Chapter 5

Rules and Policies

5.1.1 Notice of Proposed Rule, Policy and Forms under the Securities Act – Rule 45-501 Exempt Distributions, Companion Policy 45-501CP Exempt Distributions and Form 45-501F1, Form 45-501F2, Form 45-501F3 and Rescission of Existing Rule 45-501 Exempt Distributions, Companion Policy 45-501CP Exempt Distributions and Form 45-501F1, Form 45-501F2 and Form 45-501F3

NOTICE OF PROPOSED RULE, POLICY AND FORMS
UNDER THE SECURITIES ACT
RULE 45-501 *EXEMPT DISTRIBUTIONS*,
COMPANION POLICY 45-501CP *EXEMPT DISTRIBUTIONS*
AND FORM 45-501F1, FORM 45-501F2, FORM 45-501F3

AND

RESCISSION OF EXISTING RULE 45-501 *EXEMPT DISTRIBUTIONS*,
COMPANION POLICY 45-501CP *EXEMPT DISTRIBUTIONS* AND
FORM 45-501F1, FORM 45-501F2 AND FORM 45-501F3

Notice of Proposed Rule, Companion Policy and Forms

The Commission has made revised Rule 45-501 *Exempt Distributions* (the Proposed Rule) and Forms 45-501F1, 45-501F2 and 45-501F3 (the Proposed Forms) under section 143 of the *Securities Act* (the Act).

The Proposed Rule, the Proposed Forms and the other material required by the Act to be delivered to the Minister of Finance were delivered on October 28, 2003. If the Minister does not reject the Proposed Rule and the Proposed Forms or return them to the Commission for further consideration, the Proposed Rule and the Proposed Forms will come into force on January 12, 2004.

The Commission has adopted Companion Policy 45-501CP *Exempt Distributions* (the Proposed Policy) under section 143.8 of the Act. The Proposed Policy will come into force on the date that the Proposed Rule and the Proposed Forms come into force.

The Proposed Rule, the Proposed Forms and the Proposed Policy are collectively referred to as the Proposed Materials. The Proposed Materials will replace the existing Rule 45-501 *Exempt Distributions* (the Current Rule), the existing Forms 45-501F1, 45-501F2 and 45-501F3 and the existing Companion Policy 45-501CP *Exempt Distributions*.

Substance and Purpose of Amendments to Rule and Forms

The Current Rule made significant changes to the exempt market regime in Ontario with the implementation of, among other changes, two new exemptions: the accredited investor exemption and the closely-held issuer exemption. The Commission notes that the amendments in the Proposed Materials are primarily of a technical nature, and are not intended to reflect a policy shift in the rationale for the exempt distributions regime in the Current Rule. The members of the Canadian Securities Administrators (the CSA) are currently considering a proposed approach to harmonizing the various exempt distributions regimes across Canada, and recently published a concept paper entitled *Blueprint for Uniform Securities Laws for Canada*. The amendments in the Proposed Materials are not meant to address the proposals discussed in the concept paper.

Since the Current Rule was implemented in November 2001, the Commission has been monitoring the effectiveness of this rule and noting areas where amendments would be beneficial. These amendments, including issues identified in Staff Notice 45-702 – *Frequently Asked Questions*, were published for comment on April 18, 2003 at (2003) 26 OSCB 2965 (the April 2003 Materials). The Commission received submissions on the April 2003 Materials from four commentators, and has made a number of revisions to the April 2003 Materials in response to these comments. For a summary of these comments and the Commission's responses, please see Schedule "A" to this Notice.

In addition to the amendments made in response to the comments received, the Commission has made a number of additional changes to the April 2003 Materials, including an amendment to paragraph 2.1(1)(a) of the Proposed Rule to clarify the resale requirements applicable to security holders of a closely-held issuer.

Changes that have been made since the publication of the April 2003 Materials are reflected in the blacklines attached as Schedule “B”. The Commission is of the view that none of the revisions made to the April 2003 Materials is material. Accordingly, the Proposed Materials are not being published for a further comment period.

If adopted, the Proposed Rule will address some areas that have been the subject of comment from practitioners, will reduce the need for certain exemptive relief applications and will clarify and amend certain provisions. The Proposed Rule and the Proposed Forms have also been amended to reflect the consequential amendments to the Current Rule and the existing Forms due to the coming into force of Ontario Securities Commission Rule 13-502 *Fees* and to include additional information required to assist Commission staff.

Substance and Purpose of Amendments to the Companion Policy

The purpose of the Proposed Policy is to set forth the views of the Commission as to the manner in which the Proposed Rule and the provisions of the Act relating to exempt distributions are to be interpreted and applied. The purpose of the amendments is to provide the views of the Commission with respect to the amendments contained in the Proposed Rule.

Authority for Proposed Rule and Proposed 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 which provide for exemptions from the registration and prospectus requirements under the Act and for the removal of exemptions from those requirements. 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.

Related Instruments

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

Text of Proposed Materials

The text of the Proposed Rule, the Proposed Policy and the Proposed Forms follows.

Rescission of Current Rule 45-501

The coming into force of the Proposed Materials will result in the rescission of the Current Rule, the existing Companion Policy and the existing Forms. The text of the proposed rescission will be as follows:

“Rule 45-501 *Exempt Distributions* is hereby rescinded.”

“Forms 45-501F1, 45-501F2 and 45-501F3 are hereby rescinded.”

“Companion Policy 45-501CP *Exempt Distributions* is hereby rescinded.”

DATED: October 28, 2003.

Schedule "A"

Summary of Comments & Responses

Comment letters were received from the following commenters:

- Comment dated May 13, 2003 from John F. O'Donnell (Shibley Righton LLP)
- Comment dated June 23, 2003 from Richard S. Sutin (Ogilvy Renault)
- Comment dated July 17, 2003 from Eric T. Spink
- Comment dated July 18, 2003 from Dawn V. Scott (Torys LLP)

The Commission would like to thank the commenters for taking the time to provide comments on the April 2003 Materials. The Commission has carefully considered these comments and has provided summaries of the comments and the Commission's responses in the following table.

