

The Ontario Securities Commission

**National Instrument 45-106
National Instrument 45-102
OSC Rule 45-501**

Supplement to the OSC Bulletin

February 29, 2008

Volume 31, Issue 9 (Supp-1)

(2008), 31 OSCB

The Ontario Securities Commission Administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Published under the authority of the Commission by:

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The OSC Bulletin is published weekly by Carswell, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of \$549 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	\$175
Outside North America	\$400

Single issues of the printed Bulletin are available at \$20 per copy as long as supplies are available.

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**NATIONAL INSTRUMENT 45-106
PROSPECTUS AND REGISTRATION EXEMPTIONS**

**NATIONAL INSTRUMENT 45-102
RESALE OF SECURITIES**

**OSC RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

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NOTICE AND REQUEST FOR COMMENTS

PROPOSED REPEAL AND REPLACEMENT OF NATIONAL INSTRUMENT 45-106 *PROSPECTUS AND REGISTRATION EXEMPTIONS* FORM 45-106F1, FORM 45-106F2, FORM 45-106F3, FORM 45-106F4 AND FORM 45-106F5 AND COMPANION POLICY 45-106CP *PROSPECTUS AND REGISTRATION EXEMPTIONS*

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES*, FORM 45-102F1 AND COMPANION POLICY 45-102CP *RESALE OF SECURITIES*

Background

We, the Canadian Securities Administrators (the CSA), are publishing for a 90-day comment period the following documents:

- National Instrument 45-106 *Prospectus and Registration Exemptions* (**New NI 45-106**),
- Form 45-106F1 *Report of Exempt Distribution*, Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, Form 45-106F4 *Risk Acknowledgement* and Form 45-106 F5 *Risk Acknowledgement – Saskatchewan Close Personal Friends and Close Business Associates* (collectively, the **New Forms**), and
- Companion Policy 45-106CP *Prospectus and Registration Exemptions* (**New 45-106CP** and, together with New NI 45-106 and the New Forms, the **New Exemptions Materials**).

The New Exemptions Materials would replace the following documents currently in effect:

- National Instrument 45-106 *Prospectus and Registration Exemptions* (**Current NI 45-106**),
- Form 45-106F1 *Report of Exempt Distribution*, Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, Form 45-106F3 *Offering Memorandum for Qualifying Issuers*, Form 45-106F4 *Risk Acknowledgement* and Form 45-106 F5 *Risk Acknowledgement – Saskatchewan Close Personal Friends and Close Business Associates* (collectively, the **Current Forms**), and
- Companion Policy 45-106CP *Prospectus and Registration Exemptions* (Current 45-106CP and, together with Current NI 45-106 and Current 45-106CP, the **Current Exemptions Materials**).

The Current NI 45-106 and Current Forms came into effect either as a rule, a policy, or a regulation, in all CSA jurisdictions, except Yukon, on September 14, 2005. Each member of the CSA, except Yukon, is expected to repeal the Current Exemptions Materials and replace them with the New Exemptions Materials. The New NI 45-106 and New Forms will be implemented as a rule, commission regulation, or policy in all CSA member jurisdictions.

We are also publishing for comment proposed amendments to:

- National Instrument 45-102 *Resale of Securities* (**NI 45-102**),
- Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities*, and
- Companion Policy 45-102CP *Resale of Securities* (**45-102CP**)

(collectively, the **Amended Resale Materials**).

We are also proposing consequential amendments (**Consequential Amendments**) to update National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**). The Consequential Amendments would amend NI 51-102 to update cross references to New NI 45-106.

The text of the New Exemption Materials, the Amended Resale Materials, related amending instruments, and Consequential Amendments together with versions of New 45-106CP, New Forms and the Amended Resale Materials blacklined against the versions of those documents currently in force, follow or can be found elsewhere on a CSA member website.

In addition, the text outlining proposed related amendments to local securities legislation is being published concurrently with this Notice or can be found elsewhere on a CSA member website.

The Current NI 45-106 harmonizes and consolidates many of the exemptions from the prospectus and registration requirements previously contained in provincial statutes, and national, multilateral and local instruments. NI 45-102, first adopted in November

2001 in a number of jurisdictions, harmonizes the resale restrictions that apply to securities distributed in reliance on prospectus exemptions.

Changes to the *Securities Act* (Ontario) that would be required to implement proposed National Instrument 31-103 *Registration Requirements* also may affect the proposed New NI 45-106. At this time the Government of Ontario has not completed its consideration of possible legislative amendments. Any statutory amendments will only become law if they are passed by the Legislative Assembly of Ontario.

If and when a consultation draft of the legislation is published, this could result in the Ontario Securities Commission having to publish a modified rule proposal in Ontario.

Additional information on the New Exemptions Materials and the Amended Resale Materials, required for publication in Ontario, can be found in the form of notice published in the OSC Bulletin or on its Website at www.osc.gov.on.ca.

Substance and purpose of proposed changes

The proposed changes to the instruments fall into the following two main categories:

1. Substantive changes to improve the effectiveness of the instruments. These include:
 - a. amendments to clarify some provisions of the instruments,
 - b. amendments to address areas that an instrument, form or companion policy does not address, including codifying discretionary relief that we have granted and answers to certain frequently asked questions, including those in CSA Staff Notice 45-305 *Frequently asked questions regarding National Instrument 45-106 Prospectus and Registration Exemptions*, and
 - c. amendments to streamline and harmonize requirements in the instruments.
2. Changes consequential to proposed National Instrument 31-103 *Registration Requirements* (NI 31-103). We propose to restructure New NI 45-106 so that the prospectus exemptions set out in Part 2 of the Current NI 45-106 are independent from the dealer registration exemptions in that Part. We propose to add a provision rendering the registration exemptions in New NI 45-106 inoperative in most jurisdictions after NI 31-103 comes into force. In addition, we propose to add a provision retaining the registration exemptions in New NI 45-106 in certain circumstances in British Columbia and Manitoba after NI 31-103 comes into force.

In British Columbia and Manitoba, the registration exemptions in Part 3 of New NI 45-106 will apply to a person unless the person is registered in any Canadian jurisdiction. A person may not rely on the registration exemptions in New NI 45-106 in British Columbia or Manitoba if they are already registered in either of those jurisdictions.

Certain registration exemptions now contained in Current NI 45-106 are reproduced in NI 31-103 and, following a transition period after NI 31-103 comes into force, the New NI 45-106 will be primarily a prospectus exemptions rule.

For further information, please see the discussion below under “Sections 3.0 and 3.01 – Application”, which outlines the availability of the registration exemptions in New NI 45-106. For further information regarding NI 31-103, including the registration exemptions set out in that instrument, please see the notice accompanying NI 31-103 published for comment on February 29, 2008.

Summary of the proposed substantive changes

The significant proposed changes to improve the effectiveness of the Current Exemptions Materials are set out below. This is not a complete list of all the changes.

Changes to improve the effectiveness of the Current NI 45-106

Section 1.1 – Definitions

We are proposing to delete subsection (c) of the definition of “executive officer”. Subsection (c) is redundant because all persons covered by the text of subsection (c) are also covered by the text of subsection (d) of the definition.

We are also adding a definition of “self-directed RESP” as we are introducing a national exemption for certain trades in self-directed RESPs.

In addition, some jurisdictions may be adopting changes to a number of definitions in their legislation. As a result of those changes, the following definitions in Current NI 45-106 may no longer be required in those jurisdictions:

- control person
- director
- reporting issuer

Sections 2.2 and 3.2 – Reinvestment plan

We are proposing to make two changes to this exemption.

1. This exemption permits dividends or distributions to be reinvested to acquire new securities. The form of this exemption adopted in September 2005 requires that the securities issued under this exemption be of the same class as the securities to which the dividend or distribution is attributable. However, as discussed in question B.2 of CSA Staff Notice 45-305, all jurisdictions have provided an alternative exemption without this restriction, either through a blanket order or, in Ontario, an amendment to the exemption. The proposed change will mean that issuers with a reinvestment plan that issues a different class of securities can rely on the exemption in New NI 45-106. The jurisdictions with blanket orders expect to revoke those orders when New NI 45-106 comes into force. This change preserves the status quo in all CSA jurisdictions.

2. In conjunction with expanding the reinvestment plan exemption in the manner described above, we are proposing to require an issuer who issues securities of a different class to provide information to its plan participants about the rights of the class of securities being distributed. This can be done by either providing the description or a notice of a source where the participant can obtain the information without charge. We have included in Part 8 a transitional provision so that an issuer who has an existing plan can provide the required information with a mailing to its securityholders (such as with the proxy materials for an annual general meeting).

Sections 2.4 and 3.4 – Private issuer

We are proposing two main changes to this exemption.

1. We are changing it so that an issuer that was a reporting issuer but that no longer has public shareholders (for example, following a takeover bid and compulsory acquisition or a reorganization) can rely on the private issuer exemption.

2. We are adding grandchildren to the list of family members to whom securities can be issued. We understand that the failure to include grandchildren in the list was sometimes a problem for certain trusts established for the benefit of grandchildren.

Sections 2.5 and 3.5 – Family, friends and business associates

We are adding grandchildren to the list of family members (similar to the change proposed for sections 2.4 and 3.4)

Sections 2.9 and 3.9 – Offering memorandum

We are proposing changes that will harmonize the availability of the offering memorandum exemption in sections 2.9(2) and 3.9(2) for investment funds. As a result of these changes, the exemption in Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan would be available to a mutual fund that is a reporting issuer or to a non-redeemable investment fund.

New Brunswick is proposing to remove the restriction on commissions and finder's fees in sections 2.9(4) and 3.9(4).

Sections 2.12, 3.12, 2.13 and 3.13 – Asset acquisition and Petroleum, natural gas and mining properties

Proposed changes make it clear that the acquisition of assets or natural resource properties, as the case may be, can be made directly or indirectly (such as through a wholly-owned subsidiary). This proposed change is based on exemptive relief we have granted.

Section 2.16 and 3.16 – Take-over bid and issuer bid

Proposed changes clarify that prospectus and registration requirements do not apply in connection with a take-over bid or issuer bid in a jurisdiction of Canada.

Sections 2.18 and 3.18 – Investment fund reinvestment plan

The proposed changes allow an investment fund that is not in continuous distribution to rely on the exemption provided that the fund gives investors information which is substantially similar to the information contained in a prospectus.

Sections 2.22 and 3.22 – Definition of consultant

We are proposing to add employees of consulting companies to the list of eligible persons. Trades to those employees are permitted under the exemption only if the employee spends a significant amount of time and attention on the affairs and business of the issuer or its related entity.

Sections 2.34 and 3.34 – Specified debt

In addition to changing its title, we are proposing to make two changes to this exemption.

1. Currently, debt securities of or guaranteed by certain permitted supranational agencies can be traded under this exemption. We are adding to the list of permitted supranational agencies. This proposed change is based on exemptive relief and blanket orders granted in certain jurisdictions.

2. We are removing the exemption for trades in debt securities for Ontario school boards or certain corporations established under the *Education Act* (Ontario) as this exemption is only available in Ontario. Ontario is proposing to move this exemption to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

Sections 2.36 and 3.36 – Mortgages

Alberta is proposing to be included in s. 2.36(3) of NI 45-106 and thereby remove the exemption for syndicated mortgages in Alberta.

Sections 2.38 and 3.38 – Not for profit issuer

British Columbia is proposing to remove the British Columbia-only requirement that a not for profit issuer must provide an information statement to purchasers.

Sections 2.43 and 3.43 – Self-directed RESPs

We are proposing to add an exemption for trades in self-directed RESPs. This exemption is similar to exemptions currently available in many jurisdictions where a self-directed RESP is a security.

Sections 3.0 and 3.01 – Application

We are proposing to add that the CSA jurisdictions, except British Columbia and Manitoba, plan to eliminate the registration exemptions in New NI 45-106. British Columbia and Manitoba propose to restrict the use of the registration exemptions in New NI 45-106 to persons who are not otherwise registered in another province or in another category of registration.

The text of proposed sections 3.0 and 3.01 is as follows:

3.0 On • [being six months after the coming into force of National Instrument 31-103 *Registration Requirements*], Part 3 does not apply in any jurisdiction except British Columbia and Manitoba.

3.01 On • [being six months after the coming into force of National Instrument 31-103 *Registration Requirements*] in British Columbia and Manitoba, Part 3 does not apply to any person who is registered in any jurisdiction.

Section 3.03 – Person or company not in the business of trading

We are proposing to add that, in British Columbia and New Brunswick, a person or company may trade a security without registration if the person or company is not in the business of trading securities.

Section 3.50 – Investment dealer acting as portfolio manager

We are proposing to make two changes to this exemption.

1. We are proposing to change this exemption to clarify the rules and policies of the Investment Dealers Association of Canada that a registered investment dealer must follow in order to rely on this exemption.

2. We are proposing to remove subsection 3.8(3) which is an Ontario-only requirement to provide the securities regulatory authority with certain information in respect of registered investment dealers as this information is available on the National Registration Database.

Section 6.1 – Report of exempt distribution and Form 45-106F1

We are proposing to clarify that issuers that distribute their own securities and underwriters that distribute securities that they acquired under section 2.33 [*Acting as underwriter*] must file a report of exemption distribution in Form 45-106F1.

In the instructions to Form 45-106F1, we are proposing to require that the same report of exempt distribution be filed in all jurisdictions where a report is required. Currently an issuer may, but is not required to, file the same report in all jurisdictions where the issuer has made the distribution.

Section 6.6 – Reporting requirements in British Columbia

While a person trading securities exclusively in British Columbia who is not otherwise registered will not be required to register as an exempt market dealer, British Columbia is proposing requiring that the person (i) file an initial notice and an annual notice with the British Columbia Securities Commission and (ii) provide a risk acknowledgement form to the investor to whom it proposes to sell securities.

Changes to Forms 45-106F2 and F3

We are proposing to clarify the financial statements that are required to be included with an offering memorandum. These changes will make the financial statement requirements more consistent with the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* and other national instruments.

We are also proposing to add requirements that clarify the disclosure expected for issuers with mining and oil and gas activities.

Changes to 45-106CP

We have added guidance to 45-106CP to address:

- amendments consequential to NI 31-103
- reinvestment plans
- not for profit issuers
- employees, executive officers, directors, and consultants

Amendments to NI 45-102

Section 2.5 – Restricted period

We are proposing changes to the legending requirements. These are intended to make the requirements more effective in situations where the purchaser of the securities does not receive a certificate. The proposed changes also address written notice requirements in circumstances where a security is entered into a direct registration or other electronic book-entry system and eliminate the requirement that the direct registration or other electronic book-entry system be acceptable to the regulator and, in Québec, the securities regulatory authority.

Section 2.8 – Exemption for a Trade by a Control Person

We are proposing changes to make it clear that a control person (or other person required to file a notice in Form 45-102F1) cannot have concurrent notices outstanding for the same securities. The Form 45-102F1 is intended to provide notice to the market that a control person is selling securities. If the form could effectively be an evergreen document because a control person files a new notice before the previous one expires, the form cannot serve its intended function. As a result of this proposed change, after each new filing of a Form 45-102F1, the control person will have to wait seven days before relying on the prospectus exemption in section 2.8 of NI 45-102. However, we are also proposing that a previously filed Form 45-102F1 will expire on the earlier of the date the control person files an insider report and 30 days from the date the Form 45-102F1 was filed.

NI 45-102 – Appendices D and E

We are amending these appendices to reflect the amendments consequential to NI 31-103 and to clarify the resale provisions applicable to securities distributed under the following exemptions in New NI 45-106:

- Section 2.31 – Dividends and distributions
- Section 2.42 – Conversion, exchange or exercise
- Section 5.2 – Offerings by TSX Venture Exchange Offering Document

Amendments to 45-102CP

We have expanded or added guidance to 45-102CP to address:

- legending requirements
- when section 2.10 of NI 45-102 applies

Other issue - approved credit rating

We are currently reviewing the use of credit ratings in New NI 45-106. Once we have completed our review, we will assess whether any amendments are required to the exemptions in New NI 45-106 that currently contain a credit rating requirement.

Request for Comments

We welcome your comments on the proposed amendments to the instruments and any relevant local amendments. In addition to any general comments you may have, we also invite comments on the following specific questions.

1. We are proposing to change the definition of private issuer so that the exemption would be available in the future to an issuer that completes a transaction if immediately following the transaction all securities of the issuer are beneficially owned only by persons who would be eligible to purchase the securities under section 2.4(2) and 3.4(2) of New NI 45-106. This is intended to allow an issuer that completes a going private transaction (for example, by way of an amalgamation squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) to use the private issuer exemption after the going private transaction. We have not specified any types of transaction. Are there any specific transactions that would allow an issuer to reduce its number of security holders which we should not permit for this purpose?

2. In our view, the legending requirements help to ensure that illegal trades are not made during the restricted period by restricting the trade and notifying intermediaries and prospective purchasers of the restriction. Do the legending requirements with the proposed changes fulfill this purpose? Does the current system of legending work efficiently or could it be improved? If so, in what way? Could we achieve the same outcome in another way, without requiring legending?

Please submit your comments in writing on or before May 29, 2008. If you are not sending your comments by email, a diskette containing the submissions (in Windows format, Word) should also be forwarded.

Address your submission to all of the Canadian securities regulatory authorities, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Deliver your comments **only** to the two addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments will also be posted to the BCSC web-site at www.bcsc.bc.ca and the websites of the other CSA jurisdictions to improve the transparency of the policy-making process.

Questions

Please refer your questions to any of:

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February 29, 2008

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APPENDIX "A"

**Proposed Amended and Restated
National Instrument 45-106
Prospectus And Registration Exemptions**

Text boxes in this Instrument refer to National Instrument 45-102 Resale of Securities. These text boxes are located above sections 2.1 to 2.5, 2.7 to 2.21, 2.24, 2.26, 2.27, and 2.30 to 2.43 These text boxes do not form part of this Instrument.

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National Instrument 45-106
Prospectus And Registration Exemptions

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument

"accredited investor" means

- (a) a Canadian financial institution, or a Schedule III bank,
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
- (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
- (f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
- (g) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada,
- (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1 000 000,
- (k) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,
- (l) an individual who, either alone or with a spouse, has net assets of at least \$5 000 000,
- (m) a person, other than an individual or investment fund, that has net assets of at least \$5 000 000 as shown on its most recently prepared financial statements,
- (n) an investment fund that distributes or has distributed its securities only to
 - (i) a person that is or was an accredited investor at the time of the distribution,
 - (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 [*Minimum amount investment*], and 2.19 [*Additional investment in investment funds*], or
 - (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 [*Investment fund reinvestment*],
- (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,

- (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,
- (q) a person acting on behalf of a fully managed account managed by that person, if that person
 - (i) is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, and
 - (ii) in Ontario, is purchasing a security that is not a security of an investment fund;
- (r) a registered charity under the ITA that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,
- (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,
- (t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,
- (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser, or
- (v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as an accredited investor;

"AIF" means

- (a) for financial years starting before January 1, 2004, a current AIF as defined in Multilateral Instrument 45-102 *Resale of Securities* that came into force on November 30, 2001, and
- (b) for financial years starting on or after January 1, 2004,
 - (i) an AIF as defined in NI 51-102,
 - (ii) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not filed or been required to file an AIF or annual financial statements under NI 51-102, or
 - (iii) a QT circular if the issuer has not filed or been required to file annual financial statements under NI 51-102 subsequent to filing its QT circular;

"approved credit rating" has the same meaning as in National Instrument 81-102 *Mutual Funds*;

"approved credit rating organization" has the same meaning as in National Instrument 81-102 *Mutual Funds*;

"bank" means a bank named in Schedule I or II of the *Bank Act* (Canada);

"Canadian financial institution" means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

"control person" has the same meaning as in securities legislation except in Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Prince Edward Island where control person means any person that holds or is one of a combination of persons that holds

- (a) a sufficient number of any of the securities of an issuer so as to affect materially the control of the issuer, or

- (b) more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holding of those securities does not affect materially the control of the issuer;

"CPC instrument" means a rule or regulation of a jurisdiction of Canada or a rule, regulation or policy of an exchange in Canada that applies only to capital pool companies;

"debt security" means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;

"director" means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

"eligibility adviser" means

- (a) a person that is registered as an investment dealer or in an equivalent category of registration under the securities legislation of the jurisdiction of a purchaser and authorized to give advice with respect to the type of security being distributed, and
- (b) in Saskatchewan or Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not
 - (i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons, and
 - (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months;

"eligible investor" means

- (a) a person whose
 - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
 - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
 - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (b) a person of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are eligible investors,
- (f) an accredited investor,
- (g) a person described in section 2.5 [*Family, friends and business associates*], or
- (h) a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

"executive officer" means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer;

"financial assets" means

- (a) cash,
- (b) securities, or
- (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

"founder" means, in respect of an issuer, a person who,

- (a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and
- (b) at the time of the distribution or trade is actively involved in the business of the issuer;

"fully managed account" means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"investment fund" has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"marketplace" has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

"MD&A" has the same meaning as in NI 51-102;

"NI 43-101" means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

"NI 45-102" means National Instrument 45-102 *Resale of Securities*;

"NI 51-102" means National Instrument 51-102 *Continuous Disclosure Obligations*;

"non-redeemable investment fund" has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"person" includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

"QT circular" means an information circular or filing statement in respect of a qualifying transaction for a capital pool company under a CPC instrument;

"qualifying issuer" means a reporting issuer in a jurisdiction of Canada that

- (a) is a SEDAR filer,
- (b) has filed all documents required to be filed under the securities legislation of that jurisdiction, and

- (c) if not required to file an AIF, has filed in the jurisdiction,
 - (i) an AIF for its most recently completed financial year for which annual statements are required to be filed, and
 - (ii) copies of all material incorporated by reference in the AIF not previously filed;

"related liabilities" means

- (a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or
- (b) liabilities that are secured by financial assets;

"reporting issuer" means, in Northwest Territories, Nunavut and Prince Edward Island, an issuer that is a reporting issuer in a jurisdiction of Canada;

"RRIF" means a registered retirement income fund as defined in the ITA;

"RRSP" means a registered retirement savings plan as defined in the ITA;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"SEDAR filer" means an issuer that is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

"self-directed RESP" means an educational savings plan registered under the ITA

- (a) that is structured so that contributions by a subscriber to the plan are deposited directly into an account in the name of the subscriber, and
- (b) under which the subscriber maintains control and direction over the plan that enables the subscriber to direct how the assets of the plan are to be held, invested or reinvested subject to compliance with the ITA.

"spouse" means, an individual who,

- (a) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), from the other individual,
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or
- (c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

"subsidiary" means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

Affiliate

1.2 For the purpose of this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.3 Except in Part 2, Division 4, for the purpose of this Instrument, a person (first person) is considered to control another person (second person) if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,

- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Registration requirement

1.4 (1) An exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.

(2) An exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

Definition of distribution - Manitoba and Yukon

1.5 For the purpose of this Instrument, in Manitoba and Yukon, "**distribution**" means a primary distribution to the public.

Definition of trade – Québec

1.6 For the purpose of this Instrument, in Québec, "**trade**" includes any of the following activities:

- (a) any of the activities referred to in the definition of "dealer" in section 5 of the *Securities Act* (Québec), including distributing a security;
- (b) the sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise, but does not include,
 - (i) except as provided in paragraph (e), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith, or
 - (ii) the purchase of a security;
- (c) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
- (d) receipt by a registrant of an order to buy or sell a security;
- (e) a transfer, pledge or encumbrance of securities of an issuer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith;
- (f) entering into a derivative;
- (g) any activity, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities referred to in paragraphs (a) to (f).

PART 2: PROSPECTUS EXEMPTIONS

Division 1: Capital Raising Exemptions

Rights offering

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1 The prospectus requirement does not apply to a distribution by an issuer of a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

- (a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the distribution, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up,

- (b) the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the distribution within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the distribution, the issuer has delivered to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority, and
- (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.

Reinvestment plan

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.2 (1) Subject to subsections (3), (4) and (5), the prospectus requirement does not apply to the following distributions by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the distributions are permitted by a plan of the issuer:

- (a) a distribution of a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security, and
- (b) subject to subsection (2), a distribution of a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the distributions described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section does not apply to a distribution of a security of an investment fund.

(5) Subject to section 8.4.1, if the security distributed under a plan described in subsection (1) is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security distributed under the plan or notice of a source from which the participant can obtain the information without charge.

Accredited investor

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.3 (1) The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor.

(2) Subject to subsection (3), for the purpose of this section, a trust company or trust corporation described in paragraph (p) of the definition of "accredited investor" in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(3) Subsection (2) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(4) For the purpose of this section, a person described in paragraph (q) of the definition of "accredited investor" in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(5) This section does not apply to a distribution of a security to a person if that person is created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in section 1.1 [*Definitions*].

Private issuer

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.4 (1) In this section,

"private issuer" means an issuer

- (a) that is not a reporting issuer or an investment fund,
- (b) whose securities, other than non-convertible debt securities,
 - (i) are subject to restrictions on transfer that are contained in the issuer's constating documents or security holders' agreements, and
 - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and
- (c) that
 - (i) has distributed its securities only to persons described in subsection (2), or
 - (ii) has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned, directly or indirectly, only by persons described in subsection (2) and since the completion of the transaction has distributed its securities only to persons described in subsection (2).

(2) The prospectus requirement does not apply to a distribution of a security of a private issuer to a person who purchases the security as principal and is

- (a) a director, officer, founder or control person of the issuer,
- (b) an employee of the issuer or an affiliate of the issuer,
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
- (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,
- (e) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (f) a close business associate of a director, executive officer, founder or control person of the issuer,
- (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
- (h) a security holder of the issuer,
- (i) an accredited investor,
- (j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
- (k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (l) a person that is not the public.

(3) Except for a distribution to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a distribution under subsection (2).

Family, friends and business associates

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.5 (1) Except in Ontario and subject to section 2.6 [*Family, friends and business associates -- Saskatchewan*], the prospectus requirement does not apply to a distribution of a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a distribution under subsection (1).

Family, friends and business associates - Saskatchewan

2.6 (1) In Saskatchewan, section 2.5 [*Family, friends and business associates*] does not apply unless the person making the distribution obtains a signed risk acknowledgement from the purchaser in the required form for a distribution to

- (a) a person described in section 2.5(1) (d) or (e) [*Family, friends and business associates*],
- (b) a close personal friend or close business associate of a founder of the issuer, or
- (c) a person described in section 2.5(1)(h) or (i) [*Family, friends and business associates*] if the distribution is based in whole or in part on a close personal friendship or close business association.

(2) The person making the distribution must retain the required form referred to in subsection (1) for 8 years after the distribution.

Founder, control person and family - Ontario

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.7 In Ontario, the prospectus requirement does not apply to a distribution to a person who purchases the security as principal and is

- (a) a founder of the issuer,
- (b) an affiliate of a founder of the issuer,
- (c) a spouse, parent, brother, sister, grandparent or child of an executive officer, director or founder of the issuer, or
- (d) a person that is a control person of the issuer.

Affiliates

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.8 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to an affiliate of the issuer that is purchasing as principal.

Offering memorandum

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.9 (1) In British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (11), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12).

(2) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (11), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12),

and

- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

(3) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person described in paragraph (a) of the definition of "eligible investor" in section 1.1 [Definitions] if that person is created or used solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2).

(4) No commission or finder's fee may be paid to any person, other than a registered dealer, in connection with a distribution to a purchaser in the Northwest Territories, Nunavut and Saskatchewan under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(7) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
- (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of
 - A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - B) 3 years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following:

"This offering memorandum does not contain a misrepresentation."

(9) A certificate under subsection (8) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, a person acting in that capacity,
- (b) on behalf of the directors of the issuer,
 - (i) by any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

(10) A certificate under subsection (8) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

(11) If a certificate under subsection (8) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless

- (a) the purchaser receives an update of the offering memorandum,
- (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (9), and
- (c) the purchaser re-signs the agreement to purchase the security.

(12) A risk acknowledgement under subsection (1) or (2) must be in the required form and an issuer relying on either of those subsections must retain the signed risk acknowledgment for 8 years after the distribution.

(13) The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a distribution of a security under subsection (1) or (2) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
- (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

(14) The issuer must file a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

(15) If a qualifying issuer uses a form of offering memorandum that allows the qualifying issuer to incorporate previously filed information into the offering memorandum by reference, the qualifying issuer is exempt from the requirement under NI 43-101 to file a technical report to support scientific or technical information about the qualifying issuer's mineral project in the offering memorandum or incorporated by reference into the offering memorandum if the information about the mineral project is contained in a previously filed technical report under NI 43-101.

Minimum amount investment

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.10 (1) The prospectus requirement does not apply to a distribution of a security to a person if

- (a) that person purchases as principal,
- (b) the security has an acquisition cost to the purchaser of not less than \$150 000 paid in cash at the time of the distribution, and
- (c) the distribution is of a security of a single issuer.

(2) This section does not apply to a distribution of a security to a person if that person is created or used solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (1).

Division 2: Transaction Exemptions

Business combination and reorganization

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.11 The prospectus requirement does not apply to a distribution of a security in connection with

- (a) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,
- (b) an amalgamation, merger, reorganization or arrangement that
 - (i) is described in an information circular made pursuant to NI 51-102 or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose

approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and

- (ii) is approved by the security holders referred to in subparagraph (i),

or

- (c) a dissolution or winding-up of the issuer.

Asset acquisition

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.12 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a person as consideration for the acquisition, directly or indirectly, of the assets of the person, if those assets have a fair value of not less than \$150 000.

Petroleum, natural gas and mining properties

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.13 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue as consideration for the acquisition, directly or indirectly, of petroleum, natural gas or mining properties or any interest in them.

Securities for debt

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.14 The prospectus requirement does not apply to a distribution by a reporting issuer of a security of its own issue to a creditor to settle a bona fide debt of that reporting issuer.

Issuer acquisition or redemption

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*.

2.15 The prospectus requirement does not apply to a distribution of a security to the issuer of the security.

Take-over bid and issuer bid

Refer to section 2.11 or Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale unless the requirements of section 2.11 of NI 45-102 are met.

2.16 The prospectus requirement does not apply to a distribution of a security in connection with a take-over bid in a jurisdiction of Canada or an issuer bid in a jurisdiction of Canada.

Offer to acquire to security holder outside local jurisdiction

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.17 The prospectus requirement does not apply to a distribution by a security holder outside the local jurisdiction to a person in the local jurisdiction if the distribution would have been in connection with a take-over bid or issuer bid made by that person were it not for the fact that the security holder is outside of the local jurisdiction.

Division 3: Investment Fund Exemptions

Investment fund reinvestment

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.18 (1) Subject to subsections (3), (4), (5) and (6), the prospectus requirement does not apply to the following distributions by an investment fund to a security holder of the investment fund if the distributions are permitted by a plan of the investment fund:

- (a) a distribution of a security of the investment fund's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the security that is of the same class or series as the securities to which the dividend or distribution out of earnings, surplus, capital or other sources is attributable, and
- (b) subject to subsection (2), a distribution of a security of the investment fund's own issue if the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the distributions described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) No sales charge is payable on a distribution described in subsection (1).

(5) An investment fund that is a reporting issuer and in continuous distribution must set out in its current prospectus:

- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
- (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund and instructions on how the right can be exercised.

(6) An investment fund that is a reporting issuer and is not in continuous distribution must provide the information required by subsection (5) in its prospectus, annual information form or a material change report.

Additional investment in investment funds

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.19 The prospectus requirement does not apply to a distribution by an investment fund of a security of its own issue to a security holder of the issuer if

- (a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than \$150 000 paid in cash at the time of the distribution,
- (b) the subsequent distribution is for a security of the same class or series as the initial distribution, and
- (c) the security holder, as at the date of the subsequent distribution, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than \$150 000, or
 - (ii) a net asset value of not less than \$150 000.

Private investment club

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.20 The prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not and has never distributed its securities to the public,
- (d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires security holders to make contributions in proportion to the value of the securities held by them.

Private investment fund - loan and trust pools

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.21 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

- (a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,
- (b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of subsection (1)(a).

Division 4: Employee, Executive Officer, Director and Consultant Exemptions**Definitions**

2.22 In this Division and in Division 4 of Part 3 of this Instrument

"associate", when used to indicate a relationship with a person, means

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding voting securities of the issuer,
- (b) any partner of the person,
- (c) any trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or executor or in a similar capacity, or
- (d) in the case of an individual, a relative of that individual, including
 - (i) a spouse of that individual, or
 - (ii) a relative of that individual's spouse

if the relative has the same home as that individual;

"associated consultant" means, for an issuer, a consultant of the issuer or of a related entity of the issuer if

- (a) the consultant is an associate of the issuer or of a related entity of the issuer, or
- (b) the issuer or a related entity of the issuer is an associate of the consultant;

"compensation" means an issuance of securities in exchange for services provided or to be provided and includes an issuance of securities for the purpose of providing an incentive;

"consultant" means, for an issuer, a person, other than an employee, executive officer, or director of the issuer or of a related entity of the issuer, that

- (a) is engaged to provide services to the issuer or a related entity of the issuer, other than services provided in relation to a distribution,
- (b) provides the services under a written contract with the issuer or a related entity of the issuer, and
- (c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer

and includes

- (d) for an individual consultant, a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner; and
- (e) for a consultant that is not an individual, an employee of the consultant, provided that the individual employee spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer.

"holding entity" means a person that is controlled by an individual;

"investor relations activities" means activities or communications, by or on behalf of an issuer or a security holder of the issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
 - (i) to promote the sale of products or services of the issuer, or
 - (ii) to raise public awareness of the issuer

that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,

- (b) activities or communications necessary to comply with the requirements of
 - (i) securities legislation of any jurisdiction of Canada,
 - (ii) the securities laws of any foreign jurisdiction governing the issuer, or
 - (iii) any exchange or market on which the issuer's securities trade, or
- (c) activities or communications necessary to follow securities directions of any jurisdiction of Canada;

"investor relations person" means a person that is a registrant or that provides services that include investor relations activities;

"issuer bid requirements" means the requirements under securities legislation that apply to an issuer bid;

"listed issuer" means an issuer, any of the securities of which

- (a) are listed and not suspended, or the equivalent, from trading on

- (i) the Toronto Stock Exchange,
 - (ii) TSX Venture Exchange Inc.,
 - (iii) the American Stock Exchange LLC,
 - (iv) The New York Stock Exchange, Inc.,
 - (v) the London Stock Exchange Limited, or
- (b) are quoted on the Nasdaq Stock Market;

"permitted assign" means, for a person that is an employee, executive officer, director or consultant of an issuer or of a related entity of the issuer,

- (a) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the person,
- (b) a holding entity of the person,
- (c) an RRSP or a RRIF of the person,
- (d) a spouse of the person,
- (e) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the spouse of the person,
- (f) a holding entity of the spouse of the person, or
- (g) an RRSP or a RRIF of the spouse of the person;

"plan" means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by persons described in section 2.24(1) [*Employee, executive officer, director and consultant*] as compensation;

"related entity" means, for an issuer, a person that controls or is controlled by the issuer or that is controlled by the same person that controls the issuer;

"related person" means, for an issuer,

- (a) a director or executive officer of the issuer or of a related entity of the issuer,
- (b) an associate of a director or executive officer of the issuer or of a related entity of the issuer, or
- (c) a permitted assign of a director or executive officer of the issuer or of a related entity of the issuer;

"security holder approval" means an approval for the issuance of securities of an issuer as compensation or under a plan

- (a) given by a majority of the votes cast at a meeting of security holders of the issuer other than votes attaching to securities beneficially owned by related persons to whom securities may be issued as compensation or under that plan, or
- (b) evidenced by a resolution signed by all the security holders entitled to vote at a meeting, if the issuer is not required to hold a meeting;

"support agreement" includes an agreement to provide assistance in the maintenance or servicing of indebtedness of the borrower and an agreement to provide consideration for the purpose of maintaining or servicing indebtedness of the borrower.

Interpretation

2.23 (1) In this Division, a person (first person) is considered to control another person (second person) if the first person, directly or indirectly, has the power to direct the management and policies of the second person by virtue of

- (a) ownership of or direction over voting securities in the second person,
- (b) a written agreement or indenture,

- (c) being the general partner or controlling the general partner of the second person, or
- (d) being a trustee of the second person.

(2) In this Division, participation in a distribution is considered voluntary if

- (a) in the case of an employee or the employee's permitted assign, the employee or the employee's permitted assign is not induced to participate in the distribution by expectation of employment or continued employment of the employee with the issuer or a related entity of the issuer,
- (b) in the case of an executive officer or the executive officer's permitted assign, the executive officer or the executive officer's permitted assign is not induced to participate in the distribution by expectation of appointment, employment, continued appointment or continued employment of the executive officer with the issuer or a related entity of the issuer,
- (c) in the case of a consultant or the consultant's permitted assign, the consultant or the consultant's permitted assign is not induced to participate in the distribution by expectation of engagement of the consultant to provide services or continued engagement of the consultant to provide services to the issuer or a related entity of the issuer, and
- (d) in the case of an employee of a consultant, the individual is not induced by the issuer, a related entity of the issuer, or the consultant to participate in the distribution by expectation of employment or continued employment with the consultant.

Employee, executive officer, director and consultant

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.24 (1) Subject to section 2.25 [*Unlisted reporting issuer exception*], the prospectus requirement does not apply to a distribution

- (a) by an issuer in a security of its own issue, or
- (b) by a control person of an issuer of a security of the issuer or of an option to acquire a security of the issuer, with
- (c) an employee, executive officer, director or consultant of the issuer,
- (d) an employee, executive officer, director or consultant of a related entity of the issuer, or
- (e) a permitted assign of a person referred to in paragraphs (c) or (d)

if participation in the distribution is voluntary.

(2) For the purposes of subsection (1), a person referred to in paragraph (c), (d) or (e) includes a trustee, custodian or administrator acting as agent for that person for the purpose of facilitating a trade.

Unlisted reporting issuer exception

2.25 (1) For the purpose of this section, "**unlisted reporting issuer**" means a reporting issuer in a jurisdiction of Canada that is not a listed issuer.

(2) Subject to subsection (3), section 2.24 [*Employee, executive officer, director and consultant*] does not apply to a distribution to an employee or consultant of the unlisted reporting issuer who is an investor relations person of the issuer, an associated consultant of the issuer, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the distribution,

- (a) the number of securities, calculated on a fully diluted basis, reserved for issuance under options granted to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or

- (ii) a related person, exceeds 5% of the outstanding securities of the issuer, or
- (b) the number of securities, calculated on a fully diluted basis, issued within 12 months to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person and the associates of the related person, exceeds 5% of the outstanding securities of the issuer.

(3) Subsection (2) does not apply to a distribution if the unlisted reporting issuer

- (a) obtains security holder approval, and
- (b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:
 - (i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;
 - (ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;
 - (iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
 - (iv) in the case of options, the maximum term and the basis for the determination of the exercise price;
 - (v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability; and
 - (vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

Distributions among current or former employees, executive officers, directors, or consultants of non-reporting issuer

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.26 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an issuer by

- (a) a current or former employee, executive officer, director, or consultant of the issuer or related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

to

- (c) an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or
- (d) a permitted assign of the employee, executive officer, director, or consultant.

(2) The exemption in subsection (1) is only available if

- (a) participation in the distribution is voluntary,
- (b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and

- (c) the price of the security being distributed is established by a generally applicable formula contained in a written agreement among some or all of the security holders of the issuer to which the transferee is or will become a party.

Permitted transferees

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.27 (1) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer acquired by a person described in section 2.24(1) [*Employee, executive officer, director and consultant*] under a plan of the issuer if the distribution

- (a) is between
- (i) a person who is an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, and
 - (ii) the permitted assign of that person,
- or
- (b) is between permitted assigns of that person.

(2) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer by a trustee, custodian or administrator acting on behalf, or for the benefit, of employees, executive officers, directors or consultants of the issuer or a related entity of the issuer, to

- (a) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

if the security was acquired from

- (c) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (d) the permitted assign of a person referred to in paragraph (c).

(3) For the purposes of the exemptions in subsection (1) and paragraphs (2) (c) and (d), all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

Limitation re: permitted transferees

2.28 The exemption from the prospectus requirement under subsection 2.27(1) or (2) is only available if the security was acquired

- (a) by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] under any exemption that makes the resale of the security subject to section 2.6 of NI 45-102, or
- (b) in Manitoba, and the Yukon, by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*].

Issuer bid

2.29 The issuer bid requirements do not apply to the acquisition by an issuer of a security of its own issue that was acquired by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] if

- (a) the purpose of the acquisition by the issuer is to
 - (i) fulfill withholding tax obligations, or
 - (ii) provide payment of the exercise price of a stock option,

- (b) the acquisition by the issuer is made in accordance with the terms of a plan that specifies how the value of the securities acquired by the issuer is determined,
- (c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder, and
- (d) the aggregate number of securities acquired by the issuer within a 12 month period under this section does not exceed 5% of the outstanding securities of the class or series at the beginning of the period.

Division 5: Miscellaneous Exemptions

Isolated distribution by issuer

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period.

2.30 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue if the distribution is an isolated distribution and is not made

- (a) in the course of continued and successive transactions of a like nature, and
- (b) by a person whose usual business is trading in securities.

Dividends and distributions

Subsection (1) is cited in Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

Subsection (2) is cited in Appendix D and Appendix E of NI 45-102. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

2.31 (1) The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a security holder of the issuer as a dividend or distribution out of earnings, surplus, capital or other sources.

(2) The prospectus requirement does not apply to a distribution by an issuer to a security holder of the issuer of a security of a reporting issuer as an in specie dividend or distribution out of earnings or surplus.

Distribution to lender by control person for collateral

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. Trades by a lender, pledgee, mortgagee or other encumbrancer to realize on a debt are regulated by section 2.8 of NI 45-102.

2.32 The prospectus requirement does not apply to a distribution of a security of an issuer to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person of the issuer for the purpose of giving collateral for a bona fide debt of the control person.

Acting as underwriter

Refer to Appendix F of NI 45-102 *Resale of Securities*. First trades are a distribution.

2.33 The prospectus requirement does not apply to a distribution of a security between a person and a purchaser acting as an underwriter or between or among persons acting as underwriters.

Specified debt

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.34 (1) In this section, "permitted supranational agency" means

- (a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;
- (b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;
- (c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;
- (d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;
- (e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;
- (f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada); and
- (g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The prospectus requirement does not apply to a distribution of a debt security

- (a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,
- (b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,
- (c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (e) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or
- (f) of or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

Short-term debt

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.35 The prospectus requirement does not apply to a distribution of a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper distributed

- (a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section, and

- (b) has an approved credit rating from an approved credit rating organization.

Mortgages

This provision is not cited in any Appendix of NI 45-102 Resale of Securities. These securities are free trading.

2.36 (1) In this section, "**syndicated mortgage**" means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by a mortgage.

(2) Subject to subsection (3), the prospectus requirement does not apply to a distribution of a mortgage on real property in a jurisdiction by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply to a syndicated mortgage.

Personal property security legislation

This provision is not cited in any Appendix of NI 45-102 Resale of Securities. These securities are free trading.

2.37 The prospectus requirement does not apply to a distribution of a security evidencing indebtedness secured by or under a security agreement provided for under personal property security legislation of a jurisdiction providing for the granting of security in personal property if the security is not offered for sale to an individual.

Not for profit issuer

This provision is not cited in any Appendix of NI 45-102 Resale of Securities. These securities are free trading.

2.38 The prospectus requirement does not apply to a distribution by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if

- (a) no part of the net earnings benefit any security holder of the issuer, and
- (b) no commission or other remuneration is paid in connection with the sale of the security.

Variable insurance contract

This provision is not cited in any Appendix of NI 45-102 Resale of Securities. These securities are free trading.

2.39 (1) In this section,

- (a) "**contract**" "**group insurance**", "**insurance company**", "**life insurance**" and "**policy**" have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.
- (b) "**variable insurance contract**" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The prospectus requirement does not apply to a distribution of a variable insurance contract by an insurance company if the variable insurance contract 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 75% of the premium paid up to age 75 years 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.

RRSP/RRIF

Refer to Appendix D and Appendix E of NI 45-102 *Resale of Securities*. The resale restriction is determined by the exemption under which the security was first acquired.

2.40 The prospectus requirement does not apply to a distribution of a security between

- (a) an individual or an associate of the individual, and
- (b) an RRSP or RRIF
 - (i) established for or by the individual, or
 - (ii) under which the individual is a beneficiary.

Schedule III banks and cooperative associations - evidence of deposit

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.41 The prospectus requirement does not apply to a distribution of an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

Conversion, exchange, or exercise

Subsection (1)(a) is cited in Appendix D and Appendix E of NI 45-102 *Resale of Securities*. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

Subsection (1)(b) is cited in Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale, unless the requirements of section 2.10 of NI 45-102 are met.

2.42 (1) The prospectus requirement does not apply to a distribution by an issuer if

- (a) the issuer distributes a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or
- (b) subject to subsection (2), the issuer distributes a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

(2) For a distribution under subsection (1)(b),

- (a) the issuer must give the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the distribution, and
- (b) the regulator or, in Québec, the securities regulatory authority, must not object in writing to the distribution within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the distribution, the issuer must deliver to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority.

Self-directed registered educational savings plans

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.43 The prospectus requirement does not apply to a distribution of a self-directed RESP to a subscriber if

- (a) the distribution is conducted by
 - (i) a mutual fund dealer or a person who is registered as a salesperson, partner or officer of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or
 - (ii) a Canadian financial institution or, in Ontario, a financial intermediary or a person who is an officer, salesperson or employee of a Canadian financial institution or, in Ontario, a financial intermediary and who is acting on behalf of the Canadian financial institution or, in Ontario, the financial intermediary, and
- (b) the self-directed RESP restricts its investments in securities to securities in which the person who distributed the self-directed RESP is permitted to distribute.

PART 3: REGISTRATION EXEMPTIONS

Application

3.0 On • [being six months after the coming into force of National Instrument 31-103 *Registration Requirements*], Part 3 does not apply in any jurisdiction except British Columbia and Manitoba.

3.01 On • [being six months after the coming into force of National Instrument 31-103 *Registration Requirements*] in British Columbia and Manitoba, Part 3 does not apply to any person who is registered in any jurisdiction.

Removal of exemptions – market intermediaries

3.02 (1) Subject to subsection (2), in Ontario and Newfoundland and Labrador, the exemptions from the dealer registration requirement under the following sections are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:

- (a) section 3.1 [*Rights offering*];
- (b) section 3.3 [*Accredited investor*];
- (c) section 3.4 [*Private issuer*];
- (d) section 3.7 [*Founder, control person and family - Ontario*];
- (e) section 3.10 [*Minimum amount investment*];
- (f) section 3.11 [*Business combination and reorganization*];
- (g) section 3.12 [*Asset acquisition*];
- (h) section 3.14 [*Securities for debt*];
- (i) section 3.15 [*Issuer acquisition or redemption*];
- (j) section 3.16 [*Take-over bid and issuer bid*];
- (k) section 3.17 [*Offer to acquire to security holder outside local jurisdiction*];
- (l) section 3.19 [*Additional investment in investment funds*];
- (m) section 3.21 [*Private investment fund - loan and trust pools*];

- (n) section 3.29 [*Isolated trade*];
- (o) section 3.30 [*Isolated trade by issuer*];
- (p) section 3.31 [*Dividends and distributions*];
- (q) section 3.33 [*Acting as underwriter*];
- (r) section 3.34 [*Specified debt*];
- (s) section 3.35 [*Short-term debt*];
- (t) section 3.39 [*Variable insurance contract*];
- (u) section 3.42 [*Conversion, exchange, or exercise*];
- (v) section 3.44 [*Registered dealer*].

(2) Subsection (1) does not apply in respect of a trade in a security by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant.

Person or company not in the business of trading

3.03 In British Columbia and in New Brunswick, notwithstanding section 3.0 or section 3.01, a person or company may trade a security without registration if the person or company

- (a) is not engaged in the business of trading securities or exchange contracts as a principal or agent; and
- (b) does not hold himself or itself out as engaging in the business of trading in securities or exchanges contracts as a principal or agent.

Division 1: Capital Raising Exemptions

Rights offering

3.1 The dealer registration requirement does not apply in respect of a trade by an issuer in a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

- (a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up,
- (b) the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the trade within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the trade, the issuer has delivered to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority, and
- (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.

Reinvestment plan

3.2 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:

- (a) a trade in a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security, and
- (b) subject to subsection (2), a trade in a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section does not apply to a trade in a security of an investment fund.

(5) Subject to section 8.4.1, if the security traded under a plan described in subsection (1) is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security traded under the plan or notice of a source from which the participant can obtain the information without charge.

Accredited investor

3.3 (1) The dealer registration requirement does not apply in respect of a trade in a security if the purchaser purchases the security as principal and is an accredited investor.

(2) Subject to subsection (3), for the purpose of this section, a trust company or trust corporation described in paragraph (p) of the definition of "accredited investor" in section 1.1 [Definitions] is deemed to be purchasing as principal.

(3) Subsection (2) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(4) For the purpose of this section, a person described in paragraph (q) of the definition of "accredited investor" in section 1.1 [Definitions] is deemed to be purchasing as principal.

(5) This section does not apply to a trade in a security to a person if that person is created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in section 1.1 [Definitions].

Private issuer

3.4 (1) In this section,

"private issuer" means an issuer

- (a) that is not a reporting issuer or an investment fund,
- (b) whose securities, other than non-convertible debt securities,
 - (i) are subject to restrictions on transfer that are contained in the issuer's constating documents or security holders' agreements, and
 - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and
- (c) that
 - (i) has distributed its securities only to persons described in subsection (2), or
 - (ii) has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned, directly or indirectly, only by persons described in subsection (2) and since the completion of the transaction has distributed its securities only to persons described in subsection (2).

(2) The dealer registration requirement does not apply in respect of a trade in a security of a private issuer to a person who purchases the security as principal and is

- (a) a director, officer, founder or control person of the issuer,
- (b) an employee of the issuer or an affiliate of the issuer,
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
- (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,
- (e) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (f) a close business associate of a director, executive officer, founder or control person of the issuer,
- (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
- (h) a security holder of the issuer,
- (i) an accredited investor,
- (j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
- (k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (l) a person that is not the public.

(3) Except for a trade to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a trade under subsection (2).

Family, friends and business associates

3.5 (1) Except in Ontario and subject to section 3.6 [*Family, friends and business associates - Saskatchewan*], the dealer registration requirement does not apply in respect of a trade in a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or

- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a trade under subsection (1).

Family, friends and business associates - Saskatchewan

3.6 (1) In Saskatchewan, section 3.5 [*Family, friends and business associates*] does not apply unless the person making the trade obtains a signed risk acknowledgement from the purchaser in the required form for a trade to

- (a) a person described in section 3.5(1) (d) or (e) [*Family, friends and business associates*],
- (b) a close personal friend or close business associate of a founder of the issuer, or
- (c) a person described in section 3.5(1)(h) or (i) [*Family, friends and business associates*] if the trade is based in whole or in part on a close personal friendship or close business association.

(2) The person making the trade must retain the required form referred to in subsection (1) for 8 years after the trade.

Founder, control person and family - Ontario

3.7 In Ontario, the dealer registration requirement does not apply in respect of a trade in a security to a person who purchases the security as principal and is

- (a) a founder of the issuer,
- (b) an affiliate of a founder of the issuer,
- (c) a spouse, parent, brother, sister, grandparent or child of an executive officer, director or founder of the issuer, or
- (d) a person that is a control person of the issuer.

Affiliates

3.8 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to an affiliate of the issuer that is purchasing as principal.

Offering memorandum

3.9 (1) In British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador, the dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (11), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12).

(2) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, the dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (11), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12),

and

- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

(3) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, this section does not apply to a trade in a security to a person described in paragraph (a) of the definition of "eligible investor" in section 1.1 [Definitions] if that person is created or used solely to purchase or hold securities in reliance on an exemption from the dealer registration requirement set out in subsection (2).

(4) No commission or finder's fee may be paid to any person, other than a registered dealer, in connection with a trade to a purchaser in Northwest Territories, Nunavut and Saskatchewan under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(7) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
- (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of
 - A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - B) 3 years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and
 - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following:

"This offering memorandum does not contain a misrepresentation."

(9) A certificate under subsection (8) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, a person acting in that capacity,

- (b) on behalf of the directors of the issuer,
 - (i) by any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

(10) A certificate under subsection (8) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

(11) If a certificate under subsection (8) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless

- (a) the purchaser receives an update of the offering memorandum,
- (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (9), and
- (c) the purchaser re-signs the agreement to purchase the security.

(12) A risk acknowledgement under subsection (1) or (2) must be in the required form and an issuer relying on subsection (1) or (2) must retain the signed risk acknowledgement for 8 years after the trade.

(13) The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a trade in a security under subsection (1) or (2) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
- (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

(14) The issuer must file a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

(15) If a qualifying issuer uses a form of offering memorandum that allows the qualifying issuer to incorporate previously filed information into the offering memorandum by reference, the qualifying issuer is exempt from the requirement under NI 43-101 to file a technical report to support scientific or technical information about the qualifying issuer's mineral project in the offering memorandum or incorporated by reference into the offering memorandum if the information about the mineral project is contained in a previously filed technical report under NI 43-101.

Minimum amount investment

3.10 (1) The dealer registration requirement does not apply in respect of a trade in a security to a person if

- (a) that person purchases as principal,
- (b) the security has an acquisition cost to the purchaser of not less than \$150 000 paid in cash at the time of the trade, and
- (c) the trade is in a security of a single issuer.

(2) This section does not apply to a trade in a security to a person if that person is created or used solely to purchase or hold securities in reliance on this exemption from the dealer registration requirement.

Division 2: Transaction Exemptions**Business combination and reorganization**

3.11 The dealer registration requirement does not apply in respect of a trade in a security in connection with

- (a) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,
 - (b) an amalgamation, merger, reorganization or arrangement that
 - (i) is described in an information circular made pursuant to NI 51-102 or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and
 - (ii) is approved by the security holders referred to in subparagraph (i),
- or
- (c) a dissolution or winding-up of the issuer.

Asset acquisition

3.12 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a person as consideration for the acquisition, directly or indirectly, of the assets of the person, if those assets have a fair value of not less than \$150 000.

Petroleum, natural gas and mining properties

3.13 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue as consideration for the acquisition, directly or indirectly, of petroleum, natural gas or mining properties or any interest in them.

Securities for debt

3.14 The dealer registration requirement does not apply in respect of a trade by a reporting issuer in a security of its own issue to a creditor to settle a bona fide debt of that reporting issuer.

Issuer acquisition or redemption

3.15 The dealer registration requirement does not apply in respect of a trade in a security to the issuer of the security.

Take-over bid and issuer bid

3.16 The dealer registration requirement does not apply in respect of a trade in a security in connection with a take-over bid in a jurisdiction of Canada or an issuer bid in a jurisdiction of Canada.

Offer to acquire to security holder outside local jurisdiction

3.17 The dealer registration requirement does not apply in respect of a trade by a security holder outside the local jurisdiction to a person in the local jurisdiction if the trade would have been in connection with a take-over bid or issuer bid made by that person were it not for the fact that the security holder is outside of the local jurisdiction.

Division 3: Investment Fund Exemptions**Investment fund reinvestment**

3.18 (1) Subject to subsections (3), (4), (5) and (6), the dealer registration requirement does not apply in respect of the following trades by an investment fund to a security holder of the investment fund if the trades are permitted by a plan of the investment fund:

- (a) a trade in a security of the investment fund's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the

security that is of the same class or series as the securities to which the dividend or distribution out of earnings, surplus, capital or other sources is attributable, and

- (b) subject to subsection (2), a trade in a security of the investment fund's own issue if the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) No sales charge is payable on a trade described in subsection (1).

(5) An investment fund that is a reporting issuer and in continuous distribution must set out in its current prospectus:

- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
- (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund and instructions on how the right can be exercised.

(6) An investment fund that is a reporting issuer and is not in continuous distribution must provide the information required by subsection (5) in its prospectus, annual information form or a material change report.

Additional investment in investment funds

3.19 The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a security holder of the issuer if

- (a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than \$150 000 paid in cash at the time of the trade,
- (b) the subsequent trade is for a security of the same class or series as the initial trade, and
- (c) the security holder, as at the date of the subsequent trade, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than \$150 000, or
 - (ii) a net asset value of not less than \$150 000.

Private investment club

3.20 The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not and has never distributed its securities to the public,
- (d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires security holders to make contributions in proportion to the value of the securities held by them.

Private investment fund - loan and trust pools

3.21 (1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

- (a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,
- (b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of subsection (1)(a).

Division 4: Employee, Executive Officer, Director and Consultant Exemptions

Definitions

3.22 The definitions in Division 4 of Part 2 of this Instrument have the same meaning in this Division.

Interpretation

3.23 (1) In this Division, a person (first person) is considered to control another person (second person) if the first person, directly or indirectly, has the power to direct the management and policies of the second person by virtue of

- (a) ownership of or direction over voting securities in the second person,
- (b) a written agreement or indenture,
- (c) being the general partner or controlling the general partner of the second person, or
- (d) being a trustee of the second person.

(2) In this Division, participation in a trade is considered voluntary if

- (a) in the case of an employee or the employee's permitted assign, the employee or the employee's permitted assign is not induced to participate in the trade by expectation of employment or continued employment of the employee with the issuer or a related entity of the issuer,
- (b) in the case of an executive officer or the executive officer's permitted assign, the executive officer or the executive officer's permitted assign is not induced to participate in the trade by expectation of appointment, employment, continued appointment or continued employment of the executive officer with the issuer or a related entity of the issuer,
- (c) in the case of a consultant or the consultant's permitted assign, the consultant or the consultant's permitted assign is not induced to participate in the trade by expectation of engagement of the consultant to provide services or continued engagement of the consultant to provide services to the issuer or a related entity of the issuer, and
- (d) in the case of an employee of a consultant, the individual is not induced by the issuer, a related entity of the issuer, or the consultant to participate in the trade by expectation of employment or continued employment with the consultant.

Employee, executive officer, director and consultant

3.24 (1) Subject to section 3.25 [*Unlisted reporting issuer exception*], the dealer registration requirement does not apply in respect of

- (a) a trade by an issuer in a security of its own issue, or

- (b) a trade by a control person of an issuer in a security of the issuer or in an option to acquire a security of the issuer,
- with
- (c) an employee, executive officer, director or consultant of the issuer,
 - (d) an employee, executive officer, director or consultant of a related entity of the issuer, or
 - (e) a permitted assign of a person referred to in paragraphs (c) or (d)

if participation in the trade is voluntary.

(2) For the purposes of subsection (1), a person referred to in paragraph (c), (d) or (e) includes a trustee, custodian or administrator acting as agent for that person for the purpose of facilitating a trade.

(3) The dealer registration requirement does not apply in respect of an act by a related entity of an issuer in furtherance of a trade referred to in subsection (1).

Unlisted reporting issuer exception

3.25 (1) For the purpose of this section, "**unlisted reporting issuer**" means a reporting issuer in a jurisdiction of Canada that is not a listed issuer.

(2) Subject to subsection (3), section 3.24 [*Employee, executive officer, director and consultant*] does not apply to a trade to an employee or consultant of the unlisted reporting issuer who is an investor relations person of the issuer, an associated consultant of the issuer, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the trade,

- (a) the number of securities, calculated on a fully diluted basis, reserved for issuance under options granted to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person, exceeds 5% of the outstanding securities of the issuer, or
- (b) the number of securities, calculated on a fully diluted basis, issued within 12 months to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person and the associates of the related person, exceeds 5% of the outstanding securities of the issuer.

(3) Subsection (2) does not apply to a trade if the unlisted reporting issuer

- (a) obtains security holder approval, and
- (b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:
 - (i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;
 - (ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;
 - (iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
 - (iv) in the case of options, the maximum term and the basis for the determination of the exercise price;

- (v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability; and
- (vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

Trades among current or former employees, executive officers, directors, or consultants of non-reporting issuer

3.26 (1) Subject to subsection (2), the dealer registration requirement does not apply in respect of a trade in a security of an issuer by

- (a) a current or former employee, executive officer, director, or consultant of the issuer or related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

to

- (c) an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or
- (d) a permitted assign of the employee, executive officer, director, or consultant.

(2) The exemption in subsection (1) is only available if

- (a) participation in the trade is voluntary,
- (b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and
- (c) the price of the security being traded is established by a generally applicable formula contained in a written agreement among some or all of the security holders of the issuer to which the transferee is or will become a party.

Permitted transferees

3.27 (1) The dealer registration requirement does not apply in respect of a trade in a security of an issuer acquired by a person described in section 3.24(1) [*Employee, executive officer, director and consultant*] under a plan of the issuer if the trade

- (a) is between
 - (i) a person who is an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, and
 - (ii) the permitted assign of that person,
 or
- (b) is between permitted assigns of that person.

(2) The dealer registration requirement does not apply in respect of a trade in a security of an issuer by a trustee, custodian or administrator acting on behalf, or for the benefit, of employees, executive officers, directors or consultants of the issuer or a related entity of the issuer, to

- (a) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

if the security was acquired from

- (c) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (d) the permitted assign of a person referred to in paragraph (c).

(3) For the purposes of the exemptions in subsection (1) and paragraphs (2) (c) and (d), all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

Resale - non-reporting issuer

3.28 The dealer registration requirement does not apply in respect of the resale of a security that was acquired under this Division or by a person described in section 3.24(1) [*Employee, executive officer, director, and consultant*] if the conditions in section 2.14 of NI 45-102 are satisfied.

Division 5: Miscellaneous Exemptions

Isolated trade

3.29 The dealer registration requirement does not apply in respect of a trade in a security by a person if the trade is an isolated trade and is not made

- (a) by the issuer of the security,
- (b) in the course of continued and successive transactions of a like nature, and
- (c) by a person whose usual business is trading in securities.

Isolated trade by issuer

3.30 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue if the trade is an isolated trade and is not made

- (a) in the course of continued and successive transactions of a like nature, and
- (b) by a person whose usual business is trading in securities.

Dividends and distributions

3.31 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a security holder of the issuer as a dividend or distribution out of earnings, surplus, capital or other sources.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer to a security holder of the issuer in a security of a reporting issuer as an in specie dividend or distribution out of earnings or surplus.

Trade to lender by control person for collateral

3.32 The dealer registration requirement does not apply in respect of a trade in a security of an issuer to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person of the issuer for the purpose of giving collateral for a bona fide debt of the control person.

Acting as underwriter

3.33 The dealer registration requirement does not apply in respect of a trade in a security between a person and a purchaser acting as an underwriter or between or among persons acting as underwriters.

Specified debt

3.34 (1) In this section, "**permitted supranational agency**" means

- (a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;
- (b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;
- (c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;

- (d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;
- (e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;
- (f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada); and
- (g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The dealer registration requirement does not apply in respect of a trade in a debt security

- (a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,
- (b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,
- (c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (e) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or
- (f) of or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

Short-term debt

3.35 The dealer registration requirement does not apply in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper traded

- (a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section, and
- (b) has an approved credit rating from an approved credit rating organization.

Mortgages

3.36 (1) In this section, "**syndicated mortgage**" means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by a mortgage.

(2) Subject to subsection (3), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply to a syndicated mortgage.

Personal property security legislation

3.37 The dealer registration requirement does not apply in respect of a trade in a security evidencing indebtedness secured by or under a security agreement provided for under personal property security legislation of a jurisdiction providing for the granting of security in personal property if the security is not offered for sale to an individual.

Not for profit issuer

3.38 The dealer registration requirement does not apply in respect of a trade by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if

- (a) no part of the net earnings benefit any security holder of the issuer, and
- (b) no commission or other remuneration is paid in connection with the sale of the security.

Variable insurance contract

3.39 (1) In this section,

- (a) "contract" "group insurance", "insurance company", "life insurance" and "policy" have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.
- (b) "variable insurance contract" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract 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 75% of the premium paid up to age 75 years 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.

RRSP/RRIF

3.40 The dealer registration requirement does not apply in respect of a trade in a security between

- (a) an individual or an associate of the individual, and
- (b) an RRSP or RRIF
 - (i) established for or by the individual, or
 - (ii) under which the individual is a beneficiary.

Schedule III banks and cooperative associations - evidence of deposit

3.41 The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

Conversion, exchange, or exercise

3.42 (1) The dealer registration requirement does not apply in respect of a trade by an issuer if

- (a) the issuer trades a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or
- (b) subject to subsection (2), the issuer trades a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

(2) For a trade under subsection (1)(b),

- (a) the issuer must give the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the trade, and
- (b) the regulator or, in Québec, the securities regulatory authority, must not object in writing to the trade within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the trade, the issuer must deliver to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority.

Self-directed registered educational savings plans

3.43 The dealer registration requirement does not apply to a trade in a self-directed RESP to a subscriber if

- (a) the trade is made by
 - (i) a mutual fund dealer or a person who is registered as a salesperson, partner or officer of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or
 - (ii) a Canadian financial institution or, in Ontario, a financial intermediary or a person who is an officer, salesperson or employee of a Canadian financial institution or, in Ontario, a financial intermediary and who is acting on behalf of the Canadian financial institution or, in Ontario, the financial intermediary, and
- (b) the self-directed RESP restricts its investments in securities to securities in which the person who traded the self-directed RESP is permitted to trade.

Registered dealer

3.44 The dealer registration requirement does not apply in respect of a trade by a person acting solely through an agent who is a registered dealer.

Exchange contract

3.45 (1) In Alberta, British Columbia, Québec and Saskatchewan, the dealer registration requirement does not apply in respect of the following trades in exchange contracts:

- (a) a trade by a person acting solely through a registered dealer;
- (b) subject to subsection (2) and (3), a trade resulting from an unsolicited order placed with an individual who is not a resident of and does not carry on business in the jurisdiction;
- (c) a trade that may occasionally be transacted by employees of a registered dealer if the employees
 - (i) do not usually trade in exchange contracts, and
 - (ii) have been designated by the regulator or, in Québec, the securities regulatory authority, as "non-trading" employees, either individually or as a class.

(2) An individual referred to in subsection (1)(b) must not

- (a) advertise or engage in promotional activity that is directed to persons in the jurisdiction during the 6 months preceding the trade, and
- (b) pay any commission or finder's fee to any person in the jurisdiction in connection with the trade.

(3) Subsection (1)(b) does not apply in Saskatchewan.

Estates, bankruptcies, and liquidations

3.46 The dealer registration requirement does not apply in respect of a trade by a person acting under the authority of

- (a) a direction, order or judgment of a court,
- (b) a will, or

- (c) any law of a jurisdiction

in the course of enforcing legal obligations or administering the affairs of another person.

Employees of registered dealer

3.47 The dealer registration requirement does not apply in respect of a trade by an employee of a registered dealer in a security if the employee does not usually trade in securities and has been designated by the regulator or, in Québec, the securities regulatory authority, as a "non-trading" employee, either individually or as a class.

Small security holder selling and purchase arrangements

3.48 (1) For the purposes of this section

"exchange" means

- (a) the Toronto Stock Exchange,
- (b) the TSX Venture Exchange Inc., or
- (c) an exchange that
 - (i) has a policy that is substantially similar to the policy of the Toronto Stock Exchange, and
 - (ii) is designated by the securities regulatory authority for the purpose of this section;

"policy" means

- (a) in the case of the Toronto Stock Exchange, Policy Statement on Small Shareholder Selling and Purchase Arrangements as amended from time to time,
- (b) in the case of the TSX Venture Exchange Inc., Policy 5.7 Small Shareholder Selling and Purchase Arrangements as amended from time to time, or
- (c) in the case of an exchange referred to in paragraph (c) of the definition of "exchange", the rule, policy or other similar instrument of the exchange on small shareholder selling and purchase arrangements and every successor to that rule, policy or other similar instrument published by that exchange as amended from time to time.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer or its agent, in securities of the issuer that are listed on an exchange if

- (a) the trade is an act in furtherance of participation by the holders of the securities in an arrangement that is in accordance with the policy of that exchange,
- (b) the issuer and its agent do not provide advice to a security holder about the security holder's participation in the arrangement referred to in paragraph (a), other than a description of the arrangement's operation, procedures for participation in the arrangement, or both,
- (c) the trade is made in accordance with the policy of that exchange, without resort to an exemption from, or variation of, the significant subject matter of the policy, and
- (d) at the time of the trade after giving effect to a purchase under the arrangement, the market value of the maximum number of securities that a security holder is permitted to hold in order to be eligible to participate in the arrangement is not more than \$25 000.

(3) For the purposes of subsection (2)(c), an exemption from, or variation of, the maximum number of securities that a security holder is permitted to hold under a policy in order to be eligible to participate in the arrangement provided for in the policy is not an exemption from, or variation of, the significant subject matter of the policy.

Adviser

3.49 The adviser registration requirement does not apply to

- (a) the following persons if performance of services as an adviser are incidental to their principal business or occupation:
- (i) a Canadian financial institution and a Schedule III bank;
 - (ii) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
 - (iii) a société d'entraide économique or the Fédération des sociétés d'entraide économique du Québec governed by the Act respecting the sociétés d'entraide économique (Québec);
 - (iv) a lawyer, accountant, engineer or teacher, or, in Québec, a notary, if that individual
 - A) does not recommend securities of an issuer in which that individual has an interest, and
 - B) does not receive remuneration for the performance of services as an adviser separate from remuneration received by that individual for practicing in their professions;
 - (v) a registered dealer or any partner, officer or employee of a registered dealer;
- or
- (b) a publisher or a writer for a newspaper, news magazine or business or financial journal or periodical, however delivered, that is of general and regular paid circulation, and only available to subscribers for value, or purchasers of it, if the publisher or writer
- (i) gives advice only through the written publication,
 - (ii) has no interest either directly or indirectly in any of the securities on which that individual gives advice, and
 - (iii) receives no commission or other consideration for giving the advice other than for acting in that person's capacity as a publisher or writer.

Investment dealer acting as portfolio manager

3.50 (1) Subject to subsection (2), the adviser registration requirement does not apply to a registered investment dealer who manages the investment portfolios of its clients through discretionary authority granted by the clients if the investment dealer follows the following rules and policies made by the Investment Dealers Association of Canada for portfolio managers, as amended from time to time:

- (a) Regulation 1300 *Supervision of Accounts*;
- (b) Part VII Discretionary and Managed Account Supervision of Policy 2 Minimum Standards for Retail Account Supervision;
- (c) Policy 4 Minimum Standards for Institutional Account Opening, Operation and Supervision; and
- (d) Part I Proficiency Requirements of Policy 6 Proficiency and Education.

(2) Any partner, director, officer or employee of a registered investment dealer referred to in subsection (1) who manages an investment portfolio for the registered investment dealer must be registered under the securities legislation of the jurisdiction to trade in securities.

PART 4: CONTROL BLOCK DISTRIBUTIONS

Control block distributions

4.1 (1) In this Part

"control block distribution" means a trade to which the provisions of securities legislation listed in Appendix B apply;

"NI 62-103" means National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues*.

(2) Terms defined or interpreted in NI 62-103 and used in this Part have the same meaning as is assigned to them in that Instrument.

(3) The prospectus requirement does not apply to a control block distribution by an eligible institutional investor of a reporting issuer's securities if

- (a) the eligible institutional investor
 - (i) has filed the reports required under the early warning requirements or files the reports required under Part 4 of NI 62-103,
 - (ii) does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed,
 - (iii) does not receive in the ordinary course of its business and investment activities knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed, and
 - (iv) either alone or together with any joint actors, does not possess effective control of the reporting issuer,
- (b) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor,
- (c) the control block distribution is made in the ordinary course of business or investment activity of the eligible institutional investor,
- (d) securities legislation would not require the securities to be held for a specified period of time if the trade was not a control block distribution,
- (e) no unusual effort is made to prepare the market or to create a demand for the securities, and
- (f) no extraordinary commission or consideration is paid in respect of the control block distribution.

(4) An eligible institutional investor that makes a distribution in reliance on subsection (3) must file a letter within 10 days after the distribution that describes the date and size of the distribution, the market on which it was made and the price at which the securities being distributed were sold.

Trades by a control person after a take-over bid

4.2 (1) Subject to subsection (2), the prospectus requirement does not apply to a trade in a security from the holdings of a control person acquired under a take-over bid for which a take-over bid circular was issued and filed if

- (a) the issuer whose securities are being acquired under the take-over bid has been a reporting issuer for at least 4 months at the date of the take-over bid,
- (b) the intention to make the trade is disclosed in the take-over bid circular issued in respect of the take-over bid,
- (c) the trade is made within the period beginning on the date of the expiry of the bid and ending 20 days after that date,
- (d) a notice of intention to distribute securities in Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities* under NI 45-102 is filed before the trade,
- (e) an insider report of the trade in Form 55-102F2 *Insider Report* or Form 55-102F6 *Insider Report*, as applicable, under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* is filed within 3 days after the completion of the trade,
- (f) no unusual effort is made to prepare the market or to create a demand for the security, and

- (g) no extraordinary commission or consideration is paid in respect of the trade.
- (2) A control person referred to in subsection (1) is not required to comply with subsection (1) (b) if
- (a) another person makes a competing take-over bid for securities of the issuer for which the take-over bid circular is issued, and
- (b) the control person sells those securities to that other person for a consideration that is not greater than the consideration offered by that other person under its take-over bid.

PART 5: OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT

Application and interpretation

5.1 (1) This Part does not apply in Ontario.

(2) In this Part

"exchange policy" means Exchange Policy 4.6 - *Public Offering by Short Form Offering Document* and Exchange Form 4H - *Short Form Offering Document*, of the TSX Venture Exchange as amended from time to time;

"gross proceeds" means the gross proceeds that are required to be paid to the issuer for listed securities distributed under a TSX Venture exchange offering document;

"listed security" means a security of a class listed on the TSX Venture Exchange;

"NI 51-101" means National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

"prior exchange offering" means a distribution of securities by an issuer under a TSX Venture exchange offering document that was completed during the 12-month period immediately preceding the date of the TSX Venture exchange offering document;

"subsequently triggered report" means a material change report that must be filed no later than 10 days after a material change under securities legislation as a result of a material change that occurs after the date the TSX Venture exchange offering document is certified but before a purchaser enters into an agreement of purchase and sale;

"TSX Venture Exchange" means the TSX Venture Exchange Inc.;

"TSX Venture exchange offering document" means an offering document that complies with the exchange policy;

"warrant" means a warrant of an issuer distributed under a TSX Venture exchange offering document that entitles the holder to acquire a listed security or a portion of a listed security of the same issuer.

TSX Venture Exchange offering

Refer to Appendix D of NI 45-102 *Resale of Securities*. These securities are free trading unless the security is acquired by

- (i) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, an underwriter of the issuer, or a member of the underwriter's professional group, or
- (ii) any other purchaser in excess of \$40 000 for the portion of the securities in excess of \$40 000.

The first trade by purchasers under (i) and (ii) are subject to a restricted period.

5.2 The prospectus requirement does not apply to a distribution by an issuer in a security of its own issue if

- (a) the issuer has filed an AIF in a jurisdiction of Canada,
- (b) the issuer is a SEDAR filer,
- (c) the issuer is a reporting issuer in a jurisdiction of Canada and has filed with the securities regulatory authority of that jurisdiction

- (i) a TSX Venture exchange offering document,
 - (ii) all documents required to be filed under the securities legislation of that jurisdiction, and
 - (iii) any subsequently triggered report,
- (d) the distribution is of listed securities or units consisting of listed securities and warrants,
- (e) the issuer has filed with the TSX Venture Exchange a TSX Venture exchange offering document in respect of the distribution, that
- (i) incorporates by reference the following documents of the issuer filed with the securities regulatory authority in any jurisdiction of Canada:
 - A) the AIF,
 - B) the most recent annual financial statements and the MD&A relating to those financial statements,
 - C) all unaudited interim financial statements and the MD&A relating to those financial statements, filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document,
 - D) all material change reports filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document, and
 - E) all documents required under NI 43-101 and NI 51-101 filed on or after the date of the AIF but before or on the date of the TSX Venture exchange offering document,
 - (ii) deems any subsequently triggered report required to be delivered to a purchaser under this Part to be incorporated by reference,
 - (iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the exchange policy,
 - (iv) grants to purchasers contractual rights of withdrawal, as required by the exchange policy, and
 - (v) contains all the certificates required by the exchange policy,
- (f) the distribution is conducted in accordance with the exchange policy,
- (g) the issuer or the underwriter delivers the TSX Venture exchange offering document and any subsequently triggered report to each purchaser
- (i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the TSX Venture exchange offering document, or
 - (ii) not later than midnight on the 2nd business day after the agreement of purchase and sale is entered into,
- (h) the listed securities issued under the TSX Venture exchange offering document, when added to the listed securities of the same class issued under prior exchange offerings do not exceed,
- (i) the number of securities of the same class outstanding immediately before the issuer distributes securities of the same class under the TSX Venture exchange offering document, or
 - (ii) the number of securities of the same class outstanding immediately before a prior exchange offering,
- (i) the gross proceeds under the TSX Venture exchange offering document, when added to the gross proceeds from prior exchange offerings do not exceed \$2 million,

- (j) no purchaser acquires more than 20% of the securities distributed under the TSX Venture exchange offering document, and
- (k) no more than 50% of the securities distributed under the TSX Venture exchange offering document are subject to section 2.5 of NI 45-102.

Underwriter obligations

5.3 An underwriter that qualifies as a "sponsor" under TSX Venture Exchange Policy 2.2 - *Sponsorship and Sponsorship Requirements* as amended from time to time must sign the TSX Venture exchange offering document and comply with TSX Venture Exchange Appendix 4A - *Due Diligence Report* in connection with the distribution.

PART 6: REPORTING REQUIREMENTS

Report of exempt distribution

6.1 (1) Subject to subsection (2) and section 6.2 [*When report not required*], issuers that distribute their own securities and underwriters that distribute securities they acquired under section 2.33 must file a report if they make the distribution under one or more of the following exemptions:

- (a) section 2.3 [*Accredited investor*];
- (b) section 2.5 [*Family, friends and business associates*];
- (c) subsection 2.9 (1) or (2) [*Offering memorandum for Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Québec, and Saskatchewan*];
- (d) section 2.10 [*Minimum amount investment*];
- (e) section 2.12 [*Asset acquisition*];
- (f) section 2.13 [*Petroleum, natural gas and mining properties*];
- (g) section 2.14 [*Securities for debt*];
- (h) section 2.19 [*Additional investment in investment funds*];
- (i) section 2.30 [*Isolated distribution by issuer*];
- (j) section 5.2 [*TSX Venture Exchange offering*].

(2) The issuer or underwriter must file the report in the jurisdiction where the distribution takes place no later than 10 days after the distribution.

When report not required

6.2 (1) An issuer is not required to file a report under section 6.1(a) [*Report of exempt distribution*] for a distribution of a debt security of its own issue or, concurrently with the distribution of the debt security, an equity security of its own issue, to a Canadian financial institution or a Schedule III bank.

(2) An investment fund is not required to file a report under section 6.1 [*Report of exempt distribution*] for a distribution under section 2.3 [*Accredited investor*], section 2.10 [*Minimum amount*] or section 2.19 [*Additional investment in investment funds*] if the investment fund files the report not later than 30 days after the financial year-end of the investment fund.

Required form of report of exempt distribution

6.3 (1) The required form of report under section 6.1 [*Report of exempt distribution*] is Form 45-106F1.

(2) Except in Manitoba, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument is exempt from the requirements in securities legislation to file a report of exempt trade or exempt distribution in the required form if the issuer files a report of exempt distribution in accordance with Form 45-106F1.

Required form of offering memorandum

6.4 (1) The required form of offering memorandum under section 2.9 or section 3.9 [*Offering memorandum*] is Form 45-106F2.

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.

Required form of risk acknowledgement

6.5 (1) The required form of risk acknowledgement under subsection 2.9(12) or subsection 3.9(12) [*Offering memorandum*] is Form 45-106F4.

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 or section 3.6 [*Family, friends and business associates*] is Form 45-106F5.

Reporting requirements in British Columbia

6.6 (1) In British Columbia, a person that relies on a registration exemption in this Instrument must:

- (a) file an initial notice in the required form;
- (b) file an annual notice in the required form; and
- (c) obtain a signed risk acknowledgement from the purchaser of the security in the required form.

(2) The person relying on the registration exemption must retain the signed risk acknowledgment for 8 years after the trade.

(3) In British Columbia, the required forms under subsection 6.6(1) are the forms specified by the regulator under section 182 of the *Securities Act* (British Columbia).

PART 7: EXEMPTION**Exemption**

7.1 (1) Subject to subsection (2), the regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) In Ontario, only the regulator may grant an exemption and only from Part 6, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8: TRANSITIONAL, COMING INTO FORCE**Additional investment - investment funds**

8.1 (1) The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a purchaser that initially acquired the security as principal before this Instrument came into force if

- (a) the security was initially acquired under any of the following provisions:
 - (i) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
 - (ii) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
 - (iii) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation MR 491/88R*;
 - (iv) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;

- (v) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);
 - (vi) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
 - (vii) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 1;
 - (viii) in Nunavut, section 3(c) and (z) of Blanket Order No. 1;
 - (ix) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;
 - (x) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -Exempt Distributions - Exemption for Purchase of Mutual Fund Securities;
 - (xi) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);
 - (xii) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).
- (b) the trade is for a security of the same class or series as the initial trade, and
- (c) the security holder, as at the date of the trade, holds securities of the investment fund that have
- (i) an acquisition cost of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted, or
 - (ii) a net asset value of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted.

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

Definition of "accredited investor" - investment fund

8.2 An investment fund that distributed its securities to persons pursuant to any of the following provisions is an investment fund under paragraph (n)(ii) of the definition of "accredited investor":

- (a) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
- (b) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
- (c) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;
- (d) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;
- (e) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);
- (f) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
- (g) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 2;
- (h) in Nunavut, section 3(c) and (z) of Blanket Order No. 3;
- (i) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;
- (j) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -Exempt Distributions - Exemption for Purchase of Mutual Fund Securities;

- (k) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);
- (l) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).

Transition - MI 45-103/MI 45-105/ OSC Rule 45-501

8.3 (1) In this section,

- "MI 45-103" means Multilateral Instrument 45-103 *Capital Raising Exemptions* that came into force on June 6, 2003;
- "MI 45-105" means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* that came into force on August 15, 2003;
- "2004 OSC Rule 45-501" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004.

(2) The dealer registration requirement or the prospectus requirement does not apply in respect of a trade in a security if the trade complies with and is completed in accordance with the requirements of MI 45-103, MI 45-105, or 2004 OSC Rule 45-501 by November 30, 2005.

Transition - Closely-held issuer

8.4 (1) In this section,

- "2001 OSC Rule 45-501" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;
- "2004 OSC Rule 45-501" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;
- "closely-held issuer" has the same meaning as in 2004 OSC Rule 45-501;

(2) The dealer registration requirement does not apply in respect of a trade in a security that was previously distributed by a closely-held issuer under section 2.1 of 2001 OSC Rule 45-501 or under section 2.1 of 2004 OSC Rule 45-501 to a person who purchases the security as principal and is

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer, founder or control person of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer, founder or control person of the issuer,
- (d) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (e) a close business associate of a director, executive officer, founder or control person of the issuer,
- (f) a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse,
- (g) a security holder of the issuer,
- (h) an accredited investor,
- (i) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
- (j) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (k) a person that is not the public.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

Transition – reinvestment plan

8.4.1 Despite subsection 2.2(5) or 3.2(5), if an issuer's reinvestment plan was established before ●, and provides for the distribution of a security that is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator of the plan must provide to each person who is already a participant the description of the material attributes and characteristics of the securities traded under the plan or notice of a source from which the participant can obtain the information not later than 140 days after the next financial year end of the issuer ending on or after ●.

Repeal of former instrument

8.5 National Instrument 45-106 *Prospectus and Registration Exemptions* which came into force on September 14, 2005 is repealed on ●

Effective date

8.6 This Instrument comes into force on ●

Appendix A
to
National Instrument 45-106 *Prospectus and Registration Exemptions*

Variable insurance contract exemption
(section 2.39 and 3.39)

JURISDICTION	LEGISLATION REFERENCE
ALBERTA	<p>"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the <i>Insurance Act</i> (Alberta) and the regulations under that Act.</p> <p>"insurance company" means an insurer as defined in the <i>Insurance Act</i> (Alberta) that is licensed under that Act.</p>
BRITISH COLUMBIA	<p>"contract", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the <i>Insurance Act</i> (British Columbia) and the regulations under that Act.</p> <p>"insurance company" means an insurance company, or an extraprovincial insurance corporation, authorized to carry on insurance business under the <i>Financial Institutions Act</i> (British Columbia).</p>
MANITOBA	<p>"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the <i>Insurance Act</i> (Manitoba) and the regulations under that Act.</p> <p>"insurance company" means an insurer as defined in the <i>Insurance Act</i> (Manitoba) that is licensed under that Act.</p>
NEW BRUNSWICK	<p>"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the <i>Insurance Act</i> (New Brunswick) and the regulations under that Act.</p> <p>"insurance company" means an insurer as defined in the <i>Insurance Act</i> (New Brunswick) that is licensed under that Act.</p>
NOVA SCOTIA	<p>"contract", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the <i>Insurance Act</i> (Nova Scotia) and the regulations under that Act.</p> <p>"insurance company" has the same meaning as in section 3(1)(a) of the <i>General Securities Rules</i> (Nova Scotia).</p>
ONTARIO	<p>"contract", "group insurance", "life insurance" and "policy" have the respective meanings assigned to them in section 1 and 171 of the <i>Insurance Act</i> (Ontario).</p> <p>"insurance company" has the same meaning as in section 1(2) of the <i>General Regulation</i> (Ont. Reg. 1015).</p>
QUÉBEC	<p>"contract of insurance", "group insurance", "life insurance", and "policy" have the respective meanings assigned to them under the Civil Code of Québec.</p> <p>"insurance company" means an insurer holding a license under the Act respecting insurance (R.S.Q., c. A-32).</p>

PRINCE EDWARD ISLAND

"contract", "group insurance", "insurer", "life insurance and "policy" have the respective meanings assigned to them in sections 1 and 174 of the *Insurance Act* (Prince Edward Island).

"insurance company" means an insurance company licensed under the *Insurance Act* (R.S.P.E.I. 1988, Cap. I-4),

SASKATCHEWAN

"contract", "life insurance" and "policy" have the respective meanings assigned to them in section 2 of *The Saskatchewan Insurance Act* (Saskatchewan).

"group insurance" has the respective meaning assigned to it in section 133 of *The Saskatchewan Insurance Act* (Saskatchewan).

"insurance company" means an issuer licensed under *The Saskatchewan Insurance Act* (Saskatchewan).

Appendix B
to
National Instrument 45-106 *Prospectus and Registration Exemptions*

Control Block Distributions
(PART 4)

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Section 1(p)(iii) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of "distribution" contained in section 1 of the <i>Securities Act</i> (British Columbia)
MANITOBA	Section 1(b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
NOVA SCOTIA	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Section 1(f)(iii) of the <i>Securities Act</i> (Prince Edward Island)
QUÉBEC	Paragraph 9 of the definition of "distribution" contained section 5 of the <i>Securities Act</i> (Québec)
SASKATCHEWAN	Section 2(1)(r)(iii) of <i>The Securities Act, 1988</i> (Saskatchewan)

APPENDIX "B"

**Proposed Amended and Restated
Form 45-106F1
Report of Exempt Distribution**

This is the form required under section 6.1 of National Instrument 45-106 for a report of exempt distribution.

Issuer/underwriter information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address and telephone number of the head office of the manager. Include the former name of the issuer if its name has changed since last report. If an underwriter is completing this form, also state the full name of the underwriter and the address and telephone number of the head office of the underwriter.

Item 2: State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

Item 3: Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

- | | |
|---|--|
| <input type="checkbox"/> Bio-tech | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> exploration/development |
| <input type="checkbox"/> investment companies and funds | <input type="checkbox"/> production |
| <input type="checkbox"/> mortgage investment companies | <input type="checkbox"/> Oil and gas |
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Hi-tech | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Other (describe) |

Details of distribution

Item 4: Complete Schedule I to this report. Schedule I is designed to assist in completing the remainder of this report.

Item 5: State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.

Item 6: For each security distributed:

- describe the type of security,
- state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and
- state the exemption(s) relied on.

Item 7: Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below.

Each jurisdiction where purchasers reside	Number of purchasers	Price per security (Canadian \$) ¹	Total dollar value raised from purchasers in the jurisdiction (Canadian \$)
Total number of Purchasers			
Total dollar value of distribution in all jurisdictions (Canadian \$)			

Note 1: If securities are issued at different prices list the highest and lowest price the securities were sold for.

Commissions and finder's fees

Item 8: Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

Full name and address of the person being compensated	Compensation paid or to be paid (cash and/or securities)				Total dollar value of compensation (Canadian \$)
	Cash (Canadian \$)	Securities			
		Number and type of securities issued	Price per security	Exemption relied on and date of distribution	

Item 9: If a distribution is made in Ontario, please include the attached "Authorization of Indirect Collection of Personal Information for Distributions in Ontario". The "Authorization of Indirect Collection of Personal Information for Distributions in Ontario" is only required to be filed with the Ontario Securities Commission.

Certificate

On behalf of the [issuer/underwriter], I certify that the statements made in this report are true.

Date: _____

Name of [issuer/underwriter] (please print)

Print name, title and telephone number of person signing

Signature

Instruction

The person filing the form must complete the bracketed information by deleting the inappropriate word.

Item 10: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

The attached Schedule I contains personal information of purchasers and details of the distribution(s). The issuer/underwriter hereby confirms that each purchaser listed in Schedule I of this report who is resident in Ontario

- (a) has been notified by the issuer/underwriter
 - (i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,
 - (ii) that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (iii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and
 - (iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

Schedule I

Complete the following table.

For reports filed under sub-section 6.1(1)(j) (TSX Venture Exchange offering) of National Instrument 45-106 the following table only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and telephone number of each purchaser.

Do not include in this table, securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

Full name, residential address and telephone number of purchaser	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of distribution

Instructions:

1. File this report and the applicable fee in each jurisdiction in which a distribution is made at the addresses listed at the end of this report. If the distribution is made in more than one jurisdiction, the issuer/underwriter must complete a single report identifying all purchasers and file that report in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the report are not affected by identifying all purchasers in a single report.
2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report.
3. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.
4. In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.
5. This report must be filed in English or in French. In Québec, the issuer/underwriter must comply with linguistic obligations and rights prescribed by Québec law.

Securities Regulatory Authorities and Regulators**British Columbia Securities Commission**

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: (604) 899-6500
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: (604) 899-6506

Alberta Securities Commission

4th Floor, 300 – 5th Avenue SW
Calgary, Alberta T2P 3C4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission

Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission

500 – 400 St Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2548
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330

Ontario Securities Commission

Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario M5H 3S8
Telephone: (416) 593- 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone (416) 593-8086

Autorité des marchés financiers

800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337
Or 1-877-525-0337
Facsimile: (514) 864-6381

New Brunswick Securities Commission

85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll Free in New Brunswick 1-866-933-2222
Facsimile: (506) 658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Prince Edward Island Securities Office

95 Rochford Street, P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283

Securities Commission of Newfoundland and Labrador

P.O. Box 8700 2nd Floor, West Block Confederation Building
St. John's, Newfoundland and Labrador A1B 4J6
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Government of Yukon

Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867) 393-6251

Government of Northwest Territories

Department of Justice
Securities Registry
1st Floor Stuart M. Hodgson Building
5009 – 49th Street
Yellowknife, Northwest Territories X1A 2L9
Telephone: (867) 920-3318
Facsimile: (867) 873-0243

Government of Nunavut

Department of Justice
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

APPENDIX "C"

**Form 45-106F1
Report of Exempt Distribution**

This is the form required under section 6.1 of National Instrument 45-106 for a report of exempt distribution.

Issuer/underwriter information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address and telephone number of the head office of the manager. Include the former name of the issuer if its name has changed since last report. If an underwriter is completing this form, also state the full name of the underwriter and the address and telephone number of the head office of the underwriter.

Item 2: State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

Item 3: Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

- | | |
|---|--|
| <input type="checkbox"/> Bio-tech | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> exploration/development |
| <input type="checkbox"/> investment companies and funds | <input type="checkbox"/> production |
| <input type="checkbox"/> mortgage investment companies | <input type="checkbox"/> Oil and gas |
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Hi-tech | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Other (describe) |

Details of distribution

Item 4: Complete Schedule I to this report. Schedule I is designed to assist in completing the remainder of this report.

Item 5: State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.

Item 6: For each security distributed:

- (a) describe the type of security,
- (b) state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and
- (c) state the exemption(s) relied on.

Item 7: Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below.

Each jurisdiction where purchasers reside	Number of purchasers	Price per security (Canadian \$) ¹	Total dollar value raised from purchasers in the jurisdiction (Canadian \$)
Total number of Purchasers			
Total dollar value of distribution in all jurisdictions (Canadian \$)			

Note 1: If securities are issued at different prices list the highest and lowest price the securities were sold for.

Commissions and finder's fees

Item 8: Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

Full name and address of the person being compensated	Compensation paid or to be paid (cash and/or securities)				Total dollar value of compensation (Canadian \$)
	Cash (Canadian \$)	Securities			
		Number and type of securities issued	Price per security	Exemption relied on and date of distribution	

Item 9: If a distribution is made in Ontario, please include the attached "Authorization of Indirect Collection of Personal Information for Distributions in Ontario". The "Authorization of Indirect Collection of Personal Information for Distributions in Ontario" is only required to be filed with the Ontario Securities Commission.

Certificate

On behalf of the [issuer/underwriter], I certify that the statements made in this report are true.

Date: _____

Name of [issuer/underwriter] (please print)

Print name, title and telephone number of person signing

Signature

Instruction
The person filing the form must complete the bracketed information by deleting the inappropriate word.

Item 10: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the securities regulatory authorities or, where applicable, the regulators under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or, where applicable, the regulator in the jurisdiction(s) where the form is filed, at the address(es) listed at the end of this report.

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

The attached Schedule I contains personal information of purchasers and details of the distribution(s). The issuer/underwriter hereby confirms that each purchaser listed in Schedule I of this report who is resident in Ontario

- (a) has been notified by the issuer/underwriter
 - (i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,
 - (ii) that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (iii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of Ontario, and
 - (iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

Schedule I

Complete the following table.

For reports filed under sub-section 6.1(1)(j) (TSX Venture Exchange offering) of National Instrument 45-106 the following table only needs to list the total number of purchasers by jurisdiction instead of including the name, residential address and telephone number of each purchaser.

Do not include in this table, securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

The information in this schedule will not be placed on the public file of any securities regulatory authority or, where applicable, regulator. However, freedom of information legislation in certain jurisdictions may require the securities regulatory authority or, where applicable, regulator to make this information available if requested.

Full name, residential address and telephone number of purchaser	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of distribution

Instructions:

1. File this report and the applicable fee in each jurisdiction in which a distribution is made at the addresses listed at the end of this report. If the distribution is made in more than one jurisdiction, the issuer ~~may~~/underwriter must complete a single report identifying all purchasers and file that report in each of the jurisdictions in which the distribution is made. Filing fees associated with the filing of the report are not affected by identifying all purchasers in a single report.
2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report.
3. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.
4. In order to determine the applicable fee, consult the securities legislation of each jurisdiction in which a distribution is made.
5. This report must be filed in English or in French. In Québec, the issuer/underwriter must comply with linguistic obligations and rights prescribed by Québec law.

Securities Regulatory Authorities and Regulators**British Columbia Securities Commission**

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: (604) 899-6500
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: (604) 899-6506

Alberta Securities Commission

4th Floor, 300 – 5th Avenue SW
Calgary, Alberta T2P 3C4
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

Saskatchewan Financial Services Commission

~~6th Floor, Suite 601 -~~ 1919 Saskatchewan Drive
Regina, Saskatchewan S4P ~~3V74H2~~
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

The Manitoba Securities Commission

~~4130500 – 405 Broadway~~400 St Mary Avenue
Winnipeg, Manitoba R3C ~~3L64K5~~
Telephone: (204) 945-2548
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330

Ontario Securities Commission

Suite 1903, Box ~~552055~~
20 Queen Street West
Toronto, Ontario M5H 3S8
Telephone: (416) 593-~~3682~~ 8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-~~82528122~~
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone (416) 593-8086

Autorité des marchés financiers

800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337
Or 1 ~~-877 -525-0337~~
Facsimile: (514) 864-~~36846381~~

New Brunswick Securities Commission

~~133 Prince William~~85 Charlotte Street, Suite ~~606300~~ Saint John, New Brunswick E2L 2B5 ~~J2~~
Telephone: (506) 658-3060
Toll Free in New Brunswick 1-866-933-2222
Facsimile: (506) 658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Prince Edward Island Securities Office

95 Rochford Street, P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283

Securities Commission of Newfoundland and Labrador

P.O. Box 8700 2nd Floor, West Block Confederation Building
St. John's, Newfoundland and Labrador A1B 4J6
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Government of Yukon

Department of Community Services
Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: (867) 667-5314
Facsimile: (867) 393-6251

Government of Northwest Territories

Department of Justice
Securities Registry
1st Floor Stuart M. Hodgson Building
5009 – 49th Street
Yellowknife, Northwest Territories X1A 2L9
Telephone: (867) 920-3318
Facsimile: (867) 873-0243

Government of Nunavut

Department of Justice
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

APPENDIX "D"

**Proposed Amended and Restated
Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers**

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office:

Address:

Phone #:

E-mail address:

Fax #:

Currently listed or quoted? [If no, state: "These securities do not trade on any exchange or market". If yes, state where, e.g., TSX/TSX Venture Exchange.]

Reporting issuer? [Yes/No. If yes, state where.]

SEDAR filer? [Yes/No]

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state "\$0" as the minimum and also state: "You may be the only purchaser."]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 6. [If income tax consequences are not material, delete this item.]

Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]

Resale restrictions

State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item 11."

Purchaser's rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have the right to sue either for damages or to cancel the agreement. See item 12."

State in bold type:

"No securities regulatory authority has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 9."

[All of the above information must appear on a single cover page.]

Item 1: Use of Available Funds

1.1 Funds - Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, please provide details about each additional source of funding. If there is no minimum offering, state "\$0" as the minimum.

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit.)	\$	\$
D	Available funds: $D = A - (B+C)$	\$	\$
E.	Additional sources of funding required	\$	\$
F.	Total: D+E	\$	\$

1.2 Use of Available Funds - Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the available funds to be applied against the working capital deficiency. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$
Total: Equal to F in the Funds table above	\$	\$

1.3 Reallocation - The available funds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the available funds may be reallocated, include the following statement:

"We intend to spend the available funds as stated. We will reallocate funds only for sound business reasons."

1.4 Working Capital Deficiency - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

Item 2: Business of [name of issuer or other term used to refer to issuer]

2.1 Structure - State the business structure (e.g., partnership, corporation or trust), the statute and the province, state or other jurisdiction under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

2.2 Our Business - Describe the issuer's business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. For a non-resource issuer this disclosure may include principal products or services, operations, market, marketing plans and strategies and a discussion of the issuer's current and prospective competitors. For a resource issuer this will require a description of principal properties (including interest held) and a summary of material information including, if applicable: the stage of development, reserves, geology, operations, production and mineral reserves or mineral resources being explored or developed. Generally, this description should not exceed 2 pages. A resource issuer who discloses information about its oil and gas activities must follow General Instruction A.9 of this Form.

2.3 Development of Business - Describe (generally, in one or two paragraphs) the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include the major events that have occurred or conditions that have influenced (favourably or unfavourably) the development of the issuer.

2.4 Long Term Objectives - Disclose the issuer's long term objectives.

2.5 Short Term Objectives and How We Intend to Achieve Them

- (a) Disclose the issuer's objectives for the next 12 months.
- (b) Using the following table, disclose how the issuer intends to meet those objectives for the next 12 months.

What we must do and how we will do it	Target completion date or, if not known, number of months to complete	Our cost to complete
		\$
		\$

2.6 Insufficient Funds

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and all outstanding conditions that must be satisfied.

2.7 Material Agreements - Disclose the key terms of all material agreements

- (a) to which the issuer is currently a party, or
- (b) with a related party

including the following information:

- (i) if the agreement is with a related party, the name of the related party and the relationship,
- (ii) a description of any asset, property or interest acquired, disposed of, leased, under option, etc.,
- (iii) a description of any service provided,
- (iv) purchase price and payment terms (e.g., paid in instalments, cash, securities or work commitments),
- (v) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate,
- (vi) the date of the agreement,
- (vii) the amount of any finder's fee or commission paid or payable to a related party in connection with the agreement, and
- (viii) any material outstanding obligations under the agreement.

Item 3: Interests of Directors, Management, Promoters and Principal Holders

3.1 Compensation and Securities Held - Using the following table, provide the specified information about each director, officer and promoter of the issuer and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a "principal holder"). If the principal holder is not an individual, state in a note to the table the name of any person that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder. If the issuer has not completed its first financial year then include compensation paid since inception. Compensation includes any form of remuneration including cash, shares and options.

Name and municipality of principal residence	Positions held (e.g., director, officer, promoter and/or principal holder) and the date of obtaining that position	Compensation paid by issuer or related party in the most recently completed financial year and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of min. offering	Number, type and percentage of securities of the issuer held after completion of max. offering

3.2 Management Experience - Using the following table, disclose the principal occupations of the directors and executive officers over the past five years. In addition, for each individual, describe any relevant experience in a business similar to the issuer's.

Name	Principal occupation and related experience

3.3 Penalties, Sanctions and Bankruptcy

- (a) Disclose any penalty or sanction (including the reason for it and whether it is currently in effect) that has been in effect during the last 10 years against
- (i) a director, executive officer or control person of the issuer, or
 - (ii) an issuer of which a person referred to in (i) above was a director, executive officer or control person at the time.
- (b) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, that has been in effect during the last 10 years with regard to any
- (i) director, executive officer or control person of the issuer, or
 - (ii) issuer of which a person referred to in (i) above was a director, executive officer or control person at that time.

Item 4: Capital Structure

4.1 Share Capital - Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

4.2 Long Term Debt - Using the following table, provide the required information about outstanding long term debt of the issuer. Disclose the current portion of the long-term debt due within 12 months of the date of the offering memorandum. If the securities being offered are debt securities, add a column to the table disclosing the amount of debt that will be outstanding after both the minimum and maximum offering. If the debt is owed to a related party, indicate that in a note to the table and identify the related party.

Description of long term debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at [a date not more than 30 days prior to the offering memorandum date]
			\$
			\$

4.3 Prior Sales - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the last 12 months, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

Item 5: Securities Offered

5.1 Terms of Securities- Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

5.2 Subscription Procedure

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).
- (c) Disclose any conditions to closing, e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

6.2 If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide

- (a) a summary of the significant income tax consequences to Canadian residents, and
- (b) the name of the person providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

- (a) a description of each type of compensation and the estimated amount to be paid for each type,
- (b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date), and
- (d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Other Material Facts

Give particulars of any material facts about the securities being distributed that are not disclosed under any other items and for which failure to disclose would constitute a misrepresentation in the offering memorandum.

Item 9: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
- arbitrary determination of price,
 - no market or an illiquid market for the securities,
 - resale restrictions, and
 - subordination of debt securities.
- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
- insufficient funds to accomplish the issuer's business objectives,
 - no history or a limited history of sales or profits,
 - lack of specific management or technical expertise,
 - management's regulatory and business track record,
 - dependence on key employees, suppliers or agreements,
 - dependence on financial viability of guarantor,
 - pending and outstanding litigation, and
 - political risk factors.
- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
- environmental and industry regulation,
 - product obsolescence, and
 - competition.

Item 10: Reporting Obligations

10.1 Disclose the documents that will be sent to purchasers on an annual or on-going basis.

10.2 If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 11: Resale Restrictions

11.1 General Statement - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan, state:

"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation."

11.2 Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan state one of the following, as applicable:

- (a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer or other term used to refer to the issuer] becomes a reporting issuer in any province or territory of Canada."

- (b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date."

11.3 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

"Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

- (a) [name of issuer or other term used to refer to issuer] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or
- (b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

Item 12: Purchasers' Rights

State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or
- (b) for damages against [state the name of issuer or other term used to refer to issuer and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation].

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer or other term used to refer to issuer]:

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must

commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

Item 13: Financial Statements

Include in the offering memorandum immediately before the certificate page of the offering memorandum all required financial statements as set out in the Instructions.

Item 14: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),
- (b) on behalf of the directors of the issuer
 - (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a),
or
 - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**Instructions for Completing
Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers**

A. General Instructions

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
3. The issuer may include additional information in the offering memorandum other than that specifically required by the form. An offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision.
4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
5. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
6. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about "directors", provide disclosure for the general partner(s) of the limited partnership and the trustee(s) and manager of the trust. If a general partner, trustee or manager is a corporation, provide disclosure of the directors and executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.
7. When the term "related party" is used in this form, it refers to:
 - (a) a director, officer, promoter or control person of the issuer,
 - (b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence,
 - (c) in regard to a person referred to in (a) or (b), his or her spouse or a person with whom he or she is living in a marriage-like relationship,
 - (d) an insider of the issuer,
 - (e) a company controlled by one or more individuals referred to in (a) to (d), and
 - (f) in the case of an insider, promoter or control person that is not an individual, any person that controls that insider, promoter or control person.

(If the issuer is not a reporting issuer, the reference to "insider" includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.)

8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
9. If an oil and gas issuer is disclosing information about its oil and gas activities it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). Under section 5.3 of NI 51-101 disclosure of reserves or resources must be consistent with the

reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
11. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.
12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

B. Financial Statements - General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired and summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), regardless of whether the issuer is a reporting issuer or not.
2. Include all financial statements required by these instructions in the offering memorandum immediately before the certificate page of the offering memorandum.
3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the offering memorandum financial statements of the issuer consisting of:
 - (a) an income statement, a statement of retained earnings and a cash flow statement for the period from inception to a date not more than 90 days before the date of the offering memorandum,
 - (b) a balance sheet as at the end of the period referred to in paragraph (a), and
 - (c) notes to the financial statements.
4. If the issuer has completed one or more financial years, include in the offering memorandum annual financial statements of the issuer consisting of:
 - (a) an income statement, a statement of retained earnings and a cash flow statement for
 - (i) the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and
 - (ii) the financial year immediately preceding the financial year in clause (i), if any,
 - (b) a balance sheet as at the end of each of the periods referred to in paragraph (a), and
 - (c) notes to the financial statements.
5. If the issuer has completed one or more financial years, include in the offering memorandum interim financial statements of the issuer comprised of:
 - (a) an income statement, a statement of retained earnings and a cash flow statement for the most recently completed interim period that ended
 - (i) more than 60 days before the date of the offering memorandum, and
 - (ii) after the year-end date of the financial statements required under B.4(a)(i),

- (b) an income statement, a statement of retained earnings and a cash flow statement for the corresponding period in the immediately preceding financial year, if any,
 - (c) a balance sheet as at the end of the periods required by paragraphs (a) and (b), and
 - (d) notes to the financial statements.
6. An issuer is not required to include the financial statements for the period in B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year ended less than 120 days before the date of the offering memorandum.
 7. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending nine, six, or three months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 – *Investment Fund Continuous Disclosure* (NI 81-106).
 8. The comparative financial information required under B.5(b) and (c) may be omitted if not previously prepared.
 9. The financial statements required by B.3 and the financial statements of the most recently completed financial period referred to in B.4 must be audited. The financial statements required under B.5, B.6 and the comparative financial information required by B.4 may be unaudited; however, if any of those financial statements have been audited, the auditor's report must be included in the offering memorandum.
 10. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.
 11. All unaudited financial statements and unaudited comparatives must be clearly labelled as unaudited.
 12. If the offering memorandum does not contain audited financial statements for the issuer's most recently completed financial year, and if the distribution is ongoing, update the offering memorandum to include the annual audited financial statements and the accompanying auditor's report as soon as the issuer has approved the audited financial statements.
 13. The offering memorandum does not have to be updated to include interim financial statements for periods completed after the date 60 days prior to the date of the offering memorandum unless it is necessary to prevent the offering memorandum from containing a misrepresentation.
 14. Forward looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 should be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.
 15. If the issuer is a limited partnership, in addition to the financial statements required for the issuer, include in the offering memorandum the financial statements in accordance with Part B for the general partner and, if the limited partnership has active operations, for the limited partnership.

C. Financial Statements - Business Acquisitions

1. If the issuer
 - (a) has acquired a business during the past two years and the audited financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 9 consecutive months, or
 - (b) is proposing to acquire a business and the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high,

include the financial statements specified in C.4 for the business if either of the tests in C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.
2. Include the financial statements specified in C.4 for a business referred to in C.1 if either:

- (a) the issuer's proportionate share of the consolidated assets of the business exceeds 40% of the consolidated assets of the issuer calculated using the annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the date of the acquisition or, for a proposed acquisition, the date of the offering memorandum or
 - (b) the issuer's consolidated investments in and advances to the business as at the date of the acquisition or the proposed date of acquisition exceeds 40% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the last day of the issuer's most recently completed financial year that ended before the date of the acquisition or the date of the offering memorandum for a proposed acquisition.
3. If an issuer or a business has not yet completed a financial year, or its first financial year ended within 120 days of the offering memorandum date, use the financial statements referred to in B.3 to make the calculations in C.2.
4. If under C.2 you must include in an offering memorandum financial statements for a business, the financial statements must include:
- (a) If the business has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum
 - (i) an income statement, a statement of retained earnings and a cash flow statement
 - A) for the period from inception to a date not more than 90 days before the date of the offering memorandum, or
 - B) if the date of acquisition precedes the ending date of the period referred to in (A), for the period from inception to the date of acquisition or a date not more than 45 days before the date of acquisition,
 - (ii) a balance sheet dated as at the end of the period referred to in clause (i), and
 - (iii) notes to the financial statements.
 - (b) If the business has completed one or more financial years include
 - (i) annual financial statements comprised of:
 - A) an income statement, a statement of retained earnings and a cash flow statement for the following annual periods:
 - i. the most recently completed financial year that ended before the date of acquisition and more than 120 days before the date of the offering memorandum, and
 - ii. the financial year immediately preceding the most recently completed financial year specified in clause i, if any,
 - B) a balance sheet as at the end of each of the periods specified in (A),
 - C) notes to the financial statements, and
 - (ii) interim financial statements comprised of:
 - A) an income statement, a statement of retained earnings and a cash flow statement for either:
 - i. the most recently completed year-to-date interim period and the three month period ending on the last date of the interim period that ended before the date of acquisition and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under C.4(b)(i)(A), or
 - ii. the period from the first day after the financial year referred to in C.4(b)(i) to a date before the date of acquisition and after the period end in C.4(b)(ii)(A), and

- B) an income statement, a statement of retained earnings and a cash flow statement for the corresponding period in the immediately preceding financial year, if any,
- C) a balance sheet as at the end of the periods required by (A) and (B), and
- D) notes to the financial statements.

Refer to Instruction B.7 for the meaning of "interim period".

5. The information for the most recently completed financial period referred to in C.4(b)(i) must be audited and accompanied by an auditor's report. The financial statements required under C.4(a), C.4(b)(ii) and the comparative financial information required by C.4(b)(i) may be unaudited; however, if those financial statements or comparative financial information have been audited, the auditor's report must be included in the offering memorandum.
6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business's most recently completed financial year that ended before the date of acquisition and the distribution is ongoing, update the offering memorandum to include those financial statements accompanied by an auditor's report when they are available, but in any event no later than the date 120 days following the year-end.
7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:
 - (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and
 - (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.
8. If a transaction or a proposed transaction for which the likelihood of the transaction being completed is high has been or will be accounted for as a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part A. The legal parent, as that term is defined in the CICA Handbook, is considered to be the business acquired. C.1 may also require financial statements of the legal parent.
9. An issuer satisfies the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. An issuer will satisfy the financial statement requirements of this form if it includes the financial statements required by securities legislation for a prospectus.
2. Notwithstanding the requirements in section 3.2(a) of NI 52-107, an auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may contain a qualification of opinion relating to inventory if
 - (a) the issuer includes in the offering memorandum a balance sheet that is for a date that is subsequent to the date to which the qualification relates, and
 - (b) the balance sheet referred to in paragraph (a) is accompanied by an auditor's report that does not contain a qualification of opinion relating to closing inventory, and
 - (c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year that contained a qualification of opinion relating to inventory.
3. If an issuer has, or will account for a business referred to in C.1 using the equity method, then financial statements for a business required by Part C are not required to be included if:
 - (a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that:

- (i) summarizes information as to the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
- (b) the financial information provided under D.3(a) for the most recently completed financial year has been audited, or has been derived from audited financial statements of the business; and
- (c) the offering memorandum discloses that:
- (i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under D.3(a) has been derived; and
 - (ii) the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was issued without a reservation of opinion.

If the financial information included in an offering memorandum under D.3(a) has been derived from financial statements of a business incorporated or organized in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information must be accompanied by a note that explains and quantifies the effect of material differences between Canadian GAAP and the foreign GAAP.

4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if the acquisition is significant based only on the asset test or:
- (a) the issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those financial statements do not exist or the issuer does not have access to those financial statements,
 - (b) the acquisition was not or will not be accounted for as a "reverse take-over" as defined in NI 51-102,
 - (c) the business did not or does not constitute a "reportable segment" of the seller, as defined in section 1701 of the CICA Handbook, at the time of acquisition, and
 - (d) the offering memorandum contains alternative disclosure for the business which includes:
 - (i) an operating statement for each of the financial periods for which financial statements would, but for this section, be required under C.4, presenting for the business, at a minimum, the following line items:
 - A) gross revenue,
 - B) royalty expenses,
 - C) production costs, and
 - D) operating income,

The operating statement for the most recently completed financial period referred to in C.4(b)(i) must be audited.

- (ii) a description of the property or properties and the interest acquired by the issuer,
- (iii) information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates,
- (iv) actual production volumes of the property for the most recently completed year, and
- (v) estimated production volumes of the property for the first year reflected in the estimate disclosed under D.4(d)(iv).

5. Financial statements for a business that is an interest in an oil and gas property or for the acquisition or proposed acquisition by an issuer of a property are not required to be audited if during the 12 months preceding the date of the acquisition or the proposed date of an acquisition, the daily average production of the property on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil) is less than 20 per cent of the total daily average production of the seller for the same or similar periods and:
- (i) despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,
 - (ii) the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and
 - (iii) the offering memorandum discloses
 - 1. that the issuer was unable to obtain an audited operating statement,
 - 2. the reasons for that inability,
 - 3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(b)(ii), and
 - 4. that the results presented in the operating statements may have been materially different if the statements had been audited.

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APPENDIX "E"

Form 45-106F2

Offering Memorandum for Non-Qualifying Issuers

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office:

Address:

Phone #:

E-mail address:

Fax #:

Currently listed or quoted? [If no, state: "These securities do not trade on any exchange or market". If yes, state where, e.g., TSX/TSX Venture Exchange.]

Reporting issuer? [Yes/No. If yes, state where.]

SEDAR filer? [Yes/No]

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum, state "\$0" as the minimum and also state: "You may be the only purchaser."]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income tax consequences: There are important tax consequences to these securities. See item 6. [If income tax consequences are not material, delete this item.]

Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]

Resale restrictions

State: "You will be restricted from selling your securities for [4 months and a day/an indefinite period]. See item ~~40-11~~."

Purchaser's rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have the right to sue either for damages or to cancel the agreement. See item ~~44-12~~."

State in bold type:

"No securities regulatory authority has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item ~~8-9~~."

[All of the above information must appear on a single cover page.]

Item 1: Use of ~~Net Proceeds~~ Available Funds

1.1 ~~Net Proceeds~~ Funds - Using the following table, disclose the ~~net proceeds of the offering~~ funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, please provide details about each additional source of funding. If there is no minimum offering, state "\$0" as the minimum.

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit.)	\$	\$
D	Net proceeds Available funds: $D = A - (B+C)$	\$	\$
E.	<u>Additional sources of funding required</u>	\$	\$
F.	<u>Total: D+E</u>	\$	\$

1.2 Use of ~~Net Proceeds~~ Available Funds - Using the following table, provide a detailed breakdown of how the issuer will use the ~~net proceeds available funds~~. If any of the ~~net proceeds available funds~~ will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the ~~net proceeds available funds~~ to be applied against the working capital deficiency. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of net proceeds available funds listed in order of priority	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$
<u>Total: Equal to F in the Funds table above</u>	\$	\$

1.3 Reallocation - The ~~net proceeds available funds~~ must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the ~~net proceeds available funds~~ may be reallocated, include the following statement:

"We intend to spend the ~~net proceeds available funds~~ as stated. We will reallocate funds only for sound business reasons."

1.4 Working Capital Deficiency - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of ~~net proceeds available funds~~, state how the issuer intends to eliminate or manage the deficiency.

Item 2: Business of [name of issuer or other term used to refer to issuer]

2.1 Structure - State the business structure (e.g., partnership, corporation or trust), the statute and the province, state or other jurisdiction under which the issuer is incorporated, continued or organized, and the date of incorporation, continuance or organization.

2.2 Our Business - Describe the issuer's business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. For a non-resource issuer this disclosure may include principal products or services, operations, market ~~and~~ marketing plans and strategies and a discussion of the issuer's current and prospective competitors. For a resource issuer this will require a description of principal properties (including interest held) and ~~may include disclosure of a summary of material information including, if applicable:~~ the stage of development, reserves, geology, operations, production and mineral ~~or resource~~ reserves or mineral resources being explored or developed. Generally, this description should not exceed 2 pages. A resource issuer who discloses information about its oil and gas activities must follow General Instruction A.9 of this Form.

2.3 Development of Business - Describe (generally, in one or two paragraphs) the general development of the issuer's business over at least its two most recently completed financial years and any subsequent period. Include the major events that have occurred or conditions that have influenced (favourably or unfavourably) the development of the issuer.

2.4 Long Term Objectives - Disclose the issuer's long term objectives.

2.5 Short Term Objectives and How We Intend to Achieve Them

- (a) Disclose the issuer's objectives for the next 12 months.
- (b) Using the following table, disclose how the issuer intends to meet those objectives for the next 12 months.

What we must do and how we will do it	Target completion date or, if not known, number of months to complete	Our cost to complete
	\$	\$
	\$	\$

2.6 Insufficient Proceeds Funds

If applicable, disclose that the proceeds funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and all outstanding conditions that must be satisfied.

2.7 Material Agreements - Disclose the key terms of all material agreements

- (a) to which the issuer is currently a party, or
- (b) with a related party

including the following information:

- (i) if the agreement is with a related party, the name of the related party and the relationship,
- (ii) a description of any asset, property or interest acquired, disposed of, leased, under option, etc.,
- (iii) a description of any service provided,
- (iv) purchase price and payment terms (e.g., paid in instalments, cash, securities or work commitments),
- (v) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate,
- (vi) the date of the agreement,
- (vii) the amount of any finder's fee or commission paid or payable to a related party in connection with the agreement, and
- (viii) any material outstanding obligations under the agreement.

Item 3: Interests of Directors, Management, Promoters and Principal Holders

3.1 Compensation and Securities Held - Using the following table, provide the specified information about each director, officer and promoter of the issuer and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a "principal holder"). If the principal holder is not an individual, state in a note to the table the name of any person that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder. If the issuer has not completed its first financial year then include compensation paid since inception. Compensation includes any form of remuneration including cash, shares and options.

Name and municipality of principal residence	Positions held (e.g., director, officer, promoter and/or principal holder) and the date of obtaining that position	Compensation paid by issuer <u>or related party</u> in the most recently completed financial year and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of min. offering	Number, type and percentage of securities of the issuer held after completion of max. offering

3.2 Management Experience - Using the following table, disclose the principal occupations of the directors and executive officers over the past five years. In addition, for each individual, describe any relevant experience in a business similar to the issuer's.

Name	Principal occupation and related experience

(2) **3.3 Penalties, Sanctions and Bankruptcy**

- (a) Disclose any penalty or sanction (including the reason for it and whether it is currently in effect) that has been in effect during the last 10 years against
- (i) a director, executive officer or control person of the issuer, or
 - (ii) an issuer of which a person referred to in (i) above was a director, executive officer or control person at the time.
- (b) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets, that has been in effect during the last 10 years with regard to any
- (i) director, executive officer or control person of the issuer, or
 - (ii) issuer of which a person referred to in (i) above was a director, executive officer or control person at that time.

Item 4: Capital Structure

(3) **4.1 Share Capital** - Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

(1) **4.2 Long Term Debt** - Using the following table, provide the required information about outstanding long term debt of the issuer. Disclose the current portion of the long-term debt due within 12 months of the date of the offering memorandum. If the securities being offered are debt securities, add a column to the table disclosing the amount of debt that will be outstanding after both the minimum and maximum offering. If the debt is owed to a related party, indicate that in a note to the table and identify the related party.

Description of long term debt (including whether secured)	Interest rate	Repayment terms	Amount outstanding at [a date not more than 30 days prior to the offering memorandum date]
			\$
			\$

4.3 Prior Sales - If the issuer has issued any securities of the class being offered under the offering memorandum (or convertible or exchangeable into the class being offered under the offering memorandum) within the last 12 months, use the following table to provide the information specified. If securities were issued in exchange for assets or services, describe in a note to the table the assets or services that were provided.

Date of issuance	Type of security issued	Number of securities issued	Price per security	Total funds received

Item 5: Securities Offered

5.1 Terms of Securities- Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

5.2 Subscription Procedure

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).
- (c) Disclose any conditions to closing, e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you."

6.2 If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide

- (a) a summary of the significant income tax consequences to Canadian residents, and
- (b) the name of the person providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

- (a) a description of each type of compensation and the estimated amount to be paid for each type,
- (b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date), and
- (d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Other Material Facts

Give particulars of any material facts about the securities being distributed that are not disclosed under any other items and for which failure to disclose would constitute a misrepresentation in the offering memorandum.

Item 9: ~~Item 8~~-Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
 - arbitrary determination of price,
 - no market or an illiquid market for the securities,
 - resale restrictions, and
 - subordination of debt securities.

- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
 - insufficient funds to accomplish the issuer's business objectives,
 - no history or a limited history of sales or profits,
 - lack of specific management or technical expertise,
 - management's regulatory and business track record,
 - dependence on key employees, suppliers or agreements,
 - dependence on financial viability of guarantor,
 - pending and outstanding litigation, and
 - political risk factors.

- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
 - environmental and industry regulation,
 - product obsolescence, and
 - competition.

Item 10: ~~Item 9~~-Reporting Obligations

10.1 ~~9.1~~-Disclose the documents that will be sent to purchasers on an annual or on-going basis.

10.2 ~~9.2~~-If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 11: ~~Item 10~~-Resale Restrictions

11.1 ~~10.1~~-General Statement - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan, state:

"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation."

11.2 ~~10.2~~-Restricted Period - For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan state one of the following, as applicable:

- (a) If the issuer is not a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the date [insert name of issuer or other term used to refer to the issuer] becomes a reporting issuer in any province or territory of Canada."

- (b) If the issuer is a reporting issuer in a jurisdiction at the distribution date state:

"Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date."

11.3 40.3 Manitoba Resale Restrictions - For trades in Manitoba, if the issuer will not be a reporting issuer in a jurisdiction at the time the security is acquired by the purchaser state:

"Unless permitted under securities legislation, you must not trade the securities without the prior written consent of the regulator in Manitoba unless

- (a) [name of issuer or other term used to refer to issuer] has filed a prospectus with the regulator in Manitoba with respect to the securities you have purchased and the regulator in Manitoba has issued a receipt for that prospectus, or
- (b) you have held the securities for at least 12 months.

The regulator in Manitoba will consent to your trade if the regulator is of the opinion that to do so is not prejudicial to the public interest."

Item 12: ~~Item 11:~~ Purchasers' Rights

State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or
- (b) for damages against [state the name of issuer or other term used to refer to issuer and the title of any other person against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation].

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer or other term used to refer to issuer]:

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must

commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

Item 13: ~~Item 12:~~ Financial Statements

Include ~~all financial statements required~~ in the offering memorandum immediately before the certificate page of the offering memorandum all required financial statements as set out in the Instructions.

Item 14: ~~Item 13:~~ Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed]."

This offering memorandum does not contain a misrepresentation."

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),
- (b) on behalf of the directors of the issuer
 - (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a),
or
 - (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**Instructions for Completing
Form 45-106F2
Offering Memorandum for Non-Qualifying Issuers**

A. General Instructions

1. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
2. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
3. The issuer may include additional information in the offering memorandum other than that specifically required by the form. ~~However, the~~ An offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision.
4. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
5. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
6. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about "directors", provide disclosure for the general partner(s) of the limited partnership and the trustee(s) and manager of the trust. If a general partner, trustee or manager is a corporation, provide disclosure of the directors and executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.
7. When the term "related party" is used in this form, it refers to:
 - (a) a director, officer, promoter or control person of the issuer,
 - (b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence,
 - (c) in regard to a person referred to in (a) or (b), his or her spouse or a person with whom he or she is living in a marriage-like relationship,
 - (d) an insider of the issuer,
 - (e) a company controlled by one or more individuals referred to in (a) to (d), and
 - (f) in the case of an insider, promoter or control person that is not an individual, any person that controls that insider, promoter or control person.

(If the issuer is not a reporting issuer, the reference to "insider" includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.)
8. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
9. If an oil and gas issuer is disclosing information about its oil and gas activities it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101). Under section 5.3 of NI 51-101 disclosure of reserves or resources must be consistent with the

reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.

10. ~~9~~–Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
11. ~~10~~–If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 11 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.
12. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

B. Financial Statements - General

1. All financial statements, operating statements for an oil and gas property that is an acquired business or a business to be acquired and summarized financial information as to the assets, liabilities and results of operations of a business relating to an acquisition that is, or will be, an investment accounted for by the issuer using the equity method included in the offering memorandum must comply with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107), regardless of whether the issuer is a reporting issuer or not.
2. Include all financial statements required by these instructions in the offering memorandum immediately ~~prior to~~before the certificate page of the offering memorandum.
3. If the issuer has not completed one financial year or its first financial year end is less than 120 days from the date of the offering memorandum, include in the following offering memorandum financial statements of the issuer ~~in the offering memorandum consisting of~~:
- (a) ~~statements of an~~ income statement, a statement of retained earnings and a cash flows flow statement for the period from inception to a date not more than ~~60~~90 days before the date of the offering memorandum, ~~and~~
 - (b) a balance sheet ~~dated as at the ending date~~end of the period referred to in paragraph (a), and
 - (c) notes to the financial statements required by B.3(a).
4. If the issuer has completed one or more financial years, include in the following offering memorandum annual financial statements of the issuer ~~in the offering memorandum consisting of~~:
- (a) an income statement, a statement of retained earnings and a cash flow statement for
 - (i) ~~(a) statements of income, retained earnings and cash flows for the most recently completed financial year that ended more than 120 days before the date of the offering memorandum, and~~
 - (ii) the financial year immediately preceding the financial year in clause (i), if any,
 - (b) a balance sheet as at the end of each of the periods referred to in paragraph (a), and
 - (c) notes to the financial statements.
5. If the issuer has completed one or more financial years, include in the offering memorandum interim financial statements of the issuer comprised of:
- (a) an income statement, a statement of retained earnings and a cash flow statement for the most recently completed interim period that ended
 - (i) more than 60 days before the date of the offering memorandum, and

- (ii) after the year-end date of the financial statements required under B.4(a)(i).
- (b) an income statement, a statement of retained earnings and a cash flow statement for the corresponding period in the immediately preceding financial year, if any.
- (c) a balance sheet as at the end of the periods required by paragraphs (a) and (b), and
- (d) notes to the financial statements.
6. ~~(b) a balance sheet as at the last day of the most recently completed~~ An issuer is not required to include the financial statements for the period in B.4.(a)(ii) in an offering memorandum if the issuer includes financial statements for a financial year that ended moreless than 120 days before the date of the offering memorandum.
- ~~(c) statements of income, retained earnings and cash flows for the most recently completed interim period ending 9, 6, or 3 months before the end of the issuer's financial year, if that interim period ended more than 60 days before the date of the offering memorandum, and ended after the date of any financial statements required under B.4(a), and~~
- ~~(d) a balance sheet dated as at the ending date of the statements required by B.4(c).~~
5. ~~If financial statements of the issuer for a more recent annual or interim period than those required by B.3 or B.4 have been prepared, include those more recent financial statements in the offering memorandum.~~
6. ~~If the issuer has changed its year end, refer to NI 51-102 for guidance concerning interim periods in a transition year. To satisfy B.4(c) in a transition year, provide financial statements for the most recently completed interim period that ended more than 60 days before the date of the offering memorandum and ended after the date of any financial statements required under B.4(a).~~
7. ~~If the issuer has completed two or more financial years that ended more than 120 days from the date of the offering memorandum, the annual financial statements required under B.4(a) and (b) must include comparatives for the prior year. The interim financial statements required under B.4(c) and (d) may exclude comparatives if financial statements for the comparative periods were not previously prepared. For an issuer that is not an investment fund, the term "interim period" has the meaning set out in NI 51-102. In most cases, an interim period is a period ending nine, six, or three months before the end of a financial year. For an issuer that is an investment fund, the term "interim period" has the meaning set out in National Instrument 81-106 – *Investment Fund Continuous Disclosure* (NI 81-106).~~
8. The comparative financial information required under B.5(b) and (c) may be omitted if not previously prepared.
9. ~~8. The annual financial statements required under B.4(a) and (b) must be audited in accordance with the requirements of NI 52-107. The audit report must be included in the offering memorandum. by B.3 and the financial statements of the most recently completed financial period referred to in B.4 must be audited. The financial statements required under B.3, B.4(c) and (d) and B.55, B.6 and the comparatives comparative financial information required by B.74 may be unaudited; however, if any of those financial statements have been audited, the audit auditor's report on them must be included in the offering memorandum. Refer to National Instrument 52-108 *Auditor Oversight* for requirements for auditors of reporting issuers.~~
10. Refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to reporting issuers and public accounting firms.
11. ~~9. All unaudited financial statements must indicate in bold that the financial statements have not been audited and unaudited comparatives must be clearly labelled as unaudited.~~
12. ~~10. If the offering memorandum does not contain audited financial statements for the issuer's most recently completed financial year, and if the distribution is ongoing, update the offering memorandum to include the annual audited financial statements and the audit accompanying auditor's report as soon as the issuer has approved the audited financial statements, but in any event no later than the 120th day following the financial year end.~~
13. ~~11. The offering memorandum does not have to be updated to include interim financial statements for periods completed after the date 60 days prior to the date of the offering memorandum unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.~~
12. ~~Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum,~~

14. Forward looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. For an issuer that is not a reporting issuer, references to "reporting issuer" in section 4A.2, section 4A.3 and Part 4B of NI 51-102 should be read as references to an "issuer". Additional guidance may be found in the companion policy to NI 51-102.

15. ~~13.~~ If the issuer is a limited partnership, in addition to the financial statements required for the issuer, include in the offering memorandum the financial statements required by in accordance with Part B ~~offer~~ for the general partner and, if the limited partnership has active operations, ~~offer~~ for the limited partnership.

C. Financial Statements - Business Acquisitions

1. If the issuer

(a) has acquired a business during the past two years and the audited ~~and/or unaudited consolidated~~ financial statements of the issuer included in the offering memorandum do not include the results of the acquired business for 429 consecutive months, or

(b) is proposing to acquire a business and ~~either:~~

(i) ~~is obligated to complete the acquisition, or~~

(ii) ~~has the right to acquire the business and has decided to complete the acquisition, the acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high.~~

include the financial statements specified in C.4 for the business if either of the test tests in C.2 is met, irrespective of how the issuer accounts, or will account, for the acquisition.

2. Include the financial statements specified in C.4 for a business referred to in C.1 if either:

(a) the issuer's proportionate share of the consolidated assets of the business exceeds 40% of the consolidated assets of the issuer calculated using the ~~most recent~~ annual financial statements of each of the issuer and the business for the most recently completed financial year of each that ended before the date of the acquisition or, for a proposed date of acquisition, the date of the offering memorandum or

(b) the issuer's consolidated investments in and advances to the business as at the date of the acquisition or the proposed date of acquisition exceeds 40% of the consolidated assets of the issuer, excluding any investments in or advances to the business, as at the ~~end last day~~ of the issuer's most recently completed financial year that ended before the date of the acquisition or the date of the offering memorandum for a proposed date of acquisition.

3. ~~Where~~ If an issuer or a business referred to in C.1 has not yet completed a financial year, ~~or has completed its first financial year that ended within 120 days of the offering memorandum date and financial statements for that year are not yet available~~, use the financial statements referred to in B.3(b) or B.4(d) to make the calculations in C.2.

4. If a business referred to in C.1 meets either of the threshold tests in C.2, ~~include in the~~ under C.2 you must include in an offering memorandum the following financial statements for a business, the financial statements of the business must include:

(a) If the business has not completed one financial year ~~include~~ or its first financial year end is less than 120 days from the date of the offering memorandum

(i) an income statement, a statement of retained earnings and a cash flow statement

A) (i) ~~statements of income, retained earnings and cash flows for the period from inception to a date not more than 6090 days before the date of the offering memorandum, and/or~~

(ii) ~~a balance sheet dated as at the ending date of the statements required by C.4(a)(i).~~

B) ~~However, if the date of acquisition for a business precedes the ending date of the period referred to in C.4(a)(i), then provide financial statements A)~~ for the period from inception to the date

- of acquisition or a date not more than ~~30~~45 days before the date of acquisition.
- (ii) a balance sheet dated as at the end of the period referred to in clause (i), and
 - (iii) notes to the financial statements.
- (b) If the business has completed one or more financial years include
- (i) annual financial statements comprised of:
 - A) an income statement, a statement of retained earnings and a cash flow statement for the following annual periods:
 - ~~i. (i) statements of income, retained earnings and cash flows for the most recently completed financial year that ended before the date of acquisition and more than 120 days before the date of the offering memorandum, and~~
 - ii. the financial year immediately preceding the most recently completed financial year specified in clause i, if any.
 - B) ~~(ii) a balance sheet dated as at the ending date of the statements required by C.4(b)(i) end of each of the periods specified in (A),~~
 - C) notes to the financial statements, and
 - (ii) interim financial statements comprised of:
 - A) ~~(iii) statements of an income, statement, a statement of retained earnings and a cash flowsflow statement for either:~~
 - i. A) the most recently completed 3, 6 or 9 month year-to-date interim period and the three month period ending on the last date of the interim period that ended before the date of acquisition and more than 60 days before the date of the offering memorandum and ended after the date of the financial statements required under C.4(b)(i)(A)i, or
 - ii. B) the period from the first day after the financial year referred to in C.4(b)(i) to the date of acquisition or a date not more than 30 days before the date of acquisition and after the period end in C.4(b)(ii)(A)i, and
 - B) an income statement, a statement of retained earnings and a cash flow statement for the corresponding period in the immediately preceding financial year, if any.
 - C) ~~(iv) a balance sheet dated as at the ending date end of the statements periods required by C.4(b)(iii)(A) and (B), and~~
 - D) notes to the financial statements.

Refer to Instruction B.7 for the meaning of "interim period".

5. The annual information for the most recently completed financial period referred to in C.4(b)(i) must be audited and accompanied by an auditor's report. The financial statements required under C.4(a), C.4(b)(i) and (ii) must be audited in accordance with the requirements of Part 6 of NI 52-107. The audit report must be included in the offering memorandum. The financial statements required under C.4(a) and (i) and the comparative financial information required by C.4(b)(iii) and (iv)i may be unaudited; however, if any of those financial statements or comparative financial information have been audited, the audit auditor's report must be included in the offering memorandum.
6. If the offering memorandum does not contain audited financial statements for a business referred to in C.1 for the business's most recently completed financial year that ended before the date of acquisition and the distribution is ongoing, update the offering memorandum to include those financial statements and the audit accompanied by an auditor's report when they are available, but in any event no later than the date 120 days following the year end.

7. The term "business" should be evaluated in light of the facts and circumstances involved. Generally, a separate entity or a subsidiary or division of an entity is a business and, in certain circumstances, a lesser component of an entity may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. The subject of an acquisition should be considered a business where there is, or the issuer expects there will be, continuity of operations. The issuer should consider:
- (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition, and
 - (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.
8. If ~~an acquisition transaction~~ an acquisition transaction for which the likelihood of the transaction being completed is high has been or will be accounted for as a reverse take-over as defined in NI 51-102, include financial statements for the legal subsidiary in the offering memorandum in accordance with Part ~~BA~~ BA. The legal parent, as that term is defined in the CICA Handbook, is considered to be the business acquired. C.1 may also require financial statements of the legal parent.
9. An issuer ~~is exempt from~~ satisfies the requirements in C.4 if the issuer includes in the offering memorandum the financial statements required in a business acquisition report under NI 51-102.

D. Financial Statement - Exemptions

1. An issuer will satisfy the financial statement requirements of this form if it includes the financial statements required by securities legislation for a prospectus.
2. Notwithstanding the requirements in section 3.2(2a)4 of NI 52-107, an ~~audit~~ auditor's report that accompanies financial statements of an issuer or a business contained in an offering memorandum of a non-reporting issuer may contain a reservation qualification of opinion relating to ~~opening inventory unless the issuer previously filed an audit report on inventory if~~
- (a) the issuer includes in the offering memorandum a balance sheet that is for a date that is subsequent to the date to which the qualification relates, and
 - (b) the balance sheet referred to in paragraph (a) is accompanied by an auditor's report that does not contain a qualification of opinion relating to closing inventory, and
 - (c) the issuer has not previously filed financial statements for the same entity accompanied by an auditor's report for a prior year in which there was a reservation that contained a qualification of opinion relating to inventory.
3. If an ~~acquisition is~~ issuer has, or will be, an investment accounted for ~~account for~~ account for a business referred to in C.1 using the equity method, ~~as that term is defined in the CICA Handbook, then~~ financial statements for a business required by Part C.4 are not required to be included in the offering memorandum if:
- (a) the offering memorandum includes disclosure for the periods for which financial statements are otherwise required under Part C that:
 - (i) summarizes information as to the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
 - (b) the financial information provided under D.3(a) for ~~any~~ the most recently completed financial year has been audited, or has been derived from audited financial statements of the business; and
 - (c) the offering memorandum discloses that:
 - (i) the financial information provided under D.3(a) for any completed financial year has been audited, or identifies the audited financial statements from which the financial information provided under D.3(a) has been derived; and

- ~~(ii)-(ii)~~ the audit opinion with respect to the financial information or financial statements referred to in D.3(c)(i) was issued without a reservation of opinion.

If the financial information included in an offering memorandum under D.3(a) has been derived from financial statements of a business incorporated or organized in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information must be accompanied by a note that explains and quantifies the effect of material differences between Canadian GAAP and the foreign GAAP.

4. Financial statements relating to the acquisition or proposed acquisition of a business that is an interest in an oil and gas property are not required to be included in an offering memorandum if the acquisition is significant based only on the asset test or:

- (a) ~~the required issuer is unable to provide the financial statements in respect of the significant acquisition otherwise required because those~~ financial statements do not exist or the ~~reporting~~ issuer does not have access to those financial statements,
- (b) the acquisition was not or will not be accounted for as a "reverse take-over" as defined in ~~the CICA Handbook, NI 51-102,~~
- (c) the ~~property~~ business did not or does not constitute a "reportable segment" of the seller, as defined in section 1701 of the CICA Handbook, at the time of acquisition, and
- (d) the offering memorandum contains alternative disclosure for the ~~property~~ business which includes:
- (i) ~~an operating statement (which must be accompanied by an audit report if it is prepared as an alternative to audited annual~~ for each of the financial periods for which financial statements) would, but for this section, be required under C.4, presenting for the business, at a minimum, the following line items:
- A) gross revenue,
- B) royalty expenses,
- C) production costs, and
- D) operating income,

The operating statement for the most recently completed financial period referred to in C.4(b)(i) must be audited.

- (ii) a description of the property or properties and the interest acquired by the issuer,
- (iii) ~~(ii)-~~information with respect to the estimated reserves and related future net revenue attributable to the business, the material assumptions used in preparing the estimates and the identity and relationship to the issuer or to the seller of the person who prepared the estimates, ~~and other relevant information regarding the property,~~
- (iv) ~~(iii)-~~actual production volumes of the property for the most recently completed year, and
- (v) ~~(iv)-~~estimated production volumes of the property for the next year, based on information in the reserve report first year reflected in the estimate disclosed under D.4(d)(iv).

- ~~5. Financial statements for a business that is an interest in an oil and gas property or for the acquisition or proposed acquisition by an issuer of a property are not required to be audited if:~~

- ~~(a) the property was acquired prior to December 31, 2000, and the offering memorandum states that, despite making reasonable efforts, the issuer was unable to obtain audited operating statements because the seller refused to provide such audited statements or to permit access to the information necessary to audit the statements, or~~
- (b)-5. Financial statements for a business that is an interest in an oil and gas property or for the acquisition or proposed acquisition by an issuer of a property are not required to be audited if during the 12 months

preceding the date of the acquisition or the proposed date of an acquisition, the daily average production of the property on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil) is less than 20 per cent of the total daily average production of the seller for the same or similar periods and:

- ~~(i)-(i)~~ despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property,
- ~~(ii)-(ii)~~ the purchase agreement includes representations and warranties by the seller that the amounts presented in the operating statement agree to the seller's books and records, and
- ~~(iii)-(iii)~~ the offering memorandum discloses
 1. that the issuer was unable to obtain an audited operating statement,
 2. the reasons for that inability,
 3. the fact that the purchase agreement includes the representations and warranties referred to in D.5(b)(ii), and
 4. that the results presented in the operating statements may have been materially different if the statements had been audited.

APPENDIX "F"

**Proposed Amended and Restated
Form 45-106F3
Offering Memorandum for Qualifying Issuers**

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office:

Address:

Phone #:

E-mail address:

Fax #:

Where currently listed or quoted? [e.g., TSX/TSX Venture Exchange]

Jurisdictions in which the issuer is a reporting issuer:

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum state "\$0" as the minimum and also state: "You may be the only purchaser."]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income Tax consequences: "There are important tax consequences to these securities. See item 6." [If income tax consequences are not material, delete this item.]

Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]

Resale restrictions

State: "You will be restricted from selling your securities for 4 months and a day. See item 11".

Purchaser's rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have the right to sue either for damages or to cancel the agreement. See item 12."

State in bold type:

"No securities regulatory authority has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item 9."

[All of the above information must appear on a single cover page.]

Item 1: Use of Available Funds

1.1 Available Funds - Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, please provide details about each additional source of funding. If there is no minimum offering, state "\$0" as the minimum.

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$
D	Available funds: $D = A - (B+C)$	\$	\$
E.	Additional sources of funding required	\$	\$
F.	Total: $D+E$	\$	\$

1.2 Use of Available Funds - Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the available funds to be applied against the working capital deficiency. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority.	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$
Total: Equal to F in the Funds table above	\$	\$

1.3 Reallocation - The available funds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the available funds may be reallocated, include the following statement:

"We intend to spend the available funds as stated. We will reallocate funds only for sound business reasons."

1.4 Working Capital Deficiency - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

1.5 Insufficient Funds - If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and that there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and any outstanding conditions that must be satisfied.

Item 2: Information About [name of issuer or other term used to refer to issuer]

2.1 Business Summary - Briefly (in one or two paragraphs) describe the business intended to be carried on by the issuer over the next 12 months. State whether this represents a change of business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. If the issuer is a non-resource issuer, describe the products that the issuer is or will be developing or producing and the stage of development of each of the products. If the issuer is a resource issuer, state: whether the issuer's principal properties are primarily in the exploration or in the development or production stage; what resources the issuer is engaged in exploring, developing or producing; and the locations of the issuer's principal properties. A resource issuer who discloses information about its oil and gas activities must follow General Instruction A-10 of this Form.

2.2 Existing Documents Incorporated by Reference - State:

"Information has been incorporated by reference into this offering memorandum from documents listed in the table below, which have been filed with securities regulatory authorities in Canada. The documents incorporated by reference are available for viewing on the SEDAR website at www.sedar.com. In addition, copies of the documents may be obtained on request without charge from [insert complete address and telephone and the name of a contact person].

Documents listed in the table and information provided in those documents are not incorporated by reference to the extent that their contents are modified or superseded by a statement in this offering memorandum or in any other subsequently filed document that is also incorporated by reference in this offering memorandum."

Using the following table, list all of the documents incorporated by reference (as required by Instruction D.1):

Description of document (In the case of material change reports, provide a brief description of the nature of the material change)	Date of document

2.3 Existing Documents Not Incorporated by Reference - State:

"Other documents available on the SEDAR website (for example, most press releases, take-over bid circulars, prospectuses and rights offering circulars) are not incorporated by reference into this offering memorandum unless they are specifically referenced in the table above. Your rights as described in item 11 of this offering memorandum apply only in respect of information contained in this offering memorandum and documents or information incorporated by reference."

2.4 Existing Information Not Incorporated by Reference - Certain specified information (as outlined in Instruction D.2) contained in the documents incorporated by reference may be, but is not required to be, incorporated by reference into the offering memorandum. If the issuer does not wish to incorporate that information into the offering memorandum, the issuer must state that and include a statement in the offering memorandum identifying:

- (a) the information that is not being incorporated by reference, and
- (b) the document in which the information is contained.

2.5 Future Documents Not Incorporated by Reference - State:

"Documents filed after the date of this offering memorandum are not deemed to be incorporated into this offering memorandum. However, if you subscribe for securities and an event occurs, or there is a change in our business or affairs, that makes the certificate to this offering memorandum no longer true, we will provide you with an update of this offering memorandum, including a newly dated and signed certificate, and will not accept your subscription until you have re-signed the agreement to purchase the securities."

Item 3: Interests of Directors, Executive Officers, Promoters and Principal Holders

3.1 Using the following table, provide information about each director, executive officer, promoter and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a "principal holder"). If the principal holder is not an individual, state in a note to the table the name of any person or company that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

Name and municipality of principal residence	Position(s) with the issuer

3.2 State: "You can obtain further information about directors and executive officers from [insert the name and date of the document(s) with the most current information, e.g., management information circular, annual information form or material change report]."

3.3 State: "Current information regarding the securities held by directors, executive officers and principal holders can be obtained from [refer to the SEDI website at www.sedi.ca or, if information cannot be obtained from the SEDI website, refer to the securities regulatory authority(ies) from which the information can be obtained, including any website(s)]. [Name of issuer or other term used to refer to issuer] can not guarantee the accuracy of this information."

Item 4: Capital Structure

Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

Item 5: Securities Offered

5.1 Terms of Securities - Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

5.2 Subscription Procedure

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).
- (c) Disclose any conditions to closing e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you".

6.2 If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide

- (a) a summary of the significant income tax consequences to Canadian residents, and
- (b) the name of the person or company providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person or company providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person or company has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

- (a) a description of each type of compensation and the estimated amount to be paid for each type,
- (b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date), and
- (d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Other Material Facts

Give particulars of any material facts about the securities being distributed that are not disclosed under any other items and for which failure to disclose would constitute a misrepresentation in the offering memorandum.

Item 9: Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
 - arbitrary determination of price,
 - no market or an illiquid market for the securities,
 - resale restrictions, and
 - subordination of debt securities.

- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
 - insufficient funds to accomplish the issuer's business objectives,
 - no history or a limited history of sales or profits,
 - lack of specific management or technical expertise,
 - management's regulatory and business track record,
 - dependence on key employees, suppliers or agreements,
 - dependence on financial viability of guarantor,
 - pending and outstanding litigation, and
 - political risk factors.

- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
 - environmental and industry regulation,
 - product obsolescence, and
 - competition.

Item 10: Reporting Obligations

10.1 Disclose the documents that will be sent to purchasers on an annual or on-going basis.

10.2 If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 11: Resale Restrictions

For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan, state:

"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation.

Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date."

Item 12: Purchasers' Rights

State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two -Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or

- (b) for damages against [state the name of issuer or other term used to refer to issuer and the title of any other person or company against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation].

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer or other term used to refer to issuer]:

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

Item 13: Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),
- (b) on behalf of the directors of the issuer
- (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a),
or
- (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**Instructions for Completing
Form 45-106F3
Offering Memorandum for Qualifying Issuers**

A. General Instructions

1. Only a "qualifying issuer" may use this form.
2. An issuer using this form to draft an offering memorandum must incorporate by reference certain parts of its existing continuous disclosure base. An issuer that does not want to do this must use Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.
3. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
4. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
5. The issuer may include additional information in the offering memorandum other than that specifically required by the form. The offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision.
6. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
7. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
8. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about "directors", provide disclosure for the general partner(s) of the limited partnership and the trustee(s) and manager of the trust. If a general partner, trustee or manager is a corporation, provide disclosure of the directors and executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.
9. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
10. If an oil and gas issuer is disclosing information about its oil and gas activities it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). Under section 5.3 of NI 51-101 disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.
11. Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
12. If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item 12 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.

13. During the course of a distribution of securities, any material forward-looking information disseminated must only be that which is set out in the offering memorandum. If an extract of FOFI, as defined in NI 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

B. Financial Statements

1. All financial statements incorporated by reference into the offering memorandum must comply with NI 51-102 and National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.
2. Forward-looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

C. Required Updates to the Offering Memorandum

1. If the offering memorandum does not incorporate by reference the issuer's AIF, and audited financial statements for its most recently completed financial year, update the offering memorandum for any financial statements that are required to be filed prior to the distribution to incorporate by reference the documents as soon as the documents are filed on SEDAR.
2. Except for documents referred to in C.1, the offering memorandum does not have to be updated to incorporate by reference interim financial statements or other documents referred to in D.1 unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.

D. Information about the Issuer

1. *Existing Documents Incorporated by Reference* - In addition to any other document that an issuer may choose to incorporate by reference, the issuer must incorporate the following documents:
 - (a) the issuer's AIF for the issuer's most recently completed financial year for which annual financial statements are either required to be filed or have been filed,
 - (b) material change reports, except confidential material change reports, filed since the end of the financial year in respect of which the issuer's AIF is filed,
 - (c) the interim financial statements for the issuer's most recently completed interim period for which the issuer prepares interim financial statements that are required to be filed and which ends after the most recently completed financial year referred to in (d),
 - (d) the comparative financial statements, together with the accompanying auditor's report, for the issuer's most recently completed financial year for which annual financial statements are required to be filed or have been filed,
 - (e) if, before the offering memorandum is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under D.1(c) and (d) is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication,
 - (f) management's discussion and analysis (MD&A) as required under NI 51-102 for the period specified in D.1(c) and D.1(d),
 - (g) each business acquisition report required to be filed under NI 51-102 for acquisitions completed since the beginning of the financial year in respect of which the issuer's AIF is filed, unless the issuer incorporated the business acquisition report by reference into its AIF for its most recently completed financial year for which annual financial statements are either required to be filed or have been filed, or incorporated at least 9 months of the acquired business or related businesses operations into the issuer's most recent audited financial statements,
 - (h) any information circular filed by the issuer since the beginning of the financial year in respect of which the issuer's most recent AIF is filed, other than an information circular prepared in connection with an annual

general meeting if the issuer has filed and incorporated by reference an information circular for a subsequent annual general meeting,

- '
- (i) if the issuer has oil and gas activities, as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, the most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3, filed by an SEC issuer, unless
 - (i) the issuer's current AIF is in the form of Form 51-102F2; or
 - (ii) the issuer is otherwise exempted from the requirements of NI 51-101,
 - (k) Any other disclosure document which the issuer has filed pursuant to an undertaking to a provincial and territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's most recent AIF is filed, and
 - (l) Any other disclosure document of the type listed above that the issuer has filed pursuant to an exemption from any requirement under securities legislation since the beginning of the financial year in respect of which the issuer's most recent AIF is filed.
2. *Mineral Property* – If a material part of the funds available as a result of the distribution is to be expended on a particular mineral property and if the issuer's most recent AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.
- .

An issuer may incorporate any additional document provided that the document is available for viewing on the SEDAR website and that, on request by a purchaser, the issuer provides a copy of the document to the purchaser, without charge.

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APPENDIX "G"

Form 45-106F3

Offering Memorandum for Qualifying Issuers

Date: [Insert the date from the certificate page.]

The Issuer

Name:

Head office:

Address:

Phone #:

E-mail address:

Fax #:

Where currently listed or quoted? [e.g., TSX/TSX Venture Exchange]

Jurisdictions in which the issuer is a reporting issuer:

The Offering

Securities offered:

Price per security:

Minimum/Maximum offering: [If there is no minimum state "\$0" as the minimum and also state: "You may be the only purchaser."]

Minimum subscription amount: [State the minimum amount each investor must invest, or state "There is no minimum subscription amount an investor must invest."]

Payment terms:

Proposed closing date(s):

Income Tax consequences: "There are important tax consequences to these securities. See item 6." [If income tax consequences are not material, delete this item.]

Selling agent? [Yes/No. If yes, state "See item 7". The name of the selling agent may also be stated.]

Resale restrictions

State: "You will be restricted from selling your securities for 4 months and a day. See item ~~40~~11".

Purchaser's rights

State: "You have 2 business days to cancel your agreement to purchase these securities. If there is a misrepresentation in this offering memorandum, you have the right to sue either for damages or to cancel the agreement. See item ~~11~~12."

State in bold type:

"No securities regulatory authority has assessed the merits of these securities or reviewed this offering memorandum. Any representation to the contrary is an offence. This is a risky investment. See item ~~8~~9."

[All of the above information must appear on a single cover page.]

Item 1: Use of ~~Net Proceeds~~Available Funds

1.1 ~~Net Proceeds~~Available Funds - Using the following table, disclose the ~~net proceeds of the offering funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, please provide details about each additional source of funding. If there is no minimum offering, state "\$0" as the minimum.~~

		Assuming min. offering	Assuming max. offering
A	Amount to be raised by this offering	\$	\$
B	Selling commissions and fees	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$
D	Net proceeds <u>Available funds</u> : D = A - (B+C)	\$	\$
<u>E.</u>	<u>Additional sources of funding required</u>	<u>\$</u>	<u>\$</u>
<u>E.</u>	<u>Total: D+E</u>	<u>\$</u>	<u>\$</u>

1.2 Use of Net Proceeds Available Funds - Using the following table, provide a detailed breakdown of how the issuer will use the net proceeds available funds. If any of the net proceeds available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the net proceeds available funds to be applied against the working capital deficiency. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of <u>net proceeds available funds</u> listed in order of priority.	Assuming min. offering	Assuming max. offering
	\$	\$
	\$	\$
<u>Total: Equal to F in the Funds table above</u>	<u>\$</u>	<u>\$</u>

1.3 Reallocation - The net proceeds available funds must be used for the purposes disclosed in the offering memorandum. The board of directors can reallocate the proceeds to other uses only for sound business reasons. If the net proceeds available funds may be reallocated, include the following statement:

"We intend to spend the net proceeds available funds as stated. We will reallocate funds only for sound business reasons."

1.4 Working Capital Deficiency - State the amount of any working capital deficiency of the issuer as at a date not more than 30 days prior to the date of the offering memorandum. If the working capital deficiency will not be eliminated by the use of net proceeds available funds, state how the issuer intends to eliminate or manage the deficiency.

1.5 Insufficient Proceeds Funds - If applicable, disclose that the proceeds funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer's proposed objectives and that there is no assurance that alternative financing will be available. If alternative financing has been arranged, disclose the amount, source and any outstanding conditions that must be satisfied.

Item 2: Information About [name of issuer or other term used to refer to issuer]

2.1 Business Summary - Briefly (in one or two paragraphs) describe the business intended to be carried on by the issuer over the next 12 months. State whether this represents a change of business. The disclosure must provide sufficient information to enable a prospective purchaser to make an informed investment decision. If the issuer is a non-resource issuer, describe the products that the issuer is or will be developing or producing and the stage of development of each of the products. If the issuer is a ~~natural~~ resource issuer, state: whether the issuer's principal properties are primarily in the exploration or in the development or production stage; what resources the issuer is engaged in exploring, developing or producing; and the locations of the issuer's principal properties. A resource issuer who discloses information about its oil and gas activities must follow General Instruction A-10 of this Form.

2.2 Existing Documents Incorporated by Reference - State:

"Information has been incorporated by reference into this offering memorandum from documents listed in the table below, which have been filed with securities regulatory authorities in Canada. The documents incorporated by reference are available for viewing on the SEDAR website at www.sedar.com. In addition, copies of the documents may be obtained on request without charge from [insert complete address and telephone and the name of a contact person].

Documents listed in the table and information provided in those documents are not incorporated by reference to the extent that their contents are modified or superseded by a statement in this offering memorandum or in any other subsequently filed document that is also incorporated by reference in this offering memorandum."

Using the following table, list all of the documents incorporated by reference (as required by Instruction D.1):

Description of document (In the case of material change reports, provide a brief description of the nature of the material change)	Date of document

2.3 Existing Documents Not Incorporated by Reference - State:

"Other documents available on the SEDAR website (for example, most press releases, take-over bid circulars, prospectuses and rights offering circulars) are not incorporated by reference into this offering memorandum unless they are specifically referenced in the table above. Your rights as described in item 11 of this offering memorandum apply only in respect of information contained in this offering memorandum and documents or information incorporated by reference."

2.4 Existing Information Not Incorporated by Reference - Certain specified information (as outlined in Instruction D.2) contained in the documents incorporated by reference may be, but is not required to be, incorporated by reference into the offering memorandum. If the issuer does not wish to incorporate that information into the offering memorandum, the issuer must state that and include a statement in the offering memorandum identifying:

- (a) the information that is not being incorporated by reference, and
- (b) the document in which the information is contained.

2.5 Future Documents Not Incorporated by Reference - State:

"Documents filed after the date of this offering memorandum are not deemed to be incorporated into this offering memorandum. However, if you subscribe for securities and an event occurs, or there is a change in our business or affairs, that makes the certificate to this offering memorandum no longer true, we will provide you with an update of this offering memorandum, including a newly dated and signed certificate, and will not accept your subscription until you have re-signed the agreement to purchase the securities."

Item 3: Interests of Directors, Executive Officers, Promoters and Principal Holders

3.1 Using the following table, provide information about each director, executive officer, promoter and each person who, directly or indirectly, beneficially owns or controls 10% or more of any class of voting securities of the issuer (a "principal holder"). If the principal holder is not an individual, state in a note to the table the name of any person or company that, directly or indirectly, beneficially owns or controls more than 50% of the voting rights of the principal holder.

Name and municipality of principal residence	Position(s) with the issuer

3.2 State: "You can obtain further information about directors and executive officers from [insert the name and date of the document(s) with the most current information, e.g., management information circular, annual information form or material change report]."

3.3 State: "Current information regarding the securities held by directors, executive officers and principal holders can be obtained from [refer to the SEDI website at www.sedi.ca or, if information cannot be obtained from the SEDI website, refer to the securities regulatory authority(ies) from which the information can be obtained, including any website(s)]. [Name of issuer or other term used to refer to issuer] can not guarantee the accuracy of this information."

Item 4: Capital Structure

Using the following table, provide the required information about outstanding securities of the issuer (including options, warrants and other securities convertible into shares). If necessary, notes to the table may be added to describe the material terms of the securities.

Description of security	Number authorized to be issued	Price per security	Number outstanding as at [a date not more than 30 days prior to the offering memorandum date]	Number outstanding after min. offering	Number outstanding after max. offering

Item 5: Securities Offered

5.1 Terms of Securities - Describe the material terms of the securities being offered, including:

- (a) voting rights or restrictions on voting,
- (b) conversion or exercise price and date of expiry,
- (c) rights of redemption or retraction, and
- (d) interest rates or dividend rates.

5.2 Subscription Procedure

- (a) Describe how a purchaser can subscribe for the securities and the method of payment.
- (b) State that the consideration will be held in trust and the period that it will be held (refer at least to the mandatory two day period).
- (c) Disclose any conditions to closing e.g., receipt of additional funds from other sources. If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met.

Item 6: Income Tax Consequences and RRSP Eligibility

6.1 State: "You should consult your own professional advisers to obtain advice on the income tax consequences that apply to you".

6.2 If income tax consequences are a material aspect of the securities being offered (e.g., flow-through shares), provide

- (a) a summary of the significant income tax consequences to Canadian residents, and
- (b) the name of the person or company providing the income tax disclosure in (a).

6.3 Provide advice regarding the RRSP eligibility of the securities and the name of the person or company providing the advice or state "Not all securities are eligible for investment in a registered retirement savings plan (RRSP). You should consult your own professional advisers to obtain advice on the RRSP eligibility of these securities."

Item 7: Compensation Paid to Sellers and Finders

If any person or company has or will receive any compensation (e.g., commission, corporate finance fee or finder's fee) in connection with the offering, provide the following information to the extent applicable:

- (a) a description of each type of compensation and the estimated amount to be paid for each type,
- (b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering),
- (c) details of any broker's warrants or agent's option (including number of securities under option, exercise price and expiry date), and
- (d) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8: Other Material Facts

Give particulars of any material facts about the securities being distributed that are not disclosed under any other items and for which failure to disclose would constitute a misrepresentation in the offering memorandum.

Item 9: ~~Item 8:~~ Risk Factors

Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to buy the issuer's securities.

Risk factors will generally fall into the following three categories:

- (a) Investment Risk - risks that are specific to the securities being offered. Some examples include
 - arbitrary determination of price,
 - no market or an illiquid market for the securities,
 - resale restrictions, and
 - subordination of debt securities.
- (b) Issuer Risk - risks that are specific to the issuer. Some examples include
 - insufficient funds to accomplish the issuer's business objectives,
 - no history or a limited history of sales or profits,
 - lack of specific management or technical expertise,
 - management's regulatory and business track record,
 - dependence on key employees, suppliers or agreements,
 - dependence on financial viability of guarantor,
 - pending and outstanding litigation, and
 - political risk factors.
- (c) Industry Risk - risks faced by the issuer because of the industry in which it operates. Some examples include
 - environmental and industry regulation,
 - product obsolescence, and
 - competition.

Item 10: ~~Item 9:~~ Reporting Obligations

10.1 ~~9.1~~ - Disclose the documents that will be sent to purchasers on an annual or on-going basis.

10.2 ~~9.2~~ - If corporate or securities information about the issuer is available from a government, regulatory authority, SRO or quotation and trade reporting system, disclose where that information can be located (including website address).

Item 11: ~~Item 10:~~ Resale Restrictions

For trades in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan, state:

"These securities will be subject to a number of resale restrictions, including a restriction on trading. Until the restriction on trading expires, you will not be able to trade the securities unless you comply with an exemption from the prospectus and registration requirements under securities legislation.

Unless permitted under securities legislation, you cannot trade the securities before the date that is 4 months and a day after the distribution date."

Item 12: ~~Item 11:~~ Purchasers' Rights

State the following:

"If you purchase these securities you will have certain rights, some of which are described below. For information about your rights you should consult a lawyer.

(1) Two -Day Cancellation Right - You can cancel your agreement to purchase these securities. To do so, you must send a notice to us by midnight on the 2nd business day after you sign the agreement to buy the securities.

(2) Statutory Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the trade occurs provides purchasers with statutory rights in the event of a misrepresentation in an offering memorandum. Modify the language, if necessary, to conform to the statutory rights.] If there is a misrepresentation in this offering memorandum, you have a statutory right to sue:

- (a) [name of issuer or other term used to refer to issuer] to cancel your agreement to buy these securities, or

- (b) for damages against [state the name of issuer or other term used to refer to issuer and the title of any other person or company against whom the rights are available].

This statutory right to sue is available to you whether or not you relied on the misrepresentation. However, there are various defences available to the persons or companies that you have a right to sue. In particular, they have a defence if you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within [state time period provided by the securities legislation]. You must commence your action for damages within [state time period provided by the securities legislation].

(3) Contractual Rights of Action in the Event of a Misrepresentation - [Insert this section only if the securities legislation of the jurisdiction in which the purchaser is resident does not provide purchasers with statutory rights in the event of a misrepresentation in an offering memorandum.] If there is a misrepresentation in this offering memorandum, you have a contractual right to sue [name of issuer or other term used to refer to issuer]:

- (a) to cancel your agreement to buy these securities, or
- (b) for damages.

This contractual right to sue is available to you whether or not you relied on the misrepresentation. However, in an action for damages, the amount you may recover will not exceed the price that you paid for your securities and will not include any part of the damages that [name of issuer or other term used to refer to issuer] proves does not represent the depreciation in value of the securities resulting from the misrepresentation. [Name of issuer or other term used to refer to issuer] has a defence if it proves that you knew of the misrepresentation when you purchased the securities.

If you intend to rely on the rights described in (a) or (b) above, you must do so within strict time limitations. You must commence your action to cancel the agreement within 180 days after you signed the agreement to purchase the securities. You must commence your action for damages within the earlier of 180 days after learning of the misrepresentation and 3 years after you signed the agreement to purchase the securities."

Item 13: ~~Item 42~~-Date and Certificate

State the following on the certificate page of the offering memorandum:

"Dated [insert the date the certificate page of the offering memorandum is signed].

This offering memorandum does not contain a misrepresentation."

The certificate must be signed by

- (a) the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity),
- (b) on behalf of the directors of the issuer
- (i) by any two directors who are authorized to sign other than the persons referred to in paragraph (a), or
- (ii) by all the directors of the issuer, and
- (c) by each promoter of the issuer.

**Instructions for Completing
Form 45-106F3
Offering Memorandum for Qualifying Issuers**

A. General Instructions

1. Only a "qualifying issuer" may use this form.
2. An issuer using this form to draft an offering memorandum must incorporate by reference certain parts of its existing continuous disclosure base. An issuer that does not want to do this must use Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.
3. Draft the offering memorandum so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
4. Address the items required by the form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
5. The issuer may include additional information in the offering memorandum other than that specifically required by the form. ~~However, the~~The offering memorandum is generally not required to contain the level of detail and extent of disclosure required by a prospectus. However, an offering memorandum must provide a prospective purchaser with sufficient information to make an informed investment decision.
6. The issuer may wrap the offering memorandum around a prospectus or similar document. However, all matters required to be disclosed by the offering memorandum must be addressed and the offering memorandum must provide a cross-reference to the page number or heading in the wrapped document where the relevant information is contained. The certificate to the offering memorandum must be modified to indicate that the offering memorandum, including the document around which it is wrapped, does not contain a misrepresentation.
7. It is an offence to make a misrepresentation in the offering memorandum. This applies both to information that is required by the form and to additional information that is provided.
8. If the issuer is a limited partnership or trust, where the offering memorandum form requires disclosure about "directors", provide disclosure for the general partner(s) of the limited partnership and the trustee(s) and manager of the trust. If a general partner, trustee or manager is a corporation, provide disclosure of the directors and executive officers of the general partner or manager and trustee. If the issuer is a limited partnership, the general partner must sign as promoter of the issuer and, if the general partner is a corporation, the chief executive officer, chief financial officer and directors of the general partner must sign as the chief executive officer, chief financial officer and directors of the issuer. If the issuer is a trust, each trustee and the manager of the trust must sign as promoters of the issuer. If any trustee is a corporation, the signing officers of the trustee must also sign as promoters. If the manager of the trust is a corporation, the chief executive officer, chief financial officer and directors of the manager must sign as the chief executive officer, chief financial officer and directors of the issuer.
9. Refer to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) when disclosing scientific or technical information for a mineral project of the issuer.
10. If an oil and gas issuer is disclosing information about its oil and gas activities it must ensure that the information is disclosed in accordance with Part 4 and Part 5 of National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101). Under section 5.3 of NI 51-101 disclosure of reserves or resources must be consistent with the reserves and resources terminology and categories set out in the Canadian Oil and Gas Evaluation Handbook. For the purposes of this instruction references to reporting issuer in Part 4 and Part 5 of NI 51-101 will be deemed to include all issuers.
- ~~11. 40-~~Securities legislation restricts what can be told to investors about the issuer's intent to list or quote securities on an exchange or market. Refer to applicable securities legislation before making any such statements.
- ~~12. 44-~~If an issuer uses this form in connection with a distribution under an exemption other than section 2.9 (*offering memorandum*) of National Instrument 45-106 *Prospectus and Registration Exemptions*, the issuer must modify the disclosure in item ~~44~~12 to correctly describe the purchaser's rights. If a purchaser does not have statutory or contractual rights of action in the event of a misrepresentation in the offering memorandum, that fact must be stated in bold on the face page.
13. During the course of a distribution of securities, any material forward-looking information disseminated must only be

that which is set out in the offering memorandum. If an extract of FOFI, as defined in NI 51-102 *Continuous Disclosure Obligations* (NI 51-102), is disseminated, the extract or summary must be reasonably balanced and have a cautionary note in boldface stating that the information presented is not complete and that complete FOFI is included in the offering memorandum.

B. Financial Statements

1. ~~Any~~All financial statements incorporated by reference into the offering memorandum must comply with NI 51-102 ~~*Continuous Disclosure Obligations* (NI 51-102)~~ and National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.
2. ~~Refer to National Policy 48 *Future Oriented Financial Information* if future oriented financial information is included in the offering memorandum.~~
1. Forward-looking information included in an offering memorandum must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in an offering memorandum must comply with Part 4B of NI 51-102. Additional guidance may be found in the companion policy to NI 51-102.

C. Required Updates to the Offering Memorandum

1. If the offering memorandum does not incorporate by reference the issuer's AIF, and audited financial statements for its most recently completed financial year, update the offering memorandum for any financial statements that are required to be filed prior to the distribution to incorporate by reference the ~~document~~documents as soon as the ~~document~~documents are filed on SEDAR.
2. Except for documents referred to in C.1, the offering memorandum does not have to be updated to incorporate by reference interim financial statements or other documents referred to in D.1 unless it is necessary to do so to prevent the offering memorandum from containing a misrepresentation.

D. Information about the Issuer

1. *Existing Documents Incorporated by Reference* - In addition to any other document that an issuer may choose to incorporate by reference, the issuer must incorporate the following documents:
 - (a) the issuer's AIF ~~reflecting~~for the issuer's most recently completed financial year for which annual financial statements are either required to be filed or have been filed,
 - (b) material change reports, except confidential material change reports, filed ~~after~~since the ~~commencement~~end of the ~~issuer's current~~ financial year in respect of which the issuer's AIF is filed,
 - (c) the interim financial statements for the issuer's most recently completed ~~financial~~interim period for which the issuer prepares interim financial statements that are required to be filed and which ends after the most recently completed financial year referred to in (d),
 - (d) the comparative financial statements, together with the accompanying auditor's report, for the issuer's most recently completed financial year for which annual financial statements are required to be filed or have been filed,
 - (e) if, before the offering memorandum is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under ~~2.2D.1~~2.2D.1(c) and (d) is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication,
 - (f) management's discussion and analysis (MD&A) as required under NI 51-~~402~~102 for the period specified in D.1(c) and D.1(d),
 - (g) each business acquisition report required to be filed under NI 51-~~402~~102 for acquisitions completed since the beginning of the financial year in respect of which the issuer's AIF is filed, unless the issuer incorporated the business acquisition report by reference into its AIF for its most recently completed financial year for which annual financial statements are either required to be filed or have been filed, or incorporated at least 9 months of the acquired business or related businesses operations into the issuer's most recent audited financial statements.

- (h) ~~except as provided in D.2, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings that, in each case, are required to be filed after the commencement of the issuer's current financial year,~~
- (i) ~~if the issuer has a mineral project, as defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, technical reports, certificates and consents required to be filed under NI 43-101 that, in each case, are required to be filed after the commencement of the issuer's current financial year, and~~
- (h) any information circular filed by the issuer since the beginning of the financial year in respect of which the issuer's most recent AIF is filed, other than an information circular prepared in connection with an annual general meeting if the issuer has filed and incorporated by reference an information circular for a subsequent annual general meeting.
- ±
- (j) ~~if the issuer has oil and gas activities, as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, all documents that it is required to file under NI 51-101 after the commencement of the issuer's current financial year, the most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3, filed by an SEC issuer, unless~~
- (i) the issuer's current AIF is in the form of Form 51-102F2; or
- (ii) the issuer is otherwise exempted from the requirements of NI 51-101.
- (k) Any other disclosure document which the issuer has filed pursuant to an undertaking to a provincial and territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's most recent AIF is filed, and
- (l) Any other disclosure document of the type listed above that the issuer has filed pursuant to an exemption from any requirement under securities legislation since the beginning of the financial year in respect of which the issuer's most recent AIF is filed.

2. Mineral Property – If a material part of the funds available as a result of the distribution is to be expended on a particular mineral property and if the issuer's most recent AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

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An issuer may incorporate any additional document provided that the document is available for viewing on the SEDAR website and that, on request by a purchaser, the issuer provides a copy of the document to the purchaser, without charge.

- ~~2. Existing Information Not Incorporated by Reference – An issuer is not required to incorporate by reference in an offering memorandum the disclosure required:~~
- (a) ~~under securities legislation, in an information circular or annual filing of:~~
- ~~(i) the repricing downward of options or free standing stock appreciation rights,~~
- ~~(ii) the composition of the compensation committee of the board of directors of the issuer and its report on executive compensation, or~~
- ~~(iii) a graph comparing the yearly percentage change in the issuer's cumulative total shareholder return on publicly traded securities with the cumulative total return of a broad equity market index of a published industry or line of business index or other issuers, and~~
- ~~(b) by an exchange or other market on which the issuer's securities trade, in the issuer's information circular regarding the issuer's corporate governance practices.~~

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APPENDIX "H"

Proposed Amended and Restated
Form 45-106F4

Risk Acknowledgement

- I acknowledge that this is a risky investment.
- I am investing entirely at my own risk.
- No securities regulatory authority has evaluated or endorsed the merits of these securities or the disclosure in the offering memorandum.
- The person selling me these securities is not registered with a securities regulatory authority and has no duty to tell me whether this investment is suitable for me. *[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- I will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting or if the purchaser is a Manitoba resident]*
- I could lose all the money I invest.

I am investing \$ _____ [total consideration] in total; this includes any amount I am obliged to pay in future. _____ [name of issuer] will pay \$ _____ [amount of fee or commission] of this to _____ [name of person selling the securities] as a fee or commission.

I acknowledge that this is a risky investment and that I could lose all the money I invest.

_____ Date

_____ Signature of Purchaser

_____ Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

WARNING

You have 2 business days to cancel your purchase [*Instruction: The issuer must complete this section before giving the form to the purchaser.*]

To do so, send a notice to [name of issuer] stating that you want to cancel your purchase. You must send the notice before midnight on the 2nd business day after you sign the agreement to purchase the securities. You can send the notice by fax or email or deliver it in person to [name of issuer] at its business address. Keep a copy of the notice for your records.

Issuer Name and Address:

Fax:

E-mail:

You are buying Exempt Market Securities

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority.

There are restrictions on your ability to resell *exempt market securities*. *Exempt market securities* are more risky than other securities.

You will receive an offering memorandum Read the offering memorandum carefully because it has important information about the issuer and its securities. Keep the offering memorandum because you have rights based on it. Talk to a lawyer for details about these rights.

You will not receive advice [*Instruction: Delete if sold by registrant*]

You will not get professional advice about whether the investment is suitable for you. But you can still seek that advice from a registered adviser or investment dealer. In Alberta, Manitoba, Northwest Territories, Prince Edward Island, Québec and Saskatchewan to qualify as an eligible investor, you may be required to obtain that advice. Contact the Investment Dealers Association of Canada (website at www.ida.ca) for a list of registered investment dealers in your area.

The securities you are buying are not listed [*Instruction: Delete if securities are listed or quoted*]

The securities you are buying are not listed on any stock exchange, and they may never be listed. You may never be able to sell these securities.

The issuer of your securities is a non-reporting issuer [*Instruction: Delete if issuer is reporting*]

A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer.

For more information on the exempt market, call your local securities regulatory authority. [*Instruction: Insert the name, telephone number and website address of the securities regulatory authority in the jurisdiction in which you are selling these securities.*]

[Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.]

APPENDIX "I"

**Proposed Amended and Restated
Form 45-106F5**

Risk Acknowledgement

Saskatchewan Close Personal Friends and Close Business Associates

I acknowledge that this is a risky investment:

- I am investing entirely at my own risk.
- No securities regulatory authority has evaluated or endorsed the merits of these securities.
- The person selling me these securities is not registered with a securities regulatory authority and has no duty to tell me whether this investment is suitable for me. *[Instruction: Delete if sold by registrant]*
- I will not be able to sell these securities except in very limited circumstances. I may never be able to sell these securities. *[Instruction: Delete if issuer is reporting]*
- I will not be able to sell these securities for 4 months. *[Instruction: Delete if issuer is not reporting]*
- I could lose all the money I invest.
- I do not have a 2-day right to cancel my purchase of these securities or the statutory rights of action for misrepresentation I would have if I were purchasing the securities under a prospectus.

I am investing \$_____ [total consideration] in total; this includes any amount I am obliged to pay in future.

I am a **close** personal friend or **close** business associate of _____ [state name], who is a _____ [state title - founder, director, executive officer or control person] of _____ [state name of issuer or its affiliate – if an affiliate state “an affiliate of the issuer” and give the issuer’s name].

I acknowledge that I am purchasing based on my close relationship with _____ [state name of founder, director, executive officer or control person] whom I know well enough and for a sufficient period of time to be able to assess her/his capabilities and trustworthiness.

I acknowledge that this is a risky investment and that I could lose all the money I invest.

Date

Signature of Purchaser

Print name of Purchaser

Sign 2 copies of this document. Keep one copy for your records.

WARNING

You are buying Exempt Market Securities

They are called *exempt market securities* because two parts of securities law do not apply to them. If an issuer wants to sell *exempt market securities* to you:

- the issuer does not have to give you a prospectus (a document that describes the investment in detail and gives you some legal protections), and
- the securities do not have to be sold by an investment dealer registered with a securities regulatory authority.

There are restrictions on your ability to resell *exempt market securities*. Exempt market securities are more risky than other securities.

You may not receive any written information about the issuer or its business

If you have any questions about the issuer or its business, ask for written clarification before you purchase the securities. You should consult your own professional advisers before investing in the securities.

You will not receive advice [*Instruction: Delete if sold by registrant*]

Unless you consult your own professional advisers, you will not get professional advice about whether the investment is suitable for you.

The issuer of your securities is a non-reporting issuer [*Instruction: Delete if issuer is reporting*]

A *non-reporting issuer* does not have to publish financial information or notify the public of changes in its business. You may not receive ongoing information about this issuer. You can only sell the securities of a non-reporting issuer in very limited circumstances. You may never be able to sell these securities.

The securities you are buying are not listed [*Instruction: Delete if securities are listed or quoted*]

The securities you are buying are not listed on any stock exchange, and they may never be listed. There may be no market for these securities. You may never be able to sell these securities.

For more information on the exempt market, refer to the Saskatchewan Financial Services Commission's website at <http://www.sfsc.gov.sk.ca>.

[*Instruction: The purchaser must sign 2 copies of this form. The purchaser and the issuer must each receive a signed copy.*]

APPENDIX "J"

**Proposed Amended and Restated
Companion Policy 45-106CP
*Prospectus and Registration Exemptions***

PART 1 - INTRODUCTION

- 1.1 Purpose
- 1.2 Status in Yukon
- 1.3 All trades are subject to securities legislation
- 1.4 Multi-jurisdictional trades
- 1.5 Other exemptions
- 1.6 Discretionary relief
- 1.7 Advisers
- 1.8 Underwriters
- 1.9 Persons created to use exemptions ("syndication")
- 1.10 Responsibility for compliance
- 1.11 Prohibited activities

PART 2 - INTERPRETATION

- 2.1 Definitions
- 2.2 Executive officer ("policy making function")
- 2.3 Directors, executive officers and officers of non-corporate issuers
- 2.4 Founder
- 2.5 Investment fund
- 2.6 Affiliate, control and related entity
- 2.7 Close personal friend
- 2.8 Close business associate

PART 3 - CAPITAL RAISING EXEMPTIONS

- 3.1 Soliciting purchasers
- 3.2 Soliciting purchasers - Newfoundland and Labrador and Ontario
- 3.3 Advertising
- 3.4 Restrictions on finder's fees or commissions
- 3.4.1 Reinvestment plans and unsolicited orders
- 3.5 Accredited investor
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Companion Policy 45-106CP
Prospectus and Registration Exemptions

PART 1 – INTRODUCTION

National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106") provides: (i) exemptions from the prospectus requirement; (ii) exemptions from registration requirements; and (iii) one exemption from the issuer bid requirements.

Under section 3.0 of NI 45-106, the registration exemptions in Part 3 of NI 45-106 will not apply in any jurisdiction except British Columbia and Manitoba [six months] after National Instrument 31-103 *Registration Requirements* ("NI 31-103") comes into force. Certain registration exemptions now contained in NI 45-106 are reproduced in NI 31-103.

At the same time, registration exemptions contained in NI 45 -106 will continue to be available in certain circumstances in British Columbia and Manitoba after NI 31-103 comes into force.

British Columbia and Manitoba retained the registration exemptions in Part 3 of NI 45-106. As a result, in British Columbia and Manitoba, the registration exemptions in Part 3 of NI 45-106 apply to a person unless the person is registered in any Canadian jurisdiction. A person may not rely on the registration exemptions in Part 3 of NI 45-106 in British Columbia and Manitoba if the person is already registered in either of those jurisdictions.

1.1 Purpose and Application

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of the application of various parts of NI 45-106.

1.2 Status in Yukon

Until such time as the Government of Yukon adopts NI 45-106 as a rule, it will consider applications for exemptions on a case-by-case basis and it will consider the provisions of NI 45-106 in exercising its discretionary authority.

1.3 All trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any trade in a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of "trade" in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade occurs.

1.4 Multi-jurisdictional distributions or trades

A distribution or a trade can occur in more than one jurisdiction. If it does, the person conducting the distribution or a trade must comply with the securities legislation of each jurisdiction in which the distribution or a trade occurs. For example, a distribution or a trade from a person in Alberta to a purchaser in British Columbia may be considered a distribution or a trade in both jurisdictions.

1.5 Other exemptions

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. The CSA has issued a notice that lists other exemptions available under securities legislation.

1.6 Discretionary relief

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement and the registration requirements.

1.7 Advisers

Subsection 1.4(2) of NI 45-106 provides that an exemption from the dealer registration requirement in NI 45-106 is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice

are required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under NI 45-106.

1.8 Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the prospectus exemption in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where a dealer purchases securities under a prospectus exemption other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.

If a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be looked at as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

1.9 Persons created to use exemptions ("syndication")

Sections 2.3(5), 3.3(5), 2.4(1), 3.4(1), 2.9(3), 3.9(3), 2.10(2) and 3.10(2) of NI 45-106 specifically prohibit syndications. A distribution or a trade of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a "syndicate") may be considered a distribution of, or trade in, securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing \$150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes \$10 000. In this situation the shareholders of the newly formed company are indirectly investing \$10 000 when the exemption requires that they each invest \$150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute or trade securities when the exemption is not available to directly distribute or trade securities to each person in the syndicate.

1.10 Responsibility for compliance

A person distributing or trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person distributing or trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person distributing or trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.

For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement describing the purchaser's relationship with the director. On the basis of that factual information, the issuer could determine whether the purchaser is a close personal friend of the director for the purposes of a family, friends and business associates exemption. The issuer should not rely merely on a representation: "I am a close personal friend of a director". Likewise, under the accredited investor exemptions, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of "accredited investor". Prior to discussing the particulars of the investment with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.

It is not appropriate for a person to assume an exemption is available. For instance a seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.

1.11 Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

PART 2 – INTERPRETATION

2.1 Definitions

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

2.2 Executive officer ("policy making function")

The definition of "executive officer" in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102").

Paragraph (c) of the definition "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who "performs a policy-making function" in respect of the issuer. The CSA is of the view that an individual who "performs a policy-making function" in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

2.3 Directors, executive officers and officers of non-corporate issuers

The term "director" is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term "officer" is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines "officer" to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute or trade securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

2.4 Founder

The definition of "founder" includes a requirement that, at the time of the distribution of, or trade in, a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a "founder" for the purposes of NI 45-106, regardless of the person's degree of prior involvement with the issuer or the extent of the person's continued ownership interest in the issuer.

2.5 Investment fund

Generally, the definition of "investment fund" would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

2.6 Affiliate, control and related entity

(1) Affiliate

Section 1.2 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 and Division 4 of Part 3 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in, respectively, section 2.23(1) and section 3.23(1). For the purposes of the rest of NI 45-106, the interpretation of control is found in section 1.3 of NI 45-106. The reason for having two different interpretations of control is that the exemptions for distributions of, and trades in, securities to employees, executive officers, directors and consultants require a broader concept of control than is considered necessary for the rest of NI 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures.

2.7 Close personal friend

For the purposes of both the private issuer exemptions and the family, friends and business associates exemptions, a "close personal friend" of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The term "close personal friend" can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same organization, association or religious group, or
- (c) a client, customer, former client or former customer.

2.8 Close business associate

For the purposes of both the private issuer exemptions and the family, friends and business associates exemptions, a "close business associate" is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness. An individual is not a close business associate solely because the individual is a client, customer, former client or former customer of the issuer.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

PART 3 – CAPITAL RAISING EXEMPTIONS

3.1 Soliciting purchasers

Part 2, Division 1, and Part 3, Division 1 (capital raising exemptions) in NI 45-106 do not prohibit the use of registrants, finders, or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer exemptions in sections 2.4 and 3.4 of NI 45-106, or under the family, friends and business associates exemptions in sections 2.5 and 3.5 of NI 45-106, may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find purchasers under the family, friends and business associates exemptions, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on these exemptions.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemptions, provided that all of the other conditions to those exemptions are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

3.2 Soliciting purchasers – Newfoundland and Labrador and Ontario

In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement identified in section 3.02 of NI 45-106 are not available to a "market intermediary", except as therein provided (or as otherwise provided in local securities legislation – see, for instance, in the case of Ontario, OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*). Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario the term "market intermediary" is defined in Ontario Securities Commission Rule 14-501 *Definitions*.

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

3.3 Advertising

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

3.4 Restrictions on finder's fees or commissions

The following restrictions apply with respect to certain exemptions under NI 45-106:

- (1) no commissions or finder's fees may be paid to directors, officers, founders and control persons in connection with a distribution or a trade made under the private issuer exemptions or the family, friends and business associates exemptions, except in connection with a distribution of, or trade in, a security to an accredited investor under a private issuer exemption; and
- (2) in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a distribution of, or a trade in, a security to a purchaser in one of those jurisdictions under an offering memorandum exemption.

3.4.1 Reinvestment plans

- (1) When is a plan administrator acting "for or on behalf of the issuer"?

Sections 2.2 and 3.2 of NI 45-106 contain prospectus and dealer registration exemptions for distributions of, and trades in, securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts "for or on behalf of the issuer" and therefore falls within the language contained in sections 2.2(1) and 3.2(1) of NI 45-106. The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the exemptions contained in sections 2.2 or 3.2 of NI 45-106.

- (2) Providing a description of material attributes and characteristics of securities

The prospectus and dealer registration reinvestment plan exemptions in sections 2.2(5) and 3.2(5) of NI 45-106 add a requirement, effective •, that if the securities distributed or traded under a reinvestment plan, in reliance upon a reinvestment plan exemption, are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed or traded. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials. Section 8.4.1 of NI 45-106 provides a transition period, allowing the issuer or plan agent to meet this requirement not later than 140 days after the next financial year end of the issuer ending on or after •.

(3) Interest payments

The exemptions in sections 2.2 and 3.2 of NI 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words "distributions out of earnings...or other sources" cover interest payable on debentures.

3.5 Accredited investor

(1) Individual qualification – financial tests

An individual is an "accredited investor" for the purposes of NI 45-106 if he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the "accredited investor" definition in section 1.1 of NI 45-106.

These branches of the definition are designed to treat spouses as a single investing unit, so that either spouse qualifies as an "accredited investor" if the combined financial assets, net income or net assets of both spouses exceed the \$1 000 000, \$300 000 or \$5 000 000 thresholds.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the "accredited investor" definition are intended to create "bright-line" standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

Paragraph (j) of the "accredited investor" definition refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate 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 following factors are indicative of beneficial ownership of financial assets:

- (a) physical or 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.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the threshold test because paragraph (j) 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 these beneficial ownership requirements.

(4) Calculation of purchaser's net assets

To calculate a purchaser's net assets under paragraph (l) of the "accredited investor" definition, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, the security.

(5) Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

(6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of, or trade in, the security. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the distribution of, or trade in, the security is completed.

(7) Recognition or Designation as an Accredited Investor

Paragraph (v) of the "accredited investor" definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement or the dealer registration requirement. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

3.6 Private issuer

(1) Meaning of "the public"

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted "the public" very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to distribute or trade securities, in reliance upon the private issuer prospectus exemption in section 2.4(2) or the private issuer dealer registration exemption in section 3.4(2) of NI 45-106, to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of, or trade in, the security is not to the public.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(2.1) Meaning of "non-convertible debt securities"

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

(3) Business combination of private issuers

A distribution of, or trade in, securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers, to holders of securities of those issuers is not a distribution of, or trade in, a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of, or trade in, securities by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of, or trade in, securities to the public, provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on a private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the sale will not be considered to have been to the public.

(5) Ceasing to be a private issuer

The term "private issuer" is defined in section 2.4(1) (with the same definition repeated in section 3.4(1) of NI 45-106). A private issuer can distribute securities only to the persons listed in section 2.4(2) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer prospectus exemption in section 2.4(2) (or the private issuer dealer registration exemption in section 3.4(2)). For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers will still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates prospectus exemption (except in Ontario) or the accredited investor prospectus exemption. However, issuers that rely on these prospectus exemptions must file a report of exempt distribution with the securities regulatory authority in each jurisdiction in which the distribution took place.

An issuer that completes a going private transaction (for example, by way of an amalgamation squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can however use the private issuer exemption after a going private transaction.

3.7 Family, friends and business associates

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemptions in sections 2.5 and 3.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(3) Risk acknowledgement - Saskatchewan

Under sections 2.6 and 3.6 of NI 45-106, the corresponding family, friends and business associates exemption in section 2.5 or 3.5 of NI 45-106 cannot be relied upon in Saskatchewan for a distribution of, or trade in, securities based on a close personal friendship or close business association unless the person obtains a signed "risk acknowledgement" in the required form from the purchaser and retains the form for eight years after the distribution of, or trade in, securities.

3.8 Offering memorandum

(1) Eligibility criteria - Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan

Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan impose eligibility criteria on persons investing under the offering memorandum exemptions. In these jurisdictions, the purchaser must be an eligible investor if the purchaser's acquisition cost is more than \$10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The \$10 000 maximum acquisition cost is calculated per distribution of, or trade in, security.

Nevertheless, concurrent and consecutive, closely-timed offerings to the same purchaser will usually constitute one distribution of, or trade in, a security. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the \$10 000 threshold by dividing a subscription in excess of \$10 000 by one purchaser into a number of smaller subscriptions of \$10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or has \$400 000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should

reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, a security.

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser's jurisdiction) that is authorized to give advice with respect to the type of security being distributed or traded. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(2) [repealed]

(3) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management's discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

(4) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(9) or 3.9(9) of NI 45-106.

The certificate must be signed by each of the following: the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or chief financial officer, persons acting in those capacities), by all promoters of the issuer, and any two directors of the issuer. If the issuer has more than two directors, any two directors who are authorized to sign the certificate, other than the chief executive officer and chief financial officer, may sign on behalf of all of the directors. If the issuer does not have at least two directors other than the chief executive officer and chief financial officer, then all directors must sign the certificate.

"Promoter" is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemptions.

In the case of an exempt distribution by a limited partnership where the general partner is a corporation, the general partner is expected to sign as promoter and the chief executive officer, chief financial officer and directors of the general partner to sign in those capacities on behalf of the issuer.

(5) Consideration to be held in trust

The purchaser has, or must be given, the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser's cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer's responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(6) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority in each of the jurisdictions in which the issuer distributes or trades securities under an offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(7) Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

3.9 Minimum amount investment

An issuer may wish to distribute or trade more than one kind of security of its own issue, such as shares and debt, in a single transaction under a minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the distribution of, or trade in, a security, the exemptions can, if otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

PART 4 - OTHER EXEMPTIONS

4.1 Employee, executive officer, director and consultant exemptions

Trustees, custodians or administrators who engage in activities, contemplated the prospectus and dealer registration exemptions in sections 2.27 and 3.27 of NI 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting "marketplaces" and "alternative trading systems".

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to participate in the growth of the employer's business and to compensate persons for the services they provide to

an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

4.2 Business combination and reorganization

(1) Statutory procedure

The securities regulatory authorities interpret the phrase "statutory procedure" broadly and are of the view that the prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 apply to all distributions of, and trades in, securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the distribution of, or trade in, a security occurs.

The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 exempt distributions of, and trades in, securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done "under a statutory procedure". The securities regulatory authorities are of the view that the references to statutory procedure in sections 2.11 and 3.11 of NI 45-106 are 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. This would include, for example, an arrangement under the *Companies' Creditors Arrangement Act* (Canada).

(2) 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. The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 refer to these distributions of, or trades in, a security when they refer to a distribution of, or a trade in, a security made in connection with an amalgamation or merger done under a statutory procedure.

(3) Exchangeable shares

A transaction involving a procedure described in the prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where 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 statutory procedure has raised a question as to whether the exemptions now contained in sections 2.11 and 3.11 of NI 45-106 were available for all distributions or 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 statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities take the position that the statutory procedure exemptions contained in section 2.11 and section 3.11 of NI 45-106 refer to all distributions or trades of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section 2.11 or section 3.11, even where such distributions or trades occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement represented a decision to, ultimately, 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, additional exemptive relief is not warranted in circumstances where these exemptions are available.

4.3 Asset acquisition - character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or

resource properties and to retain records to demonstrate how that fair market value was determined. In some situations cash assets that make up working capital could be considered in the total calculation of the fair market value.

4.4 Securities for debt - *bona fide debt*

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute or trade securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt exemptions may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

4.5 Take-over bid and issuer bid

(1) Exempt bids

The terms take-over bid and issuer bid, for the purposes of sections 2.16 and 3.16 of NI 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid exemptions refer to all distributions or trades necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such distributions or trades may occur several months or even years after the bid is completed.

4.6 Isolated distribution or trade

The exemptions contained in section 2.30 and 3.30 of NI 45-106 are limited to distributions of, or trades in, a security made by an issuer in a security of its own issue. There is also an additional isolated trade dealer registration exemption contained in section 3.29 of NI 45-106. While the latter exemption refers to trades in any security, it does not apply to any trades by an issuer in a security that is issued by the issuer.

It is intended that these exemptions will only be used rarely and are not available for registrants or others whose business is trading in securities.

Reliance upon the isolated trade exemption might, for example, be appropriate when a person who is not involved in the business of trading securities wishes to make a single trade of a security that the person owns to another person. The exemption would not be available to a person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.

4.7 Mortgages

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage prospectus and dealer registration exemptions in sections 2.36 and 3.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36(1) or 3.36(1) of NI 45-106.

The mortgage exemptions do not apply to distributions or trades in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage exemptions also do not apply to a distribution of, or a trade in, a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

4.8 Not for profit issuer

(1) Eligibility to use these exemption

These exemptions apply to distributions of, and trades in, securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit ("not for profit issuer"). To use these exemptions, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on these exemptions. For example, if an issuer organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer *may* be unable to rely on these exemptions. The same would also be true if one of an issuer's mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use these exemptions, because no part of the issuer's net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are *not* typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on these exemptions, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of, or trade in, the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within these exemptions.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec).

(2) Meaning of "no commission or other remuneration"

Sections 2.38(b) and 3.38(b) provide that "no commission or other remuneration is paid in connection with the sale of the security". This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

4.9 Exchange contracts

The dealer registration exemption for exchange contracts contained in section 3.45 of NI 45-106 (and as limited by section 3.0 of NI 45-106) is only available in Alberta, British Columbia, Québec and Saskatchewan. In Manitoba and Ontario exchange contracts are governed by commodity futures legislation.

Except in Saskatchewan the dealer registration exemption for exchange contracts contained in section 3.45(1)(b) (and as limited by section 3.0) of NI 45-106 provides for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.

PART 5 – FORMS

5.1 Report of Exempt Distribution

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file Form 45-106F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

In determining if it is required to file a report in a particular jurisdiction, the issuer/underwriter should consider the following questions:

- (a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance on when a distribution occurs in the jurisdiction.)
- (b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?
- (c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or the regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I ("Schedule I") discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently the information listed in Schedule I will not be made publicly available.

5.2 Forms required under the offering memorandum exemption

NI 45-106 designates two forms of offering memorandum. The first, Form 45-106F2, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under sections 2.9(1), 3.9(1), 2.9(2) and 3.9(2) of NI 45-106 is Form 45-106F4.

5.3 Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

5.4 Risk Acknowledgement Form Respecting Close Personal Friends and Close Business Associates – Saskatchewan

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 (and under section 3.6(1)) if the person intends to rely upon the "family, friends and business associates exemption" in section 2.5 (or in section 3.5) of NI 45-106 based on a relationship of close personal friendship or close business association. The form of risk acknowledgment required in these circumstances is Form 45-106F5.

PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1 Resale restrictions

In most jurisdictions, securities distributed under a prospectus exemption may be subject to restrictions on their resale. The particular resale, or "first trade", restrictions depend on the parties to the distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt distribution will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities* ("NI 45-102"). While NI 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

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APPENDIX "K"

**Companion Policy 45-106CP
Prospectus and Registration Exemptions**

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Companion Policy 45-106CP

Prospectus and Registration Exemptions

PART 1 – INTRODUCTION

National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106") provides: (i) exemptions from the prospectus and requirement; (ii) exemptions from registration requirements; and (iii) one exemption from the issuer bid requirement requirements.

Under section 3.0 of NI 45-106, the registration exemptions in Part 3 of NI 45-106 will not apply in any jurisdiction except British Columbia and Manitoba [six months] after National Instrument 31-103 *Registration Requirements* ("NI 31-103") comes into force. Certain registration exemptions now contained in NI 45-106 are reproduced in NI 31-103.

At the same time, registration exemptions contained in NI 45-106 will continue to be available in certain circumstances in British Columbia and Manitoba after NI 31-103 comes into force.

British Columbia and Manitoba retained the registration exemptions in Part 3 of NI 45-106. As a result, in British Columbia and Manitoba, the registration exemptions in Part 3 of NI 45-106 apply to a person unless the person is registered in any Canadian jurisdiction. A person may not rely on the registration exemptions in Part 3 of NI 45-106 in British Columbia and Manitoba if the person is already registered in either of those jurisdictions.

1.1 Purpose and Application

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of the application of various parts of NI 45-106.

1.2 Status in Yukon

Until such time as the Government of Yukon adopts NI 45-106 as a rule, it will consider applications for exemptions on a case-by-case basis and it will consider the provisions of NI 45-106 in exercising its discretionary authority.

1.3 All trades are subject to securities legislation

~~Market participants are reminded that the~~ The securities legislation of a local jurisdiction applies to any trade in a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of "trade" in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person, who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade occurs.

~~If a trade is exempted from the dealer registration requirement, so too is any act, solicitation or conduct in furtherance of that trade.~~

1.4 Multi-jurisdictional distributions or trades

~~Market participants are further reminded that~~ A distribution or a trade can occur in more than one jurisdiction. If it does, the person conducting the distribution or a trade must comply with the securities legislation of each jurisdiction in which the distribution or a trade occurs. For example, a distribution or a trade from a person in Alberta to a purchaser in British Columbia may be considered a distribution or a trade in both jurisdictions.

1.5 Other exemptions

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. The ~~Canadian Securities Administrators ("CSA")~~ CSA has issued a notice that lists other exemptions available under securities legislation.

1.6 Discretionary relief

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement and the registration ~~requirement~~ requirements.

1.7 Advisers

Subsection 1.4(2) of NI 45-106 provides that an exemption from the dealer registration requirement in NI 45-106 is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under NI 45-106.

1.8 Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the ~~exemption from the dealer registration requirement and the prospectus requirement~~ exemption in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where ~~an underwriter a dealer~~ purchases securities under ~~an exemption from the dealer registration requirement and a~~ prospectus requirement exemption other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the ~~underwriter dealer~~ purchases the securities with investment intent and not with a view to distribution.

~~Where an underwriter~~ If a dealer purchases securities through a series of exempt ~~trade~~ transactions in order to avoid the obligation to deliver a prospectus, the transactions will be looked at as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

1.9 Persons created to use exemptions ("syndication")

Sections 2.3(65), 3.3(5), 2.4(1), ~~3.4(1), 2.9(5) and 3.9(3)~~, 2.10(32) and 3.10(2) of NI 45-106 specifically prohibit syndications. A distribution or a trade of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a "syndicate") may be considered a distribution of or trade in, securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing \$150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes \$10 000. In this situation the shareholders of the newly formed company are indirectly investing \$10 000 when the exemption requires that they each invest \$150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute or trade securities when the exemption is not available to directly distribute or trade securities to each person in the syndicate.

1.10 Responsibility for compliance

A person distributing or trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person distributing or trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person distributing or trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.

For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement describing the purchaser's relationship with the director. On the basis of that factual information, the issuer could determine whether the purchaser is a close personal friend of the director for the purposes of ~~the family, friends and business associates~~ exemption. The issuer should not rely merely on a representation: "I am a close personal friend of a director". Likewise, under the accredited investor ~~exemption~~ exemptions, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of "accredited investor". Prior to discussing the particulars of the investment

with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.

It is not appropriate for a person to assume an exemption is available. For instance a seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.

1.11 Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

PART 2 – INTERPRETATION

2.1 Definitions

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

2.2 Executive officer ("policy making function")

The definition of "executive officer" in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102").

Paragraph (c) of the definition "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who "performs a policy-making function" in respect of the issuer. The CSA is of the view that an individual who "performs a policy-making function" in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

~~Paragraph (d) of the definition of "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy making function in respect of the issuer.~~

2.3 Directors, executive officers and officers of non-corporate issuers

The term "director" is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term "officer" is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines "officer" to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute or trade securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

2.4 Founder

The definition of "founder" includes a requirement that, at the time of the distribution of, or trade, in, a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a "founder" for the purposes of NI 45-106,

regardless of ~~its~~the person's degree of prior involvement with the issuer or the extent of ~~its~~the person's continued ownership interest in the issuer.

2.5 Investment fund

Generally, the definition of "investment fund" would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

2.6 Affiliate, control and related entity

(1) Affiliate

Section 1.2 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 and Division 4 of Part 3 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in, respectively, section 2.23(1) and section 3.23(1). For the purposes of the rest of NI 45-~~106~~106, the interpretation of control is found at section 1.3 of NI 45-106. The reason for having two different interpretations of control is that the ~~exemption for~~exemptions for distributions of, and trades in, securities to employees, executive officers, directors and consultants ~~requires~~require a broader concept of control than is considered necessary for the rest of NI 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures ~~than is considered necessary for the rest of NI 45-106~~.

2.7 Close personal friend

For the purposes of both the private issuer ~~exemption~~exemptions and the family, friends and business associates ~~exemption~~exemptions, a "close personal friend" of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The term "close personal friend" can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same organization, association or religious group, or
- (c) a client, customer, former client or former customer.

2.8 Close business associate

For the purposes of both the private issuer ~~exemption~~exemptions and the family, friends and business associates ~~exemption~~exemptions, a "close business associate" is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness. An individual is not a close business associate solely because the individual is a client, customer, former client or former customer of the issuer.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is ~~exemptions are~~ not available for a close business associate of a close business associate of a director of the issuer.

PART 3 – CAPITAL RAISING EXEMPTIONS

3.1 Soliciting purchasers

Part 2, Division 1, ~~and Part 3, Division 1~~ (capital raising exemptions) in NI 45-106 ~~does~~ not prohibit the use of registrants, finders, or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under ~~sections 2.4 or 2.5 (respectively, the private issuer exemption or exemptions in sections 2.4 and 3.4 of NI 45-106, or under the family, friends and business associates exemption) exemptions in sections 2.5 and 3.5 of NI 45-106,~~ may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find purchasers under the family, friends and business associates ~~exemption exemptions,~~ it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on ~~the exemption these exemptions.~~

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer ~~exemption exemptions,~~ provided that all of the other conditions to ~~that exemption those exemptions~~ are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

3.2 Soliciting purchasers – Newfoundland and Labrador and Ontario

In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement ~~set out in sections 2.43 and 3.9 identified in section 3.02~~ of NI 45-106 are not available to a "market intermediary". ~~A, except as therein provided (or as otherwise provided in local securities legislation – see, for instance, in the case of Ontario, OSC Rule 45-501 Ontario Prospectus and Registration Exemptions).~~ Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario the term "market intermediary" is defined in Ontario Securities Commission Rule 14-501 *Definitions*.

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities; the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

3.3 Advertising

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

3.4 Restrictions on finder's fees or commissions

The following restrictions apply with respect to certain exemptions under NI 45-106:

- (1) no commissions or finder's fees may be paid to directors, officers, founders and control persons in connection with a distribution or a trade made under the private issuer ~~exemption exemptions~~ or the family, friends and business associates ~~exemption exemptions,~~ except in connection with a distribution of, or trade in, a security to an accredited investor under ~~the~~ private issuer exemption; and
- (2) in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a distribution of, or a trade in, a security to a purchaser in one of those jurisdictions under ~~the~~ an offering memorandum exemption.

3.4.1 Reinvestment plans

- (1) When is a plan administrator acting "for or on behalf of the issuer"?

Sections 2.2 and 3.2 of NI 45-106 contain prospectus and dealer registration exemptions for distributions of, and trades in, securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts "for or on behalf of the issuer" and therefore falls within the language contained in sections 2.2(1) and 3.2(1) of NI 45-106. The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the exemptions contained in sections 2.2 or 3.2 of NI 45-106.

(2) Providing a description of material attributes and characteristics of securities

The prospectus and dealer registration reinvestment plan exemptions in sections 2.2(5) and 3.2(5) of NI 45-106 add a requirement, effective •, that if the securities distributed or traded under a reinvestment plan, in reliance upon a reinvestment plan exemption, are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed or traded. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials. Section 8.4.1 of NI 45-106 provides a transition period, allowing the issuer or plan agent to meet this requirement not later than 140 days after the next financial year end of the issuer ending on or after •.

(3) Interest payments

The exemptions in sections 2.2 and 3.2 of NI 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words "distributions out of earnings...or other sources" cover interest payable on debentures.

3.5 Accredited investor

(1) Individual qualification – financial tests

An individual is an "accredited investor" for the purposes of NI 45-106 if he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the "accredited investor" definition in section 1.1 of NI 45-106.

These branches of the definition are designed to treat spouses as a single investing unit, so that either spouse qualifies as an "accredited investor" if the combined financial assets, net income or net assets of both spouses exceed the \$1 000 000, \$300 000 or \$5 000 000 thresholds.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the "accredited investor" definition are intended to create "bright-line" standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

Paragraph (j) of the "accredited investor" definition refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate 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 following factors are indicative of beneficial ownership of financial assets:

- (a) physical or 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.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the threshold test because paragraph (j) 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 these beneficial ownership requirements.

- (4) Calculation of purchaser's net assets

To calculate a purchaser's net assets under paragraph (l) of the "accredited investor" definition, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, the security.

- (5) Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

- (6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of, or trade in, the security. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the distribution of, or trade in, the security is completed.

- (7) Recognition or Designation as an Accredited Investor

Paragraph (v) of the "accredited investor" definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators ~~will consider applications for accredited investor recognition or designation submitted by or on behalf of persons that do not meet any of the other criteria for accredited investor status but nevertheless have the requisite sophistication or financial resources. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement and/or the dealer registration requirement. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.~~

~~Securities legislation in British Columbia and Alberta does not contemplate recognition or designation as an accredited investor. Therefore, until changes are made to the securities legislation of these jurisdictions, applicants in British Columbia and Alberta should apply for designation or recognition as an exempt purchaser.~~

3.6 Private issuer

- (1) Meaning of "the public"

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted "the public" very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to distribute or trade securities, in reliance upon the private issuer prospectus exemption in section 2.4(2) or the private issuer dealer registration exemption in section 3.4(2) of NI 45-106, to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of, or trade in, the security is not to the public.

- (2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(2.1) Meaning of "non-convertible debt securities"

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

(3) Business combination of private issuers

~~Securities distributed~~A distribution of, or trade in, securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers, to holders of securities of those issuers is not a distribution of, or trade in, a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of, or trade in, securities ~~distributed~~ by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of, or trade in, securities to the public, provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on ~~the~~ private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the ~~tradesale~~ will not be considered to have been to the public.

(5) Ceasing to be a private issuer

The term "private issuer" is defined in section 2.4(1) (with the same definition repeated in section 3.4(1) of NI 45-106-106). A private issuer can distribute securities only to the persons listed in section 2.4(2) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer ~~exemption~~prospectus exemption in section 2.4(2) (or the private issuer dealer registration exemption in section 3.4(2)). For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers will still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates prospectus exemption (except in Ontario) or the accredited investor prospectus exemption. However, issuers that rely on these prospectus exemptions must file a report of exempt distribution with the securities regulatory authority in each jurisdiction in which the distribution took place.

An issuer that completes a going private transaction (for example, by way of an amalgamation squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can however use the private issuer exemption after a going private transaction.

3.7 Family, friends and business associates

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates ~~exemption~~exemptions in ~~sections~~sections 2.5 and 3.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of "close personal friend" and "close business associate".

(3) Risk acknowledgement - Saskatchewan

Under ~~sections~~sections 2.6(4) and 3.6 of NI 45-106, the corresponding family, friends and business associates exemption in section 2.5 or 3.5 of NI 45-106 cannot be relied upon in Saskatchewan for a distribution of, or trade in, securities based on a close personal friendship or close business association unless the person obtains a signed "risk acknowledgement" in the required form from the purchaser and retains the form for eight years after the distribution of, or trade in, securities.

3.8 Offering memorandum

- (1) Eligibility criteria - Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan

Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan impose eligibility criteria on persons investing under the offering memorandum ~~exemption~~exemptions. In these jurisdictions, ~~anyone can purchase up to \$10 000 worth of securities under the offering memorandum exemption.~~ However, the purchaser must be an eligible investor if the purchaser's acquisition cost is more than \$10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The \$10 000 maximum acquisition cost is calculated per distribution of, or trade in, security.

Nevertheless, concurrent and consecutive, closely timed offerings to the same purchaser will usually constitute one distribution of, or trade in, a security. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the \$10 000 threshold by dividing a subscription in excess of \$10 000 by one purchaser into a number of smaller subscriptions of \$10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or has \$400 000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, a security.

Another way a purchaser can qualify, as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser's jurisdiction) that is authorized to give advice with respect to the type of security being distributed or traded. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

- (2) ~~Use of offering memorandum exemption by investment funds~~

~~In British Columbia, New Brunswick, Newfoundland and Labrador and Nova Scotia, investment funds can use the offering memorandum exemption.~~

~~In Alberta, Northwest Territories, Nunavut and Prince Edward Island, investment funds must be reporting issuers to use the offering memorandum exemption. In Manitoba, Québec and Saskatchewan in addition to being a reporting issuer, an investment fund must be listed on a stock exchange or quoted on an over the counter market.~~

- (2) ~~[repealed]~~

- (3) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management's discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

(4) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(449) or 3.9(9) of NI 45-106.

The certificate must be signed by each of the following: the chief executive officer and the chief financial officer of the issuer (or, if the issuer does not have a chief executive officer or chief financial officer, persons acting in those capacities), by all promoters of the issuer, and any two directors of the issuer. If the issuer has more than two directors, any two directors who are authorized to sign the certificate, other than the chief executive officer and chief financial officer, may sign on behalf of all of the directors. If the issuer does not have at least two directors other than the chief executive officer and chief financial officer, then all directors must sign the certificate.

"Promoter" is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under ~~this exemption~~ the offering memorandum exemptions.

In the case of an exempt distribution by a limited partnership where the general partner is a corporation, the general partner is expected to sign as promoter and the chief executive officer, chief financial officer and directors of the general partner to sign in those capacities on behalf of the issuer.

(5) Consideration to be held in trust

The purchaser has or must be given the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser's cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer's responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(6) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority in each of the jurisdictions in which the issuer distributes or trades securities under ~~the an~~ offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(7) Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

3.9 Minimum amount investment

An issuer may wish to distribute or trade more than one kind of security of its own issue, such as shares and debt, in a single transaction under ~~the~~ the minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the distribution of, or trade in, a security, the ~~exemption can~~ exemptions can, if otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

PART 4 - OTHER EXEMPTIONS

4.1 Employee, executive officer, director and consultant exemptions

Trustees, custodians or administrators who engage in activities, ~~contemplated by subsection 2.27(2) of NI 45-106~~ the prospectus and dealer registration exemptions in sections 2.27 and 3.27 of NI 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting "marketplaces" and "alternative trading systems".

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to participate in the growth of the employer's business and to compensate persons for the services they provide to an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

4.2 Business combination and reorganization

(1) Statutory procedure

The securities regulatory authorities interpret the phrase "statutory procedure" broadly and are of the view that the ~~exemption can be used for all~~ prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 apply to all distributions of, and trades in, securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the ~~trades occur~~ distribution of, or trade in, a security occurs.

~~Section 2.14~~ The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 exempt ~~exempt~~ distributions of, and trades in, securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done "under a statutory procedure". The securities regulatory authorities are of the view that the references to statutory procedure in ~~section~~ sections 2.11 and 3.11 of NI 45-106 are 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. This would include, for example, an arrangement under the *Companies' Creditors Arrangement Act* (Canada).

(2) 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 2.14~~ The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 exempt these trades as the exemption applies to any trade ~~refer to these distributions of, or trades in, a security when they refer to a distribution of, or a trade in, a security made in connection with an amalgamation or merger done under a statutory procedure.~~

(3) Exchangeable shares

A transaction involving a procedure described in ~~section 2.11~~ the prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where 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 statutory procedure has raised a question as to whether the ~~exemption~~ exemptions now contained in sections 2.11 and 3.11 of NI 45-106 ~~was~~ were available for all distributions or 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 statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities ~~have taken~~ take the position that the statutory procedure ~~exemption~~ exemptions contained in section 2.11 and section 3.11 of NI 45-106 ~~is available for~~ refer to all distributions or trades of securities that are necessary to complete an exchangeable share transaction involving a procedure described in ~~section 2.11 or section 3.11~~ sections 2.11 or section 3.11, even where such distributions or trades occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement ~~ultimately~~ ultimately represented a decision to ultimately 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, additional exemptive relief is not warranted in ~~these circumstances~~ where these exemptions are available.

4.3 Asset acquisition - character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations cash assets that make up working capital could be considered in the total calculation of the fair market value.

4.4 Securities for debt - bona fide debt

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute or trade securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt ~~exemption~~ exemptions may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

4.5 Take-over bid and issuer bid

(1) Exempt bids

~~Issuers are reminded that the~~ The terms take-over bid and issuer bid, for the purposes of ~~section~~ sections 2.16 and 3.16 of NI 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid ~~exemption is available for~~ exemptions refer to all distributions or trades necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such distributions or trades may occur several months or even years after the bid is completed.

4.6 Isolated distribution or trade

The ~~isolated trade exemption~~ exemptions contained in section 2.342.30 and 3.30 of NI 45-106 ~~is~~ are limited to distributions of, or trades in, a security made by an issuer in a security of its own issue. ~~A comparable exemption from the~~ There is also an additional isolated trade ~~dealer registration requirement is available under~~ exemption contained in section 3.33.29 of NI 45-106. ~~The~~ While the ~~latter exemption is available for~~ refers to trades in any security ~~but it is not available to issuers to trade a security of its own issue.~~ it does not apply to any trades by an issuer in a security that is issued by the issuer.

It is intended that ~~the isolated trade~~ these exemptions will only be used rarely and are not available for registrants or others whose business is trading in securities.

Reliance upon ~~this~~ the isolated trade exemption might ~~be appropriate~~, for example, be appropriate when a person who is not involved in the business of trading securities wishes to make a single trade of a security that the person owns to another person. The exemption would not be available to a person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.

4.7 Mortgages

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage ~~exemption in section 2.36~~ prospectus and dealer registration exemptions in sections 2.36 and 3.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36(1) or 3.36(1) of NI 45-106.

The mortgage ~~exemption~~ exemptions do not apply to distributions or trades in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage ~~exemption~~ exemptions also do not apply to a distribution of, or a trade in, a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

4.8 Not for profit issuer

This(1) Eligibility to use these exemption ~~allows~~

These exemptions apply to distributions of, and trades in, securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit ("not for profit issuer"). To use ~~this exemption~~ these exemptions, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised ~~under this exemption~~ for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on ~~the exemption~~ these exemptions. For example, ~~if an issuer that is~~ organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer ~~may be deemed~~ may be deemed unable to rely on ~~this exemption~~ these exemptions. The same would also be true if one of an issuer's mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use ~~this exemption~~ these exemptions, because no part of the issuer's net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are not typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on these exemptions, