, parent, grandparent or child of an officer, director or promoter of the issuer, or a RRSP or a RRIF established by or for the spouse, parent, grandparent or child or under which the spouse, parent, grandparent or child is a beneficiary;

(b) the purchaser is purchasing as principal; and

(c) no advertising is done and no selling or promotional expenses are paid or incurred in connection with the trade.

2.5 Exemption for a Trade by a Control Person in a Security Acquired under a Formal Take-Over Bid[20]

(1) Section 53 of the Act does not apply to a trade that is a control person distribution in a security that was acquired under a formal bid as defined in Part XX of the Act, if

(a) the offeree issuer had been a reporting issuer for at least 12 months at the date of the bid;

(b) subject to subsection (2), the intention to make the trade was disclosed in the take-over bid circular for the take-over bid;

(c) the trade is made within the period commencing on the date of the expiry of the bid and ending 20 days after that date;

(d) a notice of intention and a declaration prepared in accordance with Form 23 to the Regulation are filed by the seller before the trade;

(e) an insider report under Form 55-102F2 or 55-102F5 as applicable, is filed by the seller within three days after the completion of the trade; and

(f) no unusual effort is made to prepare the market or to create a demand for the securities and no extraordinary commission is paid for the trade.

(2) Paragraph (1)(b) does not apply to a trade to another person or company that made a competing formal bid for securities of the same issuer for a per security price not greater than the per security consideration offered by that other person or company in its take-over bid.

2.6 Exemption for a Trade in Connection with a Securities Exchange Issuer Bid - Sections 25 and 53 of the Act do not apply to a trade in a security that is exchanged by or for the account of the offeror with a securityholder of the offeror in connection with an issuer bid as defined in Part XX of the Act, if at the time of the trade, the issuer whose securities are being issued or transferred is a reporting issuer not in default under the Act or the regulations.

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18 Section 2.3 of existing Rule 45-501 has been deleted. That section provided an exemption for trades to or among promoters of the issuer or among promoters and control persons. Promoters are now included in the definition of "accredited investor" and therefore the exemption is no longer required.

19 Section 2.4 of the revised Rule provides an exemption for trades to certain family members of officers, directors and promoters provided that there is no advertising and no selling or promotional expense involved.

20 Section 2.5 of existing Rule 45-501 has been deleted. That section provided first trade relief for trades among purchasers of seed capital or government incentive securities. The section is no longer required since the seed capital exemption and the government incentive securities exemption have been replaced in the revised Rule.

2.7 Exemption for a Trade on an Amalgamation, Arrangement or Specified Statutory Procedure - Sections 25 and 53 of the Act do not apply to a trade in a security of an issuer in connection with

(a) a statutory amalgamation or statutory arrangement; or

(b) a statutory procedure under which one issuer takes title to the assets of the other issuer that in turn loses its existence by operation of law or under which one issuer merges with one or more issuers, whether or not the securities are issued by the merged issuer.

2.8 Exemption for a Trade upon Exercise of Conversion Rights in a Convertible Security - Sections 25 and 53 of the Act do not apply to a trade by an issuer in an underlying security of its own issue to a holder of a convertible security or multiple convertible security of the issuer on the exercise by the issuer of its right under the convertible security or multiple convertible security to cause the holder to convert into or purchase the underlying security or on the automatic conversion of the convertible security or multiple convertible security, if no commission or other remuneration is paid or given to others for the trade except for administrative or professional services or for services performed by a registered dealer.

2.9 Exemption for a Trade upon Exercise of Exchange Rights in an Exchangeable Security - Sections 25 and 53 of the Act do not apply to a trade by an exchange issuer in an underlying security to a holder of an exchangeable security or multiple convertible security of the issuer on the exercise by the exchange issuer of its right under the exchangeable security or multiple convertible security to cause the holder to exchange for or purchase the underlying security or on the automatic exchange of the exchangeable security or multiple convertible security, if the exchange issuer delivers to the Commission a written notice stating the date, amount, nature and conditions of the proposed trade, including the net proceeds to be derived by the exchange issuer if the underlying securities are fully taken up and either

(a) the Commission has not informed the exchange issuer in writing within 10 days after the delivery of the notice that it objects to the proposed trade, or

(b) the exchange issuer has delivered to the Commission information relating to the underlying security that is satisfactory to and accepted by the Commission.

2.10 Exemption for a Trade in a Security under the Execution Act[21] - Sections 25 and 53 of the Act do not apply to a trade in a security by a sheriff under the *Execution Act*, if

(a) there is no published market as defined in Part XX of the Act in respect of the security;

(b) the aggregate acquisition cost to the purchaser is not more than $25,000; and

(c) each written notice to the public soliciting offers for the security or giving notice of the intended auction of the security is accompanied by a statement substantially as follows:

These securities are speculative. No representations are made concerning the securities, or the issuer of the securities. No prospectus is available and the protections, rights and remedies arising out of the prospectus provisions of the *Securities Act*, including statutory rights of rescission and damages, will not be available to the purchaser of these securities.

2.11 Exemption for a Trade in a Multiple Convertible Security, Convertible Security or Exchangeable Security Acquired under Certain Exemptions[22] - Section 53 of the Act does not apply to a trade in a multiple convertible security, convertible security or exchangeable security acquired by a holder in a Type 1 trade if the conditions in subsection (2) or (3) of section 2.5 of MI 45-102 are satisfied.

2.12 Exemption for a Trade in a Security Acquired in Connection with a Take-over Bid - Section 53 of the Act does not apply to a trade in a security acquired under the exemption in clause 72(1)(j) of the Act if

(a) when the exemption was relied upon, a securities exchange take-over bid circular for the securities was filed by the offeror under the Act;

(b) the securities take-over bid circular was filed by the offeror in connection with a bid that was made:

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21 Section 2.10 of the revised Rule (section 2.12 of existing Rule 45-501) has been amended by substituting a "no published market" concept instead of referring to "private company" and "private issuer" in clause (a) and by adding a corresponding registration exemption.

22 Section 2.11 of existing Rule 45-501 has been deleted. The section provided an exemption for basket purchases of securities with an aggregate acquisition cost of at least $150,000. The exemption is one of the exemptions being replaced under the new exempt market regime.

(i) in compliance with, and was not exempt from, section 98 of the Act,

(ii) in reliance upon clause 93(1)(e) of the Act, or

(iii) in reliance upon an order granted under clause 104(2)(c) of the Act and the bid complied with, and was not exempt from, the laws of a jurisdiction recognized by the Commission for purposes of clause 93(1)(e) of the Act;

(c) the trade is not a control person distribution; and

(d) the issuer of the securities was a reporting issuer before the securities exchange take-over bid circular was filed.

2.13 Exemption for a Trade in an Underlying Security Where the Right to Purchase, Convert or Exchange is Qualified by Prospectus - Section 53 of the Act does not apply to a trade in an underlying security acquired in accordance with the terms of a multiple convertible security, convertible security or exchangeable security if

(a) a receipt was obtained from the Director for a prospectus qualifying the distribution of the multiple convertible security, convertible security or exchangeable security;

(b) the trade is not a control person distribution; and

(c) the issuer of the underlying security acquired in accordance with the terms of an exchangeable security is a reporting issuer at the time of the trade.

2.14 Exemption for a Trade in Debt of Conseil Scolaire de L'île de Montréal - Sections 25 and 53 of the Act do not apply to a trade if the security being traded is a bond, debenture or other evidence of indebtedness of the Conseil Scolaire de L'île de Montréal.

2.15 Exemption for a Trade to a Registered Retirement Savings Plan or a Registered Retirement Income Fund[23] - Sections 25 and 53 of the Act do not apply to a trade in a security by an individual or an associate of an individual to a RRSP or a RRIF established by or for that individual or under which that individual is a beneficiary.

[24]

[25]

PART 3 REMOVAL OF CERTAIN EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS [26]

3.1 Removal of Certain Exemptions Generally - The exemptions from the registration requirement in paragraphs 3, 4, 5, 18 and 21 of subsection 35(1) and paragraph 10 of subsection 35(2) of the Act and the exemptions from the prospectus requirement in clauses (a), (c), (d), (l) and (p) of subsection 72(1) and clause (a) of subsection 73(1) as it relates to paragraph 10 of subsection 35(2) of the Act are not available for a trade in a security.

3.2 Removal of Exemptions for Bonds, Debentures and Other Evidences of Indebtedness - The exemption from the registration requirement in subparagraph 1(c) of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act are not available for a trade in a bond, debenture or other evidence of indebtedness that is subordinate in right of payment to deposits held by the issuer or guarantor of the bond, debenture or other evidence of indebtedness.

3.3 Removal of Exemptions for Securities of a Private Mutual Fund with a Promoter or Manager - The exemption from the registration requirement in paragraph 3 of subsection 35(2) and the corresponding exemption from the prospectus requirement referred to in clause 73(1)(a) of the Act are not available for trades in a security of a private mutual fund if it is administered by a trust company and there is a promoter or manager of the mutual fund other than the trust company.

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[23] Section 2.15 of existing Rule 45-501 has been deleted. The section provided relief for the first trade in securities acquired by an incorporator under the exemption in clause 72(1)(o) of the Act if the first trade was to a promoter of the issuer. The exemption is no longer necessary as promoters are included in the definition of "accredited investor" and the accredited investor exemption in section 2.3 will be available.

[24] Section 2.17 of existing Rule 45-501 has been deleted. The section provided exemptions for trades in securities of "private issuers". The exemption is no longer necessary as it is being replaced by the closely-held issuer exemption. The definition of private issuer has also been deleted.

[25] Subsection 2.18(1) of existing Rule 45-501 has been deleted. The subsection was a corollary to the private company and private issuer exemptions for securities of British Columbia companies. It has been superceded by the closely-held issuer exemption. The first trade exemption in subsection 2.18(3) of existing Rule 45-501 has also been deleted. The exemption is no longer necessary because the proposed Resale Instrument does not include a condition relating to a default in complying with reporting issuer requirements.

[26] Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.10 and 3.11 of existing Rule 45-501 have all been deleted because the exemptions that were referred to in these sections are being eliminated as a result of the implementation of either the new exempt market regime or the proposed Resale Instrument.

3.4 Removal of Registration Exemptions for Market Intermediaries - The exemption from the registration requirement in subsection 2.2(1) and sections 2.1, 2.3, 2.4, 2.6, 2.7, 2.8, 2.9, 2.10 and 2.15 are not available to a market intermediary.[27]

PART 4 OFFERING MEMORANDUM

4.1 Application of Statutory Right of Action[28] - The right of action referred to in section 130.1 of the Act shall apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3 or 2.4.[29]

4.2 Removal of Exemptions if Statutory Right of Action Not Described in Offering Memorandum - The exemptions from the prospectus requirement in sections 2.1, 2.3 and 2.4 are not available for a trade where the seller delivers an offering memorandum to the prospective purchaser unless the right of action referred to in section 130.1 of the Act is described in the offering memorandum.[30]

4.3 Delivery of Offering Memorandum to Commission - If an offering memorandum is provided to a purchaser of securities in respect of a trade made in reliance upon an exemption from the prospectus requirement in section 2.1, 2.3 or 2.4, the seller shall deliver to the Commission a copy of the offering memorandum within 10 days of the date of the trade.[31]

PART 5 DEALER REGISTRATION

5.1 Removal of Exemption unless Dealer Registered for Trade Described in the Exemption - An exemption from the registration requirement or from the prospectus requirement in the Act or the regulations that refers to a registered dealer is not available for a trade in a security unless the dealer is registered in a category that permits it to act as a dealer for the trade described in the exempting provision.

PART 6 RESTRICTIONS ON RESALE OF SECURITIES ACQUIRED UNDER CERTAIN EXEMPTIONS

6.1 Resale of a Security Acquired by a Promoter[32] - A trade by a promoter of an issuer in a security of the issuer acquired under an exemption from the prospectus requirement in section 2.1, 2.3 or 2.4 is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.

6.2 Resale of a Security Acquired under Section 2.1[33] - A trade in a security acquired under the exemption from the prospectus requirement in section 2.1, other than a trade referred to in section 6.1, is subject to section 2.6 of MI 45-102.[34]

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27 Section 3.4 of the revised Rule is intended to extend the scope of the universal registration requirement in section 206 of the Regulation to appropriate registration exemptions in revised Rule 45-501.

28 Section 4.1 of existing Rule 45-501 has been deleted. That section mandated the delivery of an offering memorandum and the provision of a contractual right of action for advertised private placements under clause 72(1)(d) of the Act and section 2.11 of the existing Rule. The section is not necessary as the exemptions in clause 72(1)(d) and section 2.11 have been replaced and delivery of an offering memorandum is not mandatory for advertised distributions under the new exemption for accredited investors.

29 Section 4.1 of the revised Rule makes the new statutory right of action in section 130.1 of the Act applicable to an offering memorandum used to effect a trade made in reliance upon the closely-held issuer, accredited investor or family member prospectus exemption. The statutory right is not made applicable to a secondary market trade made only in reliance upon one of the corresponding registration exemptions.

30 This section is derived from section 4.2 of existing Rule 45-501. References to clauses 72(1)(c), (d), and (p) of the Act and section 2.11 of existing Rule 45-501 have been deleted as the exemptions in those provisions have been replaced. This section now refers to a trade made in reliance upon the closely-held issuer, accredited investor or family member prospectus exemption.

31 This section is derived from section 4.3 of existing Rule 45-501. The reference to contractual rights of action has been deleted and the section now requires delivery to the Commission of a copy of an offering memorandum that is provided to a prospective investor in respect of a trade made in reliance upon the closely-held issuer, accredited investor or family member prospectus exemption.

32 Section 6.1 of existing Rule 45-501 imposes resale restrictions on first trades of securities acquired under the promoter exemptions in sections 2.3 and 2.15 of the existing Rule. Those sections have now been deleted as promoters have been included in the definition of "accredited investor". However, the Commission proposes to require that first trades by promoters be restricted on the same basis as control block distributions. Therefore, this section provides that trades by promoters in securities acquired under a prospectus exemption in section 2.1, 2.3 or 2.4 are subject to the "control distribution" requirements in section 2.8 of the proposed Resale Instrument.

33 Section 6.2 of existing Rule 45-501 imposes resale restrictions on first trades of securities acquired under exemptions in sections 2.4, 2.5 and 2.11 of the existing Rule. First trade restrictions for securities acquired under the exemptions in sections 2.4, 2.5 and 2.11 of existing Rule 45-501 are provided for in the transitional provisions in Part 8 of the revised Rule. See section 8.1.

34 This section provides that trades in securities acquired under the closely-held issuer exemption are subject to the "seasoning period" requirements in the proposed Resale Instrument.

6.3 Resale of a Security Acquired under Section 2.3 or 2.4 - A trade in a security acquired under an exemption from the prospectus requirement in section 2.3 or 2.4, other than a trade referred to in section 6.1, is subject to section 2.5 of MI 45-102.[35]

6.4 Resale of a Security Acquired under Clause 72(1)(h) of the Act - A trade in a security acquired under the exemption from the prospectus requirement in clause 72(1)(h) of the Act, other than a trade to which section 6.5 applies, is subject to section 2.6 of MI 45-102.

6.5 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or an Exchangeable Security Acquired under Certain Exemptions[36] - A trade in an underlying security acquired on conversion or exchange of a multiple convertible security, convertible security or exchangeable security, if the multiple convertible security, convertible security or exchangeable security was acquired in a Type 1 trade, is subject to section 2.5 of MI 45-102.

6.6 Resale of a Security Acquired under Section 2.8 or 2.9 - A trade in an underlying security acquired under an exemption from the prospectus requirement in section 2.8 or 2.9 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired by the holder in a Type 2 trade or under an exemption from the prospectus requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of Rule 45-503 Trades to Employees, Executives and Consultants, other than a trade by an associated consultant or investor consultant as defined in Rule 45-503 Trades to Employees, Executives and Consultants, is subject to section 2.6 of MI 45-102. .[37]

6.7 Resale of a Security Acquired under Section 2.6 or 2.7 - A trade in a security acquired under an exemption from the prospectus requirement in section 2.6 or 2.7 is subject to section 2.6 of MI 45-102, unless, in the case of a security acquired under section 2.6:

(a) a securities exchange issuer bid circular in respect of the securities was filed by the offeror under the Act; and

(b) the securities exchange issuer bid circular was filed by the offeror in connection with a bid that was made:

(i) in compliance with, and was not exempt from, section 98 of the Act,

(ii) in reliance upon clause 93(3)(h) of the Act, or

(iii) in reliance upon an order granted under clause 104(2)(c) of the Act and the bid complied with, and was not exempt from, the laws of a jurisdiction recognized by the Commission for purposes of clause 93(1)(h) of the Act.

PART 7 FILING REQUIREMENTS AND FEES

7.1 Form 45-501F1 - Every report that is required to be filed under subsection 72(3) of the Act or subsection 7.5(1) shall be filed in duplicate and prepared in accordance with Form 45-501F1.

7.2 Form 45-501F2 - Every report that is required to be filed under subsection 7.5(2) shall be filed in duplicate and prepared in accordance with Form 45-501F2.

7.3 Fees for Form 45-501F1

(1) A report filed in Form 45-501F1 shall be accompanied by a fee equal to the greater of

(a) $100; and

(b) subject to subsection (2), the amount calculated using the formula,

A + B

where

"A" is 0.02 percent of the aggregate gross proceeds realized in Ontario from the distribution of securities, other than special warrants, for which the report filed in Form 45-501F1 is filed, and

"B" is 0.04 percent of the aggregate gross proceeds realized in Ontario from the distribution of special warrants for which the report filed in Form 45-501F1 is filed.

(2) The amount calculated under subsection (1) is considered to be $100 if the report filed in Form 45-501F1 is filed for,

(a) a trade in securities if there is no change in beneficial ownership of the securities as a result of the trade;

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35 This section provides that trades in securities acquired under the accredited investor or family member exemption are subject to the "hold period" requirements in the proposed Resale Instrument.

36 In this context, the underlying security may have been *issued* or *transferred* to the security holder.

37 The Commission is proposing to amend Rule 45-503 Trades to Employees, Executives and Consultants to provide that a further trade in securities acquired under an exemption in Rule 45-503 is subject to the appropriate provisions of the proposed Resale Instrument.

(b) a subsequent trade in securities acquired under an exemption from the prospectus requirement in clause 72(1)(b) or (q) of the Act or section 2.3 or 2.4; or

(c) a subsequent trade in securities acquired prior to **M** , 2000 under an exemption from the prospectus requirement in clause 72(1)(a), (c), (d), (l) or (p) of the Act or section 2.4, 2.5 or 2.11 of the Previous Rule.[38]

7.4 Fees for Form 45-501F2 - A report filed in Form 45-501F2 shall be accompanied by a fee of $100.

7.5 Exempt Trade Reports

(1) Subject to subsection (5), if a trade is made in reliance upon an exemption from the prospectus requirement in section 2.3 or 2.4, the seller shall, within 10 days of the trade, file a report prepared and executed in accordance with section 7.1.

(2) If a trade is made in reliance upon the conditions in subsection (2) or (3) of section 2.5 of MI 45-102 being satisfied, the seller shall, within 10 days of the trade, file a report prepared and executed in accordance with section 7.2.[39]

(3) If a trade is made under section 2.8, the issuer shall file the notice and pay the fees prescribed by section 20 of Schedule 1 to the Regulation as if the underlying security had been acquired in a distribution exempt from section 53 of the Act by subclause 72(1)(f)(iii) of the Act.

(4) If a trade is made under section 2.9, the exchange issuer shall pay the fees prescribed by section 21 of Schedule 1 to the Regulation as if the security had been acquired in a distribution exempt from section 53 of the Act by clause 72(1)(h) of the Act.

(5) A report is not required under subsection (1) where, by a trade under section 2.3, a bank, loan corporation or trust corporation acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness.

7.6 Fees for Trade Made under Section 2.7 - If a trade is made under section 2.7, the issuer shall pay the fees prescribed by section 23 of Schedule 1 to the Regulation as if section 23 referred to section 2.7 instead of clause 72(1)(i) of the Act.

7.7 Fees for Accredited Investor Application - An application for recognition, or for renewal of recognition, as an accredited investor shall be accompanied by a fee of $500.

PART 8 TRANSITIONAL PROVISIONS [40]

8.1 Accredited Investor Definition Includes Exempt Purchaser - The definition of "accredited investor" in section 1.1 includes, prior to **M** , 2001, a person or company that is recognized by the Commission as an exempt purchaser.[41]

8.2 Resale of a Security Acquired under Section 2.4, 2.5 or 2.11 of the Previous Rule - A trade in a security acquired under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule is subject to section 2.5 of MI 45-102.

8.3 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or an Exchangeable Security Acquired under Certain Exemptions[42] - A trade in an underlying security acquired on conversion or exchange of a multiple convertible security, convertible security or exchangeable security, if any of the multiple convertible security, convertible security or exchangeable security was acquired under an exemption from the prospectus requirement in

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38 References to certain clauses of subsection 72(1) of the Act have been deleted as the exemptions are no longer available and references to sections 2.4, 2.5 and 2.11 of existing Rule 45-501 have been deleted since the exemptions in those sections are being replaced. Paragraph (c) is a transitional provision which ensures that trades in securities acquired under previously available exemptions are only subject to payment of the minimum fee.

39 The proposed Resale Instrument does not provide for the filing of a report of a trade made in compliance with the "hold period" requirements of that instrument. Section 7.5(2) continues this reporting requirement for trades of this type made in Ontario.

40 This Part contains sections that impose the appropriate resale restrictions in the proposed Resale Instrument to trades in securities acquired under certain exemptions in existing Rule 45-501 that are being removed in this revised Rule.

41 This section provides transitional relief to ensure that a person or company recognized by the Commission as an exempt purchaser within the 12 month period preceding the effective date of the revised Rule will be considered an "accredited investor" until the exempt purchaser recognition expires, at which time the person or company will have to consider the need to seek accredited investor recognition under paragraph (t) of the definition in section 1.1 if the person or company does not otherwise qualify as an accredited investor at that time.

42 In this context, the underlying security may have been *issued* or *transferred* to the security holder.

section 2.4, 2.5 or 2.11 of the Previous Rule, is subject to Section 2.5 of MI 45-102.

8.4 Resale of a Security Acquired by a Promoter under Section 2.3 or 2.15 of the Previous Rule - A trade by a promoter of an issuer in a security of the issuer acquired under an exemption from the prospectus requirement in section 2.3 or 2.15 of the Previous Rule is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.

8.5 Resale of a Security Acquired under Section 2.17 or Subsection 2.18(1) of the Previous Rule - A trade in a security acquired under an exemption from the prospectus requirement in section 2.17 of the Previous Rule, or in subsection 2.18(1) of the Previous Rule after the issuer has ceased to be a private issuer for purposes of the *Securities Act* (British Columbia), is subject to section 2.6 of MI 45-102.[43]

[43] Section 2.17 of existing Rule 45-501, which has been deleted, provided exemptions for trades in securities of private issuers. A resale of securities acquired under the private issuer exemption will be subject to the "seasoning period" requirements in the proposed Resale Instrument.

FORM 45-501F1

Securities Act (Ontario)

Report under Section 72(3) of the Act or Section 7.5(1) of Rule 45-501

(To be used for reports of trades made in reliance upon
clause 72(1)(b) or (q) of the Act, or Section 2.3 or 2.4 of Rule 45-501)

1. **Full name and address of the seller.**

2. **Full name and address of the issuer of the securities traded.**

3. **Description of the securities traded.**

4. **Date of the trade(s).**

5. **Particulars of the trade(s).**

Name of Purchaser and Municipality and Jurisdiction of Residence	Amount or Number of Securities Purchased	Purchaser Price	Total Purchase Price (Canadian $)	Exemption Relied Upon

6. **The seller has prepared and certified a statement containing the full legal name and the full residential address of each purchaser identified in section 5 and a certified true copy of the list will be provided to the Commission upon request.**

7. **State the name and address of any person acting as agent in connection with trade(s) and the compensation paid or to be paid to such agent.**

8. **Calculation of Fees payable upon filing Form 45-501F1: (See section 7.3 of Rule 45-501 Exempt Distributions (Revised)).**

   Total Fees payable: $

9. Certificate of seller or agent of seller.

The undersigned seller hereby certifies, or the undersigned agent of the seller hereby certifies to the best of the agent's information and belief, that the statements made in this report are true and correct.

DATED at _____

this __ day of _____, 20____.

_____
(Name of seller or agent - please print)

_____
(Signature)

_____
(Official capacity - please print)

(Please print name of individual whose signature appears above, if different from name of seller or agent printed above)

Notice – Collection and Use of Personal Information

The personal information prescribed by this form is collected on behalf of and used by the Ontario Securities Commission for purposes of administration and enforcement provisions of the securities legislation in Ontario. All of the information prescribed by this form, except the information contained in the statement required to be prepared and certified by the seller under section 6 of this form, is made available to the public under the securities legislation of Ontario. If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the address below:

Ontario Securities Commission
Suite 1900, Box 55,
20 Queen Street West
Toronto, Ontario M5H 3S8
Attention: FOI Coordinator
Telephone: (416) 593-8314
Facsimile: (416) 593-8122

Instructions:

1. In answer to section 7 give the name of the person or company who has been or will be paid remuneration directly related to the trade(s), such as commissions, discounts or other fees or payments of a similar nature. It is not necessary to include payments for services incidental to the trade such as clerical, printing, legal or accounting services.

2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referred to the relevant item and properly identified and signed by the person whose signature appears on the report.

3. Cheques must be made payable to the Ontario Securities Commission in the amount determined in section 8 above.

4. Please print or type and file two signed copies with:

Ontario Securities Commission
Suite 1900, Box 55,
20 Queen Street West
Toronto, Ontario M5H 3S8

FORM 45-501F2

Securities Act (Ontario)
Report under section 7.5(2) of Rule 45-501

1. **Full name and address of the seller.**

2. **Full name and address of reporting issuer whose securities were traded.**

3. **Particulars of the trade(s).**

Date of Trade	Type of Security	Amount or Number of Securities Traded	Selling Price

4. **Full name and municipality of residence of the party from whom the seller acquired the securities and the date of acquisition.**

5. **Certificate of seller or agent of seller.**

The undersigned seller hereby certifies, or the undersigned agent of the seller hereby certifies to the best of the agent's information and belief, that:

(1) the information given in this report is true and correct,

(2) (a) no unusual effort has been made to prepare the market or create a demand for the securities, and

(b) no extraordinary commission or consideration has been or has been agreed to be paid in respect of the trade covered by this report, and

(3) the trade to which this report relates is an arm's length transaction made in good faith.

Instructions:

1. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referred to the relevant item and properly identified and signed by the person whose signature appears on the report.

2. Cheques must be made payable to the Ontario Securities Commission in the amount determined in section 7.4 of Rule 45-501 Exempt Distributions (Revised).

3. Please print or type and file two signed copies with:

Ontario Securities Commission
Suite 1900, Box 55,
20 Queen Street West
Toronto, Ontario M5H 3S8

DATED at _____

this _____ day of _____, 20___.

_____
(Name of seller or agent - please print)

_____
(Signature)

_____
(Official capacity - please print)

_____
(Please print name of individual whose signature appears above, if different from name of seller or agent printed above)

FORM 45-501F3
FORM OF INFORMATION STATEMENT

Introduction

Ontario securities laws have been relaxed to make it easier for small businesses to raise start-up capital from the public. Many potential investors may view this change in securities laws as an opportunity to "get in on the ground floor" of emerging businesses and to "hit it big" as these small businesses grow into large ones.

Statistically, most small businesses fail within a few years. Small business investments are among the most risky that investors can make. This information statement suggests matters for you to consider in deciding whether to make a small business investment.

Risks and Investment Strategy

A basic principle of investing in a small business is: **NEVER MAKE A SMALL BUSINESS INVESTMENT THAT YOU CANNOT AFFORD TO LOSE IN ITS ENTIRETY**. Never use funds that might be needed for other purposes, such as a post-secondary education, retirement, loan repayment or medical expenses, and never borrow money to make such an investment. Instead use funds that you already have set aside and that otherwise would be used for a consumer purchase, such as a vacation or a stereo system.

Never let anyone convince you that the investment is not risky. Any such assurance is almost always inaccurate. Among other risk factors, small business investments generally are highly illiquid, even if they are not subject to any legal restrictions on their transferability. This lack of liquidity means that, if the company takes a turn for the worse or if you suddenly need the funds you have invested in the company, you may not be able to sell your securities.

Also, it is important to realize that, just because the proposed offering of securities is permitted under Ontario securities law does not mean that the particular investment will be successful. Neither the Ontario Securities Commission nor any other government agency evaluates or endorses the merits of investments. Anyone who suggests that the Ontario Securities Commission has endorsed the merits of the investment is breaking the law.

If you plan to invest a large amount of money in a small business, you should consider investing smaller amounts in several small businesses. A few highly successful investments can offset the unsuccessful ones. Even when using this strategy, **DO NOT INVEST FUNDS YOU CANNOT AFFORD TO LOSE IN THEIR ENTIRETY**.

Analyzing the Investment

Although there is no magic formula for making successful investment decisions, certain factors are often considered particularly important by professional venture investors. Some questions to consider are as follows:

1. How long has the company been in business? If it is a start-up or has only a brief operating history, are you being asked to pay more than the shares are worth?

2. Consider whether management is dealing unfairly with investors or putting itself in a position where it will be unaccountable to investors. For example, is management taking salaries or other benefits that are too large in light of the company's stage of development? Are outside investors putting up 80% of the money but receiving only 10% of the company's shares? Will outside investors have any voting power to elect representatives to the board of directors?

3. How much experience does management have in the industry and in small business? How successful were the managers in previous businesses?

4. Do you know enough about the industry to be able to evaluate the company and make a wise investment?

5. Does the company have a realistic business plan and do they have the resources to market the product or service successfully?

6. How reliable is the financial information, if any, that has been provided to you by the persons promoting investment in the company?

There are many other questions to be answered, but you should be able to answer these before you consider investing. If you have not been provided with the information needed to answer these and any other questions you may have about the proposed investment, make sure that you obtain the information you need from people authorized to speak on the company's behalf (*e.g.*, management or the directors) before you advance any funds or sign any commitment to advance funds to the company.

Making Money on Your Investment

The two classic methods for making money on an investment in a small business are: (1) resale of the securities in the public securities markets following a public offering; and (2) receiving cash or marketable securities in a merger or other acquisition of the company.

If the company is the type that is not likely to go public or be acquired within a reasonable time (*i.e.*, a family-owned or closely-held corporation), it may not be a good investment for you irrespective of its prospects for success because of the lack of opportunity to cash in on the investment. Management of a successful private company may receive a good return indefinitely through salaries and bonuses but it is unlikely that there will be profits sufficient to pay dividends commensurate with the risk of the investment.

Other Suggestions

It is generally a good idea to meet with management of the company face-to-face to size them up. Focus on experience and track record rather than a smooth sales presentation. If at all possible, take a sophisticated business person with you to help in your analysis.

Even the best venture offerings are highly risky. If you have a nagging sense of doubt, there is probably a good reason for it. Good investments are based on sound business criteria and not emotions. If you are not entirely comfortable, the best approach is usually not to invest. There will be many other opportunities. Do not let anyone pressure you into making a premature decision.

Conclusion

Greater numbers of public investors are "getting in on the ground floor" by investing in small businesses. When successful, these enterprises enhance the economy and provide jobs for its citizens. They also provide investment opportunities. However, an opportunity to invest must be considered in light of the inherently risky nature of small business investments.

In considering a small business investment, you should proceed with caution, and above all, never invest more than you can afford to lose.

COMPANION POLICY 45-501CP TO
ONTARIO SECURITIES COMMISSION RULE 45-501
EXEMPT DISTRIBUTIONS
(REVISED)

PART 1 PURPOSE AND DEFINITIONS

1.1 **Purpose** - This policy statement sets forth the views of the Commission as to the manner in which certain provisions of the Act and the rules relating to the exemptions from the prospectus and registration requirements are to be interpreted and applied.

1.2 **Definitions** - In this Policy, “private placement exemptions” means the prospectus and registration exemptions available for

(a) sales of securities of closely-held issuers under section 2.1 of Rule 45-501;

(b) sales of securities to accredited investors under section 2.3 of Rule 45-501; and

(c) sales of securities to certain family members under section 2.4 of Rule 45-501.

PART 2 EXEMPTIONS FROM THE REGISTRATION AND PROSPECTUS REQUIREMENTS OF THE ACT

2.1 **Interaction of Private Placement Exemptions** - The Commission recognizes that a seller of securities may, in connection with any distribution of securities, rely concurrently on different private placement exemptions except where the seller is advertising the distribution or paying or incurring selling or promotional expenses in connection with the distribution. In these circumstances, a seller may not rely on the exemption in section 2.1 or 2.4.

2.2 **Closely-Held Issuer Exemption** - The exemption in section 2.1 relating to securities of closely-held issuers is available to the closely-held issuer itself in respect of an issue of its own securities and to any holder of the issuer’s securities in respect of a sale of the securities. A closely-held issuer may issue its own securities in reliance upon the exemption in section 2.1 so long as it is able to meet the criteria for the availability of the exemption in that section. In particular, a closely-held issuer may no longer use the closely-held issuer exemption once it has received aggregate proceeds of $3,000,000 from trades made in reliance upon the exemption. However, a holder of securities of a closely-held issuer may rely upon the exemption in section 2.1 in connection with any resale of the securities so long as the issuer continues to be a closely-held issuer after the resale. The issuer does not cease to be a closely-held issuer solely because it has raised $3,000,000 in aggregate proceeds using the exemption.

The Commission notes that a closely-held issuer will be in a position to facilitate the use of the exemption in section 2.1 for the resale of its securities by limiting

the number of its security holders using the share transfer restrictions in its constating documents or in an agreement with its security holders. Once the issuer no longer meets the closely-held issuer definition, a resale of securities acquired under the exemption in section 2.1 may only be made in reliance upon another exemption or by complying with the relevant provisions of Multilateral Instrument 45-102 Resale of Securities.

The Commission also notes that the restriction on the use of the exemption in section 2.1, which refers to aggregate proceeds of $3,000,000, is based on the aggregate of all proceeds received by the issuer at any time from trades made in reliance upon the exemption in section 2.1. Proceeds received by the issuer from trades made in reliance upon other exemptions, including exemptions available prior to the date when the exemption in section 2.1 first became available, are not relevant. In particular, the proceeds realized by the issuer from trades to accredited investors need not be included in determining whether the $3,000,000 threshold would be exceeded in respect of any proposed trade under section 2.1. However, if the issuer has not filed a report on Form 45-501F1 in respect of a trade with an accredited investor, it will be presumed that the trade was made in reliance upon section 2.1, in which case the proceeds of that trade must be counted for purposes of the aggregate proceeds limit.

2.3 Sunset of Pooled Fund Rulings - For a number of years the Commission has granted rulings under subsection 74(1) of the Act providing exemptive relief from the registration and prospectus requirements to pooled fund issuers in respect of the sale of additional pooled fund interests to investors that have previously purchased pooled fund interests under an exemption. In general, these rulings have contained a "sunset" provision stating that the ruling would terminate following the adoption of a rule regarding trades in securities of pooled funds. The Commission considers that section 2.1 of Rule 45-501 provides the appropriate relief from the registration and prospectus requirements for trades in additional pooled fund interests to existing investors. Accordingly, the Commission takes the view that these rulings will expire following implementation of Rule 45-501.

2.4 Trades on an Amalgamation, Arrangement or Specified Statutory Procedure - Clause 72(1)(i) of the Act provides an exemption for trades in securities in connection with a statutory amalgamation or arrangement or other statutory procedure. The Commission is of the view that the reference to statute in that clause refers to any statute of a jurisdiction or foreign jurisdiction under which the amalgamating entities have been incorporated or created and exist and under which the transaction is taking place.

2.5 Three-Cornered Amalgamations - Certain corporate statutes permit a so-called "three-cornered merger or amalgamation" under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. Section 2.7 of Rule 45-501 exempts these trades as the exemption applies to any trade made in connection with an amalgamation or merger.

2.6 First Trade Exemptions in Sections 2.11, 2.12 and 2.13 - Sections 2.11, 2.12 and 2.13 of Rule 45-501 provide exemptions for certain first trades in securities acquired under specified prospectus exemptions provided certain conditions are satisfied. The Commission is of the view that holders of securities acquired under the applicable exemptions referred to in these sections need not comply with the resale requirements of Multilateral Instrument 45-102 Resale of Securities if a prospectus exemption in Section 2.11, 2.12 or 2.13 is available in the circumstances.

PART 3 CERTIFICATION OF FACTUAL MATTERS

3.1 Seller's Certificate - The Commission will normally be satisfied that a seller has exercised reasonable diligence for the purposes of the certificate required in Form 45-501F1 if the seller relies on statutory declarations or representations from the purchasers, unless the seller has knowledge that any facts set out in the declarations or representations are incorrect**.** In circumstances where a seller has recently obtained a statutory declaration or representation from a purchaser with whom a further trade is being made, the seller may continue to rely upon the recently obtained statutory declaration or representation unless the seller has reason to believe that the statutory declaration or representation is no longer valid in the circumstances.

PART 4 OFFERING MEMORANDA

4.1 Use of Offering Memoranda in Connection with Private Placements

(1) Part 4 of Rule 45-501 provides for the application of the statutory right of action referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective investor in connection with a trade made in reliance upon a prospectus exemption in section 2.1, 2.3 or 2.4 of Rule 45-501. In this case the statutory right of action must be described in the offering memorandum and copies of the offering memorandum must be delivered to the Commission. Although there is no obligation to prepare an offering memorandum for use in connection with a trade made in reliance upon any prospectus exemption, business practice may dictate the preparation of offering material that is delivered voluntarily to purchasers in connection with exempt trades under section 2.1, 2.3 or 2.4. This offering material may constitute an "offering

memorandum" as defined in the Act. The statutory right of rescission or damages applies when the offering memorandum is provided voluntarily in connection with exempt trades made under section 2.1, 2.3 or 2.4, including an exempt trade to a government or financial institution that is an accredited investor. However, a document delivered in connection with a sale of securities made otherwise than in reliance upon the above-noted exemptions does not give rise to the statutory rights of action or the obligations of Part 4.

(2) The Commission does not prescribe what an offering memorandum should contain apart from the description of the applicable statutory right of action and the requirements relating to future oriented financial information as contemplated by proposed National Instrument 52-101 Future-Oriented Financial Information (if and when it comes into force).

(3) The Commission cautions against the practice of providing preliminary offering material to certain prospective investors before furnishing a "final" offering memorandum unless the material contains a description of the statutory right of action available to purchasers in situations when such a right of action and description is required. The only material prepared in connection with the private placement for delivery to investors, other than a "term sheet" (representing a skeletal outline of the features of an issue without dealing extensively with the business and affairs of the issuer), should consist of an offering memorandum describing the statutory right of action and complying in all other respects with Ontario securities laws and rules.

PART 5 RESTRICTIONS ON FIRST TRADES

5.1 Incorporation of Multilateral Instrument 45-102 Resale of Securities - Part 6 of the Rule imposes first trade restrictions on securities acquired under certain exemptions from the prospectus requirements. Different types of resale restrictions are imposed depending upon the nature of the prospectus exemption under which the securities were distributed. In each case, the applicable resale restrictions are incorporated by reference to a specific section of Multilateral Instrument 45-102 Resale of Securities. Sellers of securities are reminded that these resale restrictions need not apply if the seller is able to rely upon another prospectus exemption in the Act or in a Commission rule in respect of the resale of the securities in question.

PART 6 COMMISSION REVIEW

6.1 Review of Offering Material - Although sellers of securities who rely upon the private placement exemptions are required to deliver to the Commission copies of offering material that they use in connection with the exempt trades if the offering material constitutes an "offering memorandum" as defined in the Act, the offering material is not generally reviewed or commented upon by Commission staff.

6.2 Other Regulatory Approvals - Given the self-policing nature of exempt distributions and the fact that offering memoranda are not routinely reviewed by Commission staff, the decision relating to the appropriate disclosure in an offering memorandum rests with the issuer, the selling securityholder and their advisors. If Commission staff becomes aware of an offering memorandum that fails to disclose material information relating to the securities that are the subject of the transaction, staff may seek to intervene to effect remedial action.