#	Theme	Comments	Responses
	SUMMARY OF COMMENTS		
1.	Definitions – "accredited investor" – paragraph (r) & (s) (Spink)	Clause (r) of the definition of accredited investor in s. 1.1 of proposed 45-501 should be redrafted to ensure that entities in respect of which the issuer holds a sufficient number of shares to materially affect control fall clearly within the definition. It is common for private or closely held issuers to acquire their own shares. This is clearly addressed in paragraph (s) of the definition, which makes the issuer an accredited investor. For tax or corporate law reasons, an issuer may acquire its own shares through an entity in respect of which the issuer holds a sufficient number of securities to materially affect control. This is addressed in paragraph (r) of the definition, which captures two types of accredited investors. First, it captures any "affiliated entity" of the issuer. This captures entities that are "subsidiaries" of the issuer, including a company of which the issuer (or a subsidiary of the issuer) holds more than 50% of the voting securities. It also captures an entity that holds more than 50% of the voting securities of the issuer. This part of the definition is clear. The second part of paragraph (r) of the definition of accredited investor captures "a person or company that, in relation to the issuer, is a …person or company referred to in paragraph (c) of the definition of distribution in subsection 1(1) of the Act." This clearly captures an entity that owns more than 20% of the issuer's voting securities, but it is not clear whether it captures an entity in which the issuer owns more than 20% of the voting securities. If it excludes such entities, that is an undesirable result. The policy rationale for all of paragraph (r) should be that an entity that holds a sufficient number of securities to materially affect control of the issuer, or an entity in respect of which the issuer holds a sufficient number of securities to materially affect control, should be an accredited investor with respect to securities of that issuer.	We have not amended the proposed rule in response to this comment. In our view, paragraph (r) of the definition of "accredited investor" does not currently include an entity in which the issuer is a "control person" (i.e., a person or company referred to in paragraph (c) of the definition of "distribution" in subsection 1(1) of the Act). We do not believe that it necessarily follows from the language in paragraphs (r) and (s) of the definition of "accredited investor" that an entity in which the issuer is a control person should be an accredited investor of the issuer. In the case of (r), a control person is, by definition, able "to affect materially the control of the issuer". Consequently, the Act presumes that such a person is in a special position vis-à-vis the issuer, and imposes certain restrictions on trading in securities of the issuer. It is not necessarily the case that an entity in which the issuer is a "control person" is in a similar position, and we note that such an entity is not subject to similar restrictions on trading in securities of the issuer. Similarly, we do not necessarily agree that an entity in which the issuer is a "control person" should be treated the same as the issuer itself (paragraph (s)) or a "subsidiary" of the issuer (paragraph (r)). In the former case, the issuer is able "to affect materially the control" of the entity, but does not necessarily control the entity. Several persons may be control persons in relation to a single entity. Generally, only one person will actually control the entity.
2.	Definitions – "accredited investor" – paragraph (v) (Scott)	Paragraph 1.1(v) of Rule 45-501 provides that accredited investors include mutual funds or non-redeemable investments funds that, in Ontario, distribute their securities only to persons or companies that are accredited investors. However, in Ontario such funds may distribute their securities on a prospectus exempt basis both to accredited investors and, pursuant to section 2.12 of Rule 45-501, to	We have not amended the proposed rule in response to this comment. Paragraph (v) is intended to serve a similar function to paragraph (aa). If all of the investors in a fund are accredited investors, then the fund should be an accredited investor.

#	Theme	Comments	Responses
		purchasers making investments of not less than the minimum provided for therein. They may also distribute securities pursuant to exemption orders, for example to permit top-up investments in a fund in circumstances not satisfying the requirements of paragraph 2.12(1)(b) of Rule 45-501. Prior to implementation of Section 2.12 of Rule 45-501, the securities of such funds were sold to Ontario purchasers on a prospectus exempt basis either pursuant to provisions of the *Securities Act* (Ontario) (the "Act") or pursuant to exemption orders, on conditions substantially similar to those set out in section 2.12(1)(b) of Rule 45-501. We do not see a policy rationale for disqualifying funds whose Ontario investors include investors who purchase their securities of the funds pursuant to predecessor prospectus exemptions or exemption orders or who purchase securities or the funds pursuant to the exemptions in Section 2.12 of Rule 45-501 or exemption orders from the definition of accredited investors. Accordingly, we suggest that paragraph 1.1(v) be amended to read: "(v) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors <u>or pursuant to an exemption orders or pursuant to Section 2.12 (or, prior to the implementation of section 2.12, distributed its securities pursuant to section 72(1)(d) of the Securities Act or its predecessors);"</u>	Although, as the commenter notes, a fund may distribute securities in Ontario to purchasers other than accredited investors, such as purchasers who purchase pursuant to section 2.12 of Rule 45-501 or pursuant to an exemption order, we do not believe that it is appropriate that these purchasers should necessarily be considered as analogous to accredited investors. As noted in section 2.4 of the companion policy, the Commission considers that section 2.12 is a "transitional" exemption that maintains the status quo for pooled funds until such time as the Commission determines the appropriate regulatory regime for pooled funds.
3.	Definitions – "accredited investor" – paragraph (y) (Scott)	We suggest that paragraph (y) of the accredited investor definition be further amended to add references to trust corporations authorized to carry on business under such legislation or comparable legislation of a foreign jurisdiction so that it reads: "(y) an account that is fully managed by a trust corporation registered <u>or authorized to carry on business</u> under the Loan and Trust Corporations Act or under the Trust and Loan Companies Act (Canada), or under comparable legislation in any other jurisdiction <u>or a foreign jurisdiction;"</u> This would make the exemption completely consistent with the equivalent exemption under Multilateral Instrument 45-103.	We have amended the Proposed Rule in response to this comment.
4.	Definitions – "accredited investor" – "offering memorandum" (Sutin)	One commenter has proposed an amendment to the definition of "offering memorandum" (in Rule 14-501) to exclude certain written materials that are delivered to certain classes of "accredited investors":	The proposed amendments to OSC Rule 45-501 are primarily of a technical nature, and are not intended to reflect a policy shift in the rationale for the exempt distributions regime in Current

#	Theme	Comments	Responses
		In many cases, the private investor often has access to full due diligence and, as well, is the recipient of much written documentation, which might include things like a business plan. Because of the broad definition of offering memorandum, the delivery of this information begs the question whether a particular document, such as a business plan, is or is not an offering memorandum. Out of an abundance of caution, most issuers would be generally advised that such document would constitute an offering memorandum and, therefore must not contain a misrepresentation (and therefore must not omit any necessary material fact). Caution would dictate that the issuer and its advisors would look to prospectus form requirements for a checklist of matters that should be included in the offering memorandum and, before you know it, a significant amount of extra work, (with legal and financial cost) has been generated when, in fact, the information in the offering memorandum is all information that the investor would be uncovering itself through its due diligence process. I am suggesting that there be another exception to the definition of offering memorandum for written materials that are delivered to a certain category of sophisticated investors who acknowledge that (i) they have satisfactory access to the records and assets of an investee for due diligence purposes; (ii) they do not require that written materials being delivered to them should constitute an offering memorandum; and (iii) the materials being delivered to them will not constitute an offering memorandum and will therefore not give rise to the statutory liability that attaches to an offering memorandum.	Rule 45-501. We will consider this comment in the context of the proposals to harmonize the various exempt distributions regimes across Canada through a proposed national exemptions instrument.
5.	Paragraph 2.12(1)(c) – Mutual funds and non-redeemable investment funds (Scott)	The effect of subsection 2.12(1)(c) of Rule 45-501 is that the top-up relief provided by that section is only available for funds managed by a portfolio adviser (defined to include portfolio managers registered with the Ontario Securities Commission (the "Commission") or certain brokers or dealers exempt from registration under section 148(1) of the Regulation). Section 2.4 of Companion Policy 45-501 indicates that funds managed by a person or company relying on Part 7 of OSC Rule 35-502 must apply for relief. While we can understand why the Commission might want to require funds managed by advisors not resident in Canada to apply for specific top-up relief, we believe that it would be appropriate for Rule 45-501 to provide the top-up relief to funds managed by portfolio managers or trust corporations resident and registered in another Canadian jurisdiction. Accordingly we suggest that this section be	We have amended the Proposed Rule in response to this comment.

#	Theme	Comments	Responses
		amended to read: "(c) the mutual fund or non-redeemable investment fund is managed by a portfolio adviser or by a portfolio manager resident in a jurisdiction and registered or exempt from registration under securities legislation of that jurisdiction or a trust corporation registered or authorized to carry on business under the Loan and Trust Corporations Act or under the Trust and Loan Companies Act (Canada), or under comparable legislation in any other jurisdiction." This amendment would permit funds managed by Canadian resident portfolio advisers or trust corporations based in other Canadian jurisdictions to have the benefit of the exemption where the securities of the funds are acquired by investors in Ontario, without having to apply for additional relief.	
6.	Section 4.3 – Delivery of Offering Memorandum (Scott)	We believe that Section 4.3 of Rule 45-501 should be amended to permit an offering memorandum to be delivered to the Commission once in respect of all trades to purchasers provided with that offering memorandum. An offering memorandum should only be required to be filed at the time of the report of the first trade which utilized that offering memorandum and refiled only if there has been an amendment to the offering memorandum already filed. The current wording of Section 4.3 of Rule 45-501 seems to require that an offering memorandum be delivered to the Commission "within 10 days of a trade" even though the offering memorandum has already been delivered to the Commission. This interpretation of Section 4.3 is consistent with the relief recently granted to *Olympus United Funds Corporation* (2003) 26 OSCB 2952, which gave relief from a requirement to file an offering memorandum with the Commission after each trade. We believe that a requirement to file and refile an offering memorandum within 10 days of each trade is difficult to understand from a policy perspective if the offering memorandum has already been filed with the Commission, is inconsistent with previous regulatory requirements in Ontario and with industry practice, and is in conflict with other filing requirements applicable to mutual funds and non- redeemable investment funds. … We suggest that Section 4.3 be amended amend to provide that:	We have amended the Proposed Rule in response to this comment.

#	Theme	Comments	Responses
		"...the seller shall deliver to the Commission a copy of the offering memorandum or any amendment to a previously filed offering memorandum on or before 10 days of the date of the trade."	
7.	Form 45-501F1 – Identity of Purchasers (Scott)	Item 5 of Form 45-501 F1 provides that the names and municipalities and jurisdictions of residence of purchasers must be listed on the Form (with more detailed information about the purchasers maintained by the seller and provided to the Commission on request under section 6 of Form 45-501F1). We believe that there are privacy concerns which releasing such information does not address and that its release exposes purchasers in the exempt market as targets for unwarranted solicitations as well as other inappropriate attention. More sophisticated purchasers will be able to avoid this result by making their purchases through vehicles, such as trusts or personal holding companies, which will not result in unintended disclosure of their personal information. We believe that it would be appropriate for Form 45-501F1 to be amended to provide that the name and municipality and jurisdiction of residence of a purchaser not be included in the Form, but is provided as a schedule to the Form and that the Schedule not be available to persons who request copies of a Form 45-501 from the Commission. In this way the confidentiality of personal information will be maintained.	We have not amended the proposed rule in response to this comment. We recognize that there may be legitimate privacy concerns associated with the current form of Form 45-501F1. However, we believe that the amendment proposed by the commenter would represent a significant departure from the principles of transparency underlying the current Form 45-501F1. Consequently, we believe that further consideration is necessary before proceeding with this amendment. We will consider this comment in the context of the proposals to harmonize the various exempt distributions regimes across Canada through a proposed national exemptions instrument.
8.	Paragraph 35(2)(14) and clause 72(1)(m) – Securities issued in consideration of mining claims – Acceptable pooling and escrow agreements (O'Donnell)	This commenter identified a number of practical difficulties with the mining claims exemption regime created by paragraph 35(2)(14) and clause 72(1)(m) of the Act including that: • The OSC has recognized the TSE and CDNX for the purposes of clause 72(1)(m) of the Act but not for paragraph 35(2)(14) (See Recognition Order 21-901 - Stock Exchange Recognition Order). • The OSC has attempted to rectify this problem through OSC Staff Notice 45-701, which advises that staff plans to recommend that paragraph 35(2)14 of the Act be amended to correspond with clause 72(1)(m) and that, in the interim, the Director will not consider any escrow or pooling agreement to be necessary for the purpose of trades made in reliance on paragraph 35(2)14 of the Act provided that the security proposed to	Although the comments do not directly relate to the proposed amendments to OSC Rule 45-501, we would like to take this opportunity to respond to the concerns identified by the commenter. Staff are proceeding to develop an amended recognition order to recognize the TSX and the TSX Venture Exchange for the purposes of both clause 72(1)(m) and paragraph 35(2)14. In the interim, where an issuer finds itself in circumstances similar to the circumstances of the applicant in the Order *In the Matter of Jilbey Enterprises Ltd*, staff will generally be prepared to recommend that comparable relief be granted, and that the fee for the application be waived.

#	Theme	Comments	Responses
		be issued, or the security underlying that security, is listed and posted for trading on the TSE and the issuer has received, where required by the by-laws, rules or policies of the TSE, the consent of the TSE to the issuance of the security. • There is still a disparity in that both the TSE and CDNX are recognized for the purposes of clause 72(1)(m), but only the TSE is recognized for the purpose of paragraph 35(2)14. This apparent difficulty was addressed in the OSC decision *In the Matter of Jilbey Enterprises Ltd.* Dated August 15, 2002, reported at (2002) 25 OSCB 5731. In the application by Jilbey Enterprises Ltd. ("Jilbey"), the issuer (a TSX Venture Exchange listed company) proposed to issue 400,000 common shares, in partial consideration for the assignment of an interest in mining claims, which transaction had been accepted for filing by the TSX Venture Exchange. … The OSC ordered that Jilbey was not subject to the requirement of paragraph 35(2)14 of the Act. The OSC further ordered that the issuer was exempt from the requirement to pay a fee in connection with the application, presumably in light of the obvious technical gap between the respective provisions of the Act and the Recognition Order.	
	Securities issued in consideration of mining claims – Sections 35(2)(14) and 72(1)(m) – Acceptable pooling and escrow agreements (O'Donnell) (Continued)	• There is no updated Recognition Order dealing with the change of names of TSE to TSX and CDNX to TSX Venture Exchange. • Notwithstanding that Rule 45-102 provides specific restricted periods with respect to securities issued under the provisions of clause 72(1)(m), there does not appear to be any formal mechanism to file notice of the issuance of such securities to determine whether the Director would consider any further escrow or pooling agreement necessary in the case of non-TSX listed companies. • It is clear that this unsatisfactory situation results in significant difficulties, expense, concern and ambiguity for non-TSX listed companies. Ontario reporting issuers who are not listed on any exchange but whose trades are required to be reported through the Canadian Listed	We have not amended OSC Rule 45-501 to provide for a formal reporting mechanism along the lines suggested by the commenter. A number of provisions contemplate a consent process similar to that described by paragraph 35(2)14 and clause 72(1)(m), such as the consent of the Director to make certain listing representations (subsection 38(3) of the *Securities Act*); the consent of the Commission to cease to be an offering company (subsection 1(6) of the *Ontario Business Corporations Act*); and the consent of the Commission to continue into another jurisdiction (subsection 4(b) of Ont. Reg 289/00)). Although certain other provisions of the Act provide for a time-limited objection procedure similar to that suggested by the commenter, such as clause 72(1)(h) of the Act, we do not believe that this is appropriate or necessary in the case of the mining claims exemption.

#	Theme	Comments	Responses
		Board, and the now recognized CNQ which is expected to be in operation shortly, have their own unique problems. Even if the recognition orders were amended to recognize the TSX and the TSX Venture Exchange for the purposes of both clause 72(1)(m) and paragraph 35(2)14, other non-listed issuers would still have no obvious reporting mechanism for the transaction and would otherwise be required to make an application on a transaction-by-transaction basis. • I would respectfully submit that Rule 45-501 which deals with exempt transactions could be amended to provide an expedient reporting mechanism to disclose particulars of any proposed issuances of securities for an interest in mining claims. The OSC could be given an appropriate time to respond (say 5 to 10 days), failing which no additional pooling or escrow agreement would be required.	We will consider issues relating to an appropriate approval/objection procedure in relation to securities issued in consideration for mining claims in the context of CSA proposals to develop a national exemptions instrument.

Schedule "B"

Blackline Showing Changes to the April 2003 Materials

~~*Draft: April 15, 2003*~~ONTARIO SECURITIES COMMISSION RULE 45-501
EXEMPT DISTRIBUTIONS

PART 1 DEFINITIONS

1.1 Definitions - In this Rule

"accredited investor" means

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

(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;

(d) a co-operative credit society, credit union central, federation of caisses populaires, credit union or league, or regional caisse populaire, or an association under the Cooperative Credit Associations Act (Canada), in each case, located in Canada;

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

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

(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 of 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 or similar regulatory authority;

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

(m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;

(n) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of 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) a promoter of the issuer or an affiliated entity of a promoter of the issuer;

(q) a spouse, parent, brother, sister, grandparent or child of an officer, director or promoter of the issuer;

(r) a person or company that, in relation to the issuer, is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the Act;

(s) an issuer that is acquiring securities of its own issue;

(t) a company, limited liability 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 $5,000,000 as reflected in its most recently prepared financial statements;

(u) a person or company that is recognized by the Commission as an accredited investor;

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

(w) 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 or, if it has ceased distribution of its securities, has previously distributed its securities in this manner;

(x) a fully managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund;

(y) an account that is fully managed by a 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;

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

(aa) 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;

"business assets" means assets owned by a person or company which have been used in connection with a business carried on by that person or company;

"closely-held issuer" means an issuer, other than a mutual fund or non-redeemable investment fund, whose

(a) shares are subject to restrictions on transfer requiring the approval of either the board of directors or the shareholders of the issuer (or the equivalent in a non-corporate issuer) contained in constating documents of the issuer or one or more agreements among the issuer and holders of its shares; and

(b) outstanding securities 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 directors or officers of the issuer or of an affiliated entity of the issuer; and

(iii) current or former employees of the issuer or of an affiliated entity of the issuer, or current or former consultants as defined in ~~Rule 45-503 *Trades to Employees, Executives and Consultants*,~~MI 45-105, who in each case beneficially own only securities of the issuer that were issued as compensation by, or under an incentive plan of, the issuer or an affiliated entity of the issuer;

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 each 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 the right of the issuer to cause the purchase of, a security of another 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, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of the Act;

"fully managed account" means an investment portfolio account of a client established in writing with a portfolio adviser who 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;

"government incentive security" means

(a) a security, or unit or interest in a partnership that invests in a security, that is issued by a company and for which the company has agreed to renounce in favour of the holder of the security, unit or interest, amounts that will constitute Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, or Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA; or

(b) a unit or interest in a partnership or joint venture that is issued in order to fund Canadian exploration expense as defined in subsection 66.1(6) of the ITA or Canadian development expense as defined in subsection 66.2(5) of the ITA or Canadian oil and gas property expense as defined in subsection 66.4(5) of the ITA;

"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*;

"MI 45-105" means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants*;

"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;

"related liabilities" means liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets and liabilities that are secured by financial assets;

"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, 2.12, 2.13, 2.14 or 2.16 of this Rule, or section 2.4, 2.5 or 2.11 of the Previous 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* or a trade to an associated consultant or investor relations person as defined in MI 45-105), (h), (i), (j), (k) or (n) of the Act, or section 2.5, 2.8 or 2.15 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

(1) Sections 25 and 53 of the Act do not apply to a trade in a security of ~~a closely-held issuer if(a)~~ an issuer if

(a) in the case of a trade by the issuer, following the trade, the issuer will be a closely-held issuer; or in the case of a trade by a selling security holder, the selling security holder has, upon reasonable inquiry, no grounds to believe that following the trade~~,~~ the issuer will not be a closely-held issuer;

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

(c) no selling or promotional expenses are paid or incurred in connection with the trade, except for services performed by a dealer registered under the Act.

(2) If a trade is made under subsection 2.1(1), the seller shall provide an information statement substantially similar to Form 45-501F3 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 beneficial holders of its securities.

2.2 Exemption for a Trade in a Variable Insurance Contract

(1) Sections 25 and 53 of the Act do not apply to a trade by a company licensed under the 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 - Sections 25 and 53 of the Act do not apply to a trade in a security if the purchaser is an accredited investor and purchases as principal.

2.4 Exemption for a Trade by a Control Person in a Security Acquired under a Formal Take-Over Bid

(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 45-102F~~1~~<u>3</u> are filed by the seller before the trade~~[1]~~;

(e) an insider report prepared in accordance with Form 55-102F2 or Form 55-102F6, 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 has 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.

2.5 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.

2.6 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.

~~[1] The reference to Form 45-102F1 in this paragraph reflects a proposed amendment to current Rule 45-501 published previously as a consequence of the proposed repeal and replacement of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") and the related Forms and Companion Policy. Current Rule 45-501 refers to Form 45-102F3.~~

2.7 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 exchange 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.

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

(a) an amalgamation, merger, reorganization, arrangement or other statutory procedure;

(b) a statutory procedure under which one issuer takes title to the assets of another 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; or

(c) a court-approved reorganization under bankruptcy or insolvency legislation.

2.9 Exemption for a Trade in a Security under the Execution Act - 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."

2.10 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.

2.11 Exemption for a Trade to a Registered Retirement Savings Plan or a Registered Retirement Income Fund - 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.

2.12 Exemption for Certain Trades in a Security of a Mutual Fund or Non-Redeemable Investment Fund

(1) Sections 25 and 53 of the Act do not apply to a trade in a security of a mutual fund or non-redeemable investment fund that is not a reporting issuer if

(a) the purchaser purchases as principal;

(b) either (i) the security has an aggregate acquisition cost to the purchaser of not less than $150,000 or (ii) the security is issued by a mutual fund or non-redeemable investment fund in which the purchaser then owns securities having either an aggregate acquisition cost or an aggregate net asset value of not less than $150,000; and

(c) the mutual fund or non-redeemable investment fund is managed by a portfolio adviser or by a portfolio manager resident in a jurisdiction and registered or exempt from registration under securities legislation of that jurisdiction or a trust corporation registered or authorized to carry on business 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) Sections 25 and 53 of the Act do not apply to a trade in a security of a mutual fund or non-redeemable investment fund that is not a reporting issuer if

(a) the purchaser purchases as principal;

(b) the security has an aggregate acquisition cost to the purchaser of not less than $150,000; and

(c) the mutual fund or non-redeemable investment fund is managed by a person or company, not ordinarily resident in Ontario, to whom the adviser registration requirement does not apply pursuant to Part 7 of Rule 35-502 *Non-Resident Advisers*.

2.13 Exemption for a Trade by a Promoter or Issuer in a Government Incentive Security

(1) Sections 25 and 53 of the Act do not apply to a trade by an issuer or by a promoter of an issuer in a security of the issuer that is a government incentive security, if

(a) in the aggregate in all jurisdictions, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers;

(b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information

(i) identifying every officer and director of the issuer,

(ii) identifying every promoter of the issuer,

(iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,

(iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and

(v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum;

(c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and

(i) because of net worth and investment experience or because of consultation with or advice from a person or company that is not a promoter of the issuer and that is an adviser or dealer registered under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling securityholder, or

(ii) is a senior officer or director of the issuer or of an affiliated entity of the issuer or a spouse or child of any director or senior officer of the issuer or of an affiliated entity of the issuer,

(d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale, except for professional services or for services performed by a dealer registered under the Act; and

(e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.

(2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity shall be counted as one purchaser or prospective purchaser

unless the entity has been created or is being used primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity interest in the entity or each beneficiary of the entity, as the case may be, shall be counted as a separate purchaser or prospective purchaser.

2.14 Exemption for a Trade in a Security Distributed under Section 2.13 - Sections 25 and 53 of the Act do not apply to a trade in a security that was previously distributed under the exemption in section 2.13, if each of the parties to the trade is one of the not more than 50 purchasers.

2.15 Exemption for a Trade in a Security from an Offeree outside Ontario - Sections 25 and 53 of the Act do not apply to a trade in a security to a person or company pursuant to an offer to acquire made by that person or company that would have been a take-over bid or issuer bid if the offer to acquire was made to a security holder in Ontario.

2.16 Exemption for a Trade in a Security as Consideration for the Purchase of Business Assets with a Prescribed Fair Value - Sections 25 and 53 of the Act do not apply to a trade by an issuer in a security of its own issue as consideration for the purchase of business assets from a person or company, if the fair value of the business assets so purchased is not less than $100,000.

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

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.

3.4 Removal of Registration Exemptions for Market Intermediaries

(1) The exemptions from the registration requirement in sections 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.12, 2.13, 2.14, 2.15 and 2.16 are not available to a market intermediary.

(2) A limited market dealer may act as a market intermediary in respect of a trade referred to in subsection (1).

PART 4 OFFERING MEMORANDUM

4.1 Application of Statutory Right of Action - 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, 2.12 or 2.13.

4.2 Description of Statutory Right of Action in Offering Memorandum - If the seller delivers an offering memorandum 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, 2.12 or 2.13, the right of action referred to in section 130.1 of the Act shall be described in the offering memorandum.

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, 2.12 or 2.13, the seller shall deliver to the Commission a copy of the offering memorandum ~~within~~or any amendment to a previously filed offering memorandum on or before 10 days of the date of the trade.

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 DISTRIBUTED UNDER CERTAIN EXEMPTIONS

6.1 Resale of a Security Distributed to a Promoter Under Certain Exemptions - If a security of an issuer is distributed to a promoter of the issuer under an exemption from the prospectus requirement in section 2.1, 2.3, 2.12, 2.13, 2.14, 2.15 or 2.16, the first trade in that security by that promoter is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.[2]

6.2 Resale of a Security Distributed under Section 2.1 or 2.15 - If a security is distributed under the exemption from the prospectus requirement in section 2.1 or 2.15, the first trade in that security, other than a trade referred to in section 6.1, is subject to section 2.6 of MI 45-102.

6.3 Resale of a Security Distributed under Section 2.3, 2.12, 2.13, 2.14 or 2.16 - If a security is distributed under an exemption from the prospectus requirement in section 2.3, 2.12, 2.13, 2.14 or 2.16, the first trade in that security, other than a trade referred to in section 6.1, is subject to section 2.5 of MI 45-102.

6.4 Resale of a Security Distributed under Clause 72(1)(h) of the Act - If a security is distributed under the exemption from the prospectus requirement in clause 72(1)(h) of the Act, the first trade in that security, 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 Exchangeable Security Distributed under Certain Exemptions - If an underlying security is distributed under an exemption from the prospectus requirement on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade, the first trade in that underlying security is subject to section 2.5 of MI 45-102.

6.6 Resale of a Security Distributed under Section 2.6 or 2.7 - If an underlying security is distributed under an exemption from the prospectus requirement in section 2.6 or 2.7 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired

(a) in a Type 2 trade; ~~or~~

(b) 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;* or

(c) under an exemption from the prospectus requirement in Part 2 of MI 45-105;

the first trade in that underlying security is subject to section 2.6 of MI 45-102.

6.7 Resale of a Security Distributed under Section 2.5 or 2.8 - If a security is distributed under an exemption from the prospectus requirement in section 2.5 or 2.8, the first trade in that security is subject to section 2.6 of MI 45-102.

6.8 Resale of a Security Distributed under Section 2.11 - If a security is distributed under the exemption from the prospectus requirement in section 2.11, the first trade in that security is subject to section 2.5 or 2.6 of MI 45-102, whichever section would have been applicable to a first trade in that security by the person or company making the exempt distribution under section 2.11.

PART 7 FILING REQUIREMENTS

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

[deleted]

~~[2] Reference to subsection (3) of section 2.8 of MI 45-102 has been deleted to reflect a proposed amendment to current Rule 45-501 published previously as a consequence of the proposed repeal and replacement of MI 45-102 and the related Forms and Companion Policy.~~

7.3 ~~Fees for Form 45-501F1~~

[deleted]

7.4 ~~Fees for Form 45-501F2~~

[deleted]

7.5 Exempt Trade Reports

(1) Subject to subsections (7) and (8), if a trade is made in reliance upon an exemption from the prospectus requirement in section 2.3, 2.13, 2.14 or 2.16, other than

(a) a trade to a person or company referred to in paragraphs (p) through (s) of the definition of "accredited investor" in section 1.1, or

(b) a trade to an entity referred to in paragraph (aa) of the definition of "accredited investor" in section 1.1, if all of the owners of interests referred to in that paragraph are persons or companies referred to in paragraphs (p) through (s) of that definition

the seller shall, within 10 days of the trade, file a report in accordance with section 7.1.

(2) **[deleted]**

(3) If a trade is made in reliance upon the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 being satisfied, the seller shall comply with the requirements of subsections (~~3~~4) to (~~6) and subsection (8~~7) of that section.~~[3]~~

(4) **[deleted]**

(5) **[deleted]**

(6) **[deleted]**

(7) A report is not required under subsection (1) where, by a trade under section 2.3, a person or company referred to in paragraph (a), (b), (c) or (d) of section 1.1 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.

(8) Despite subsection (1), a report in respect of a trade in a security of a mutual fund or non-redeemable investment fund made in reliance upon the exemption from the prospectus requirement in section 2.3 may be filed not later than 30 days after the financial year end of the mutual fund or non-redeemable investment fund.

7.6 Fees for Accredited Investor Application

[deleted]

7.7 Report of a Trade Made under Section 2.12 - If a trade is made in reliance upon an exemption from the prospectus requirement in section 2.12, the issuer shall, not later than thirty days after the financial year end of the issuer in which the trade occurred, file a report, in duplicate, prepared in accordance with Form 45-501F1.

PART 8 TRANSITIONAL PROVISIONS

8.1 Accredited Investor Definition Includes Exempt Purchaser - The definition of "accredited investor" in section 1.1 includes, prior to November 30, 2002, a person or company that is recognized by the Commission as an exempt purchaser.

8.2 Resale of a Security Distributed under Section 2.4, 2.5 or 2.11 of the Previous Rule - If a security was distributed under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule, the first trade in that security is subject to section 2.5 of MI 45-102.

~~[3] Reference to subsection (3) of section 2.8 of MI 45-102 has been deleted to reflect a proposed amendment to current Rule 45-501 published previously as a consequence of the proposed repeal and replacement of MI 45-102 and the related Forms and Companion Policy.~~

8.3 Resale of an Underlying Security of a Multiple Convertible Security, Convertible Security or Exchangeable Security Distributed under Certain Exemptions in the Previous Rule - If an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a distribution under an exemption from the prospectus requirement in section 2.4, 2.5 or 2.11 of the Previous Rule, the first trade in that underlying security is subject to Section 2.5 of MI 45-102.

8.4 Resale of a Security Distributed to a Promoter under Section 2.3 or 2.15 of the Previous Rule - If a security was distributed to a promoter under an exemption from the prospectus requirement in section 2.3 or 2.15 of the Previous Rule, the first trade in that security is a distribution unless the conditions in subsection (2) or (3) of section 2.8 of MI 45-102 are satisfied.[4]

8.5 Resale of a Security Distributed under Section 2.9 or 2.10 of the Previous Rule - If an underlying security was distributed under an exemption from the prospectus requirement in section 2.9 or 2.10 of the Previous Rule 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, the first trade in that underlying security is subject to section 2.6 of MI 45-102.

8.6 Resale of a Security Distributed under Section 2.7, 2.8 or 2.17 or Subsection 2.18(1) of the Previous Rule - If a security was distributed under an exemption from the prospectus requirement in section 2.7, 2.8 or 2.17 of the Previous Rule, or in subsection 2.18(1) of the Previous Rule after the issuer had ceased to be a private issuer for purposes of the Securities Act (British Columbia), the first trade in that security is subject to section 2.6 of MI 45-102.

PART 9 EXEMPTION

9.1 Exemption - The Director may grant an exemption to Part 7 of this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption in response to an application.

PART 10 EFFECTIVE DATE

10.1 Effective Date - This instrument shall come into force on ~~●.~~ January 12, 2004

[4] ~~Reference to subsection (3) of section 2.8 of MI 45-102 has been deleted to reflect a proposed amendment to current Rule 45-501 published previously as a consequence of the proposed repeal and replacement of MI 45-102 and the related Forms and Companion Policy.~~

FORM 45-501F1

Securities Act (Ontario)

Report under Subsection 72(3) of the Act or Subsection 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, 2.12, 2.13, 2.14 or 2.16 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 per unit	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. **Has the seller paid a participation fee for the current financial year in accordance with Rule 13-502?**

9. **State the name (or title) and the telephone number of the person who may be contacted with respect to any questions regarding the contents of this report.**

~~9.~~ 10. **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 for 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 1903, Box 55,
20 Queen Street West
Toronto, Ontario M5H 3S8
Attention: Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8200
Facsimile: (416) 593-8177

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. Note that issuers may file one Form 45-501F1 for a specific transaction that includes the required information for multiple purchasers.

3. If the seller has not paid a participation fee for the current financial year, or if this form is filed late, a fee may be payable under Rule 13-502. Otherwise, no fee is payable to the Commission in connection with the filing of this form. Cheques must be made payable to the Ontario Securities Commission.

~~4.~~ ~~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

FORM 45-501F2

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

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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. Some 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.

Never believe that the investment is not risky. Among other risk factors, small business investments generally are highly illiquid. In particular, until the company goes public there are significant restrictions on the resale of its securities. Even after a small business goes public there may be very little liquidity in its shares. 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.

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?

2. Is management putting itself in a position where it will be accountable to investors? For example, is management taking salaries or other benefits that are too large in light of the company's stage of development? 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 operating a 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? Does it have the resources to successfully market its product or service?

6. How reliable is the financial information, if any, that has been provided to you? Is the information audited?

7. Is the company subject to any lawsuits?

8. What are the restrictions on the resale of the securities?

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 you need 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. It is generally a good idea to meet with management of the company face-to-face.

Making Money on Your Investment

There are two classic methods for making money on an investment in a small business: (1) through resale of the securities in the public securities markets following a public offering; and (2) by 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 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.

Conclusion

When successful, small businesses 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 make an informed investment decision based on your circumstances and expectations. Above all, never invest more than you can afford to lose.

~~Draft: April 15, 2003~~COMPANION POLICY 45-501CP
TO ONTARIO SECURITIES COMMISSION RULE 45-501
EXEMPT DISTRIBUTIONS

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; and

(b) sales of securities to accredited investors under section 2.3 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 more than one private placement exemption. The Commission notes that where the seller is paying or incurring selling or promotional expenses in connection with the distribution, other than for the services of a dealer registered under the Act, the seller may not be able to rely on the exemption in section 2.1. The Commission takes the view that expenses incurred in connection with the preparation and delivery of an offering memorandum do not constitute selling or promotional expenses in this context.

2.2 **Accredited Investor Exemption**

(1) Paragraph (m) of the "accredited investor" definition in section 1.1 of Rule 45-501 refers to an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate net realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual's spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The Commission is of the view that the following factors are indicative of beneficial ownership of financial assets:

(a) physical or a constructive possession of evidence of ownership of the financial asset;

(b) entitlement to receipt of any income generated by the financial asset;

(c) risk of loss of the value of the financial asset; and

(d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

By way of example, securities held in a self-directed RRSP for the sole benefit of an individual would be beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for purposes of the threshold test because paragraph (m) takes into account financial assets owned beneficially by a spouse. However, financial assets held in a group RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet this beneficial ownership requirement.

(2) The Commission notes that paragraphs (m) and (n) of the "accredited investor" definition are designed to treat spouses as an investing unit such that either spouse may qualify as an accredited investor if both spouses, taken together, beneficially own the requisite amount of financial assets or earn the requisite net income. As well, it is the Commission's view that the financial asset test and the net income test prescribed in paragraphs (m) and (n), respectively, are to be applied only at the time of the trade such that there is no obligation on the seller to monitor the purchaser's continuing qualification as an accredited investor after the completion of the trade. Furthermore, the Commission considers that the references to "years" and "current year" in paragraph (n) mean calendar years or current calendar year, as applicable. Finally, the Commission notes that the monetary thresholds in paragraphs (m) and (n) are intended to create "bright-line" standards. Investors who do not satisfy the monetary thresholds in paragraphs (m) and (n) do not qualify as accredited investors under those paragraphs.

(3) Paragraph (q) of the "accredited investor" definition refers to certain family members of an officer or director of the issuer. The Commission notes that officers and directors of an issuer or its affiliated entities are, in effect, treated as accredited investors under ~~Rule~~Multilateral Instrument 45-~~503~~105 *Trades to Employees, ~~Executives~~Senior Officers, Directors, and Consultants*.

(4) Paragraph (t) of the "accredited investor" definition establishes a net asset threshold of at least $5,000,000 for certain types of entity, as reflected in the entity's "most recently prepared financial statements". The Commission takes the view that these financial statements must be prepared in accordance with applicable generally accepted accounting principles.

2.3 Closely-Held Issuer Exemption

(1) The definition of "closely-held issuer" contains two principal criteria.

Paragraph (a) of the definition requires restrictions on the transfer of its shares to be contained in the issuer's constating documents or in one or more agreements among the issuer and its shareholders. Accordingly, to qualify to use the exemption, the issuer must include share transfer restrictions either in its articles or by-laws, or in one or more agreements with all of its shareholders.

Paragraph (b) of the definition requires the issuer to have 35 or fewer securityholders, exclusive of

- accredited investors,
- current or former directors or officers of the issuer, and
- current or former employees or consultants of the issuer who do not own securities of the issuer other than securities *"issued as compensation by, or under an incentive plan of, the issuer"*.

The Commission confirms that

- current and former directors and officers are excluded regardless of the manner in which they acquired their securities of the issuer, and
- securities issued as an incentive on a "one-off" basis, i.e. not under an incentive plan, are securities issued as compensation by the issuer.

The Commission also notes that the definition does not require the 35 securityholder limit to be included in the articles, by-laws or agreements.

(2) The exemption in section 2.1 relating to securities of closely-held issuers is available to

- a closely-held issuer itself in respect of an issue of its own securities, and
- any holder of a closely-held issuer's securities in respect of a resale 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 paragraphs (a), (b) and (c) of subsection 2.1(1). In particular, under paragraph (b), 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.

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 if paragraphs (a) and (c) of subsection 2.1(1) are satisfied. Paragraph 2.1(1)(b) does not apply to resales of securities in reliance upon this exemption.

Paragraph (a) of subsection 2.1(1) requires the issuer to continue to be a closely-held issuer after the resale. However, it is noted that 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. This is a separate requirement under paragraph (b) of subsection 2.1(1) which, as noted above, does not have to be satisfied to effect an exempt resale.

Paragraph (c) of subsection 2.1(1) requires that *"no selling or promotional expenses are paid or incurred in connection with the trade, except for services performed by a dealer registered under the Act"*. The Commission notes that paragraph (c) is not intended to prohibit legitimate selling or promotional expenses,

such as printing, mailing and other administrative or *de mimimis* expenses incurred in connection with the trade.

(3) The Commission notes that a closely-held issuer will generally 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 through, among other things, use of the share transfer restrictions in its constating documents or in an agreement with its shareholders. Once the issuer no longer meets the closely-held issuer definition, a resale of securities distributed under the exemption in section 2.1 may only be made in reliance upon another exemption or by complying with the applicable provision of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102").

~~The Commission recognizes that in certain circumstances it may be difficult for a selling securityholder to confirm that the requirement in paragraph (a) of subsection 2.1(1) has been met. The Commission is of the view that a selling securityholder may rely on the closely-held issuer exemption if the selling securityholder has no reasonable grounds to believe that the requirement in paragraph (a) has not been met in connection with the trade.~~

(4) The Commission notes that the limitation on the use of the closely-held issuer exemption in paragraph (b) of subsection 2.1(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 closely-held issuer exemption since it was introduced in November 2001. Proceeds received by the issuer from trades made in reliance upon other exemptions, including exemptions available prior to the date when the closely-held issuer exemption 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 where such a filing is required, 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.

(5) The Commission notes that the term "common enterprise" in paragraph (b) of subsection 2.1(1) is intended to operate as an anti-avoidance mechanism to the extent that multiple business entities are organized for the purposes of financing what is essentially a single business enterprise in order to benefit from continued or excessive use of the closely-held issuer exemption. The Commission takes the view that commonality of ownership combined with commonality of business plans will be particularly indicative of a "common enterprise".

(6) The Commission considers that the reference to "the date of the trade" for purposes of the information statement delivery requirement in subsection 2.1(2) means the settlement date or closing date of the trade, as applicable.

(7) The Commission notes that there are steps that an issuer may take to ensure that it qualifies under both the closely-held issuer exemption in Ontario and the private company exemption, which used to exist in Ontario and remains in a similar form in other Canadian jurisdictions. The closely-held issuer exemption broadens the scope of potential investors to include members of the public. Issuers that wish to utilize the full scope of the closely-held issuer exemption would not prohibit invitation to the public in their constating documents. However, such issuers may be precluded from using the private company exemption under securities legislation in other Canadian jurisdictions. Accordingly, issuers that find themselves in this position may wish to consider various alternatives including the following:

1. An issuer that plans to use the closely-held issuer exemption in Ontario and to rely concurrently on the private company exemption in other Canadian jurisdictions may wish to maintain or include in its constating documents a provision prohibiting the issuer from offering its securities to the public. The issuer will thus be able to utilize the private company exemption in other Canadian jurisdictions and will be able to rely on the closely-held issuer exemption in Ontario, albeit only for offerings to investors who are not members of "the public".

2. An issuer that wishes to utilize the full scope of the closely-held issuer exemption in Ontario, i.e., by offering its securities without regard to the concept of "the public", may be precluded from using the private company exemption in other Canadian jurisdictions, and as such, may wish to consider pursuing other exemptions in those jurisdictions.

2.4 "Transitional" Pooled Fund Exemption

(1) Prior to the implementation of Rule 45-501 on November 30, 2001, the Commission granted numerous rulings under subsection 74(1) of the Act providing exemptive relief from the prospectus and registration requirements to pooled fund issuers in respect of, among other things, the sale of additional pooled fund interests to investors that previously purchased pooled fund interests under an exemption. In general, these rulings contained a "sunset" provision stating that the ruling would terminate following the adoption of a rule regarding trades in securities of pooled funds.

Rule 45-501 contains a "transitional" exemption in section 2.12 that exempts the sale of securities of a private pooled fund to an investor acquiring at least $150,000 of such securities and, if the fund's adviser is registered under the Act, the sale of additional securities of the same fund to such an investor. The Commission considers that this transitional pooled fund exemption, together with the accredited investor exemption in section 2.3 of Rule 45-501 which exempts sales of securities to certain types of accredited investors, provide adequate transitional relief from the prospectus and registration requirements for trades in pooled fund interests to investors. OSC Rule 81-501 *Mutual Fund Reinvestment Plans* also continues to apply to securities of pooled funds that are issued to investors under reinvestment plans whereby distributions of income, capital or capital gains to investors are reinvested in additional securities of that pooled fund. Accordingly, the Commission takes the view that the rulings described above expire upon implementation of Rule 45-501. The Commission considers that section 2.12 is a "transitional" exemption that maintains the status quo for pooled funds until such time as the Commission determines the appropriate regulatory regime for pooled funds.

(2) The Commission notes that the term "pooled fund" is not a defined term under Ontario securities law. The term "pooled fund" is usually considered to include non-redeemable investment funds and mutual funds that are not reporting issuers. Non-redeemable investment funds and mutual funds are defined terms. As defined in Rule 14-501 *Definitions*, a "non-redeemable investment fund" means an issuer:

(a) whose primary purpose is to invest money provided by its securityholders;

(b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control, or being actively involved in the management of the issuers in which it invests, other than other mutual funds or non-redeemable investment funds; and

(c) that is not a mutual fund.

As defined in the Act, a "mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities.

(3) The Commission notes that section 2.12 of the Rule provides, in subsection 2.12(1), automatic top-up relief for funds managed by a portfolio adviser or a trust corporation but, in subsection 2.12(2), does not provide the same relief with respect to funds managed by a person or company relying on Part 7 of Rule 35-502 *Non-Resident Advisers*. The provision was drafted intentionally this way because the top-up relief referred to in subsection 2.12(1) had become standard relief granted by the Commission. Applications for top-up relief will be considered for exempt advisers on a case-by-case basis.

(4) The Commission notes that certain hedge funds may be eligible to rely on the exemption provided by section 2.12 while others may not be eligible. Section 2.12 applies, subject to certain conditions, to:

(a) mutual funds that are not reporting issuers; and

(b) non-redeemable investment funds that are not reporting issuers.

As noted in subsection (2) above, the term "mutual fund" is defined in the Act and a definition of non-redeemable investment fund appears in Rule 14-501 *Definitions*. Trades in hedge funds that are structured as mutual funds or non-redeemable investment funds and otherwise meet the requirements of section 2.12 may be made in reliance on the exemption in section 2.12.

(5) The Commission notes that the reference to "managed by a portfolio adviser" in paragraph 2.12(1)(c) refers to the functions that are carried out by a manager of a pooled fund and are distinguishable from the narrower portfolio management functions that are carried out by a portfolio manager or sub-adviser to a pooled fund.

The exemption in section 2.12 will not be available for a pooled fund unless the manager of the pooled fund itself is registered as a portfolio adviser.

(6) The Commission notes that section 2.12 provides a prospectus and registration exemption for a trade involving an aggregate acquisition cost to the purchaser of at least $150,000. The Commission takes the view that, so long as the aggregate acquisition cost is $150,000, the exemption in section 2.12 is available despite the fact that the acquisition has taken place, in whole or in part, by way of the assumption of a liability by the purchaser.

(7) The Commission takes the view that, for the purpose of the $150,000 threshold in section 2.12, an individual may combine amounts purchased on his/her own account with amounts purchased by the individual's RRSP.

(8) The Commission notes that a pooled fund may not use the closely-held issuer exemption if it is a mutual fund or a non-redeemable investment fund.

2.5 Trades on an Amalgamation, Arrangement or Specified Statutory Procedure - Clause 72(1)(i) of the Act and section 2.8 of Rule 45-501 provide exemptions for trades in securities in connection with an amalgamation or arrangement or other statutory procedure. The Commission is of the view that the references to statute in these provisions refer to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place.

2.6 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 2.8 of Rule 45-501 exempts these trades as the exemption applies to any trade made in connection with an amalgamation or merger.

2.7 Interpretation - The Commission takes the view that the exemptions contained in clauses (b) and (c) of section 2.8 of the Rule do not qualify or restrict the scope of the exemption in clause (a) of that section. The exemptions described in clauses (a), (b) and (c) of section 2.8 are not intended to be mutually exclusive. In some cases, more than one exemption may apply to a trade. For example, the Commission takes the view that a trade in connection with an arrangement under the *Companies' Creditors Arrangement Act* may be made in reliance on the exemptions contained in clause (a) and clause (c). Similarly, a trade in connection with a reorganization may, depending on the circumstances, be exempt both under subclause 72(1)(f)(ii) of the Act and section 2.8 of the Rule.

2.8 Exchangeable Shares – A transaction involving a procedure described in section 2.8 of Rule 45-501 (a section 2.8 transaction) may include an exchangeable share structure to achieve certain tax-planning objectives. For example, in a transaction whereby a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company, and permit the holder to exchange such shares, at a time of the holder's choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a section 2.8 transaction has raised a question as to whether the exemptions contained in section 2.8 will be available for all trades necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the section 2.8 transaction, and have made application for exemptive relief to address this uncertainty.

The Commission is of the view that the exemption contained in section 2.8 is available for all trades which are necessary to complete an exchangeable share transaction involving a procedure described in section 2.8, even where such trades may occur several months or years after the transaction. In the case of the acquisition noted above, the Commission notes that the investment decision of the shareholders of the acquired company at the time of the arrangement ultimately represented a decision to exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision but merely represents the completion of that original investment decision. Accordingly, the Commission does not believe that exemptive relief is warranted in these circumstances.

Similarly, the Commission is of the view that the exemptions in clauses 35(1)16 and 35(1)17, paragraphs 72(1)(j) and 72(1)(k), and section 2.15 of Rule 45-501, are available for all trades necessary to complete a takeover bid or an issuer bid that involves an exchangeable share structure (as described above), even where such trades may occur several months or years after the bid.

2.9 **Other Exemptions -** There are various other exemptions from the prospectus and registration requirements that are available to sellers of securities in prescribed circumstances, including ~~Rule~~Multilateral Instrument 45-~~503~~105 *Trades to Employees, ~~Executives~~Senior Officers, Directors, and Consultants* which exempts sales of securities of an issuer to its employees and executives, among others. The Commission notes, in particular, that certain exemptions previously contained in Rule 45-501 as it read when it was originally adopted in December 1998 are now contained in MI 45-102. Market participants engaged in the purchase and sale of securities under exemptions from the prospectus and registration requirements should read MI 45-102 together with Rule 45-501 to ensure that they have duly considered all regulatory requirements applicable to exempt distributions of securities in Ontario.

2.10 **Applications for Accredited Investor Recognition -** Paragraph (u) of the "accredited investor" definition in section 1.1 of Rule 45-501 contemplates that a person or company may apply to be recognized by the Commission as an accredited investor. The Commission will consider applications for accredited investor recognition submitted by or on behalf of investors that do not meet any of the other criteria for accredited investor status but that nevertheless have the requisite sophistication or financial resources. The Commission has not adopted any specific criteria for granting accredited investor recognition to applicants as the Commission believes that the "accredited investor" definition generally covers all of the types of investors that do not require the protection of the prospectus and registration requirements under the Act. Accordingly, the Commission expects that applications for accredited investor recognition will be utilized on a very limited basis. If the Commission considers it appropriate in the circumstances, it may grant accredited investor recognition to an investor on terms and conditions, including a requirement that the investor apply annually for renewal of accredited investor recognition.

2.11 **Exemption for a Trade in a Security from an Offeree outside Ontario -** The exemption from the prospectus and registration requirements in section 2.15 of the Rule has been adopted to extend the prospectus and registration exemptions contained in clause 72(1)(k) and paragraph 35(1)17 of the Act. These exemptions are only available for a trade in securities to a person or company making a "take-over bid" or "issuer bid" as defined in subsection 89(1) of the Act. Both of these definitions require that an offer be made to a person or company who is *in Ontario* or to any security holder of the issuer whose last address as shown on the books of the issuer is *in Ontario*. Therefore, if none of the sellers/offerees is *in Ontario*, these exemptions will not be available. Accordingly, section 2.15 provides for an exemption where there is technically no "take-over bid" or "issuer bid" in Ontario solely because there is no seller in Ontario.

2.12 **Exemption for a Trade in a Security as Consideration for the Purchase of Business Assets with a Prescribed Fair Value -** The exemption from the prospectus and registration requirements in section 2.16 of the Rule has been adopted to facilitate commercial transactions involving the purchase of "business assets" having a minimum fair value of $100,000 where the purchaser is issuing its own securities as consideration for the purchase. With the introduction of the exemption in section 2.16, an issuer seeking to purchase business assets using its own securities as consideration will have a prospectus exemption even though the seller acquiring the securities is not an accredited investor.

PART 3 CERTIFICATION OF FACTUAL MATTERS

3.1 **Seller's Due Diligence -** It is the seller's responsibility to ensure that its trades in securities are made in compliance with applicable securities laws. In the case of a seller's reliance upon exemptions from the prospectus and registration requirements, the Commission expects that the seller will exercise reasonable diligence for the purposes of determining the availability of the exemption used in any particular circumstances. The Commission will normally be satisfied that a seller has exercised reasonable diligence in relying upon a particular exemption if the seller has obtained statutory declarations or written certifications from the purchasers, unless the seller has knowledge that any facts set out in the declarations or certifications are incorrect. In circumstances where a seller has recently obtained a statutory declaration or a written certification from a purchaser with whom a further trade is being made on an exempt basis, the seller may continue to rely upon the recently obtained statutory declaration or certification unless the seller has reason to believe that the statutory declaration or certification 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, 2.12 or 2.13 of Rule 45-501. In this case, the statutory right of action must be described in the offering memorandum and a copy of the offering memorandum must be delivered to the Commission. With the exception of the government incentive security exemption in section 2.13, there is no obligation to prepare an offering memorandum for use in connection with a trade made in reliance upon the above-noted prospectus exemptions. However, 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 2.12. This offering material may constitute an "offering memorandum" as defined in Ontario securities law. The statutory right of rescission or damages applies when the offering memorandum is provided mandatorily in connection with an exempt trade made under section 2.13, or voluntarily in connection with exempt trades made under section 2.1, 2.3 or 2.12, including an exempt trade made under section 2.3 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 right of action or subject the seller to the requirements of Part 4.

(2) With the exception of an offering memorandum that is provided in respect of a trade in government incentive securities made under the exemption in section 2.13, Ontario securities law generally does not prescribe what an offering memorandum should contain.

(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 the statutory right of action applies and a 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 law.

(4) The Commission notes that, subject to *Freedom of Information and Protection of Privacy Act* requests, it is the Commission's policy that offering material delivered to the Commission under section 4.3 of the Rule will not be made available to the public.

PART 5 RESTRICTIONS ON RESALE OF SECURITIES

5.1 `Incorporation of Multilateral Instrument 45-102 Resale of Securities - Parts 6 and 8 of the Rule imposes resale restrictions on the first trades in securities distributed 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 MI 45-102. 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 Ontario securities law, 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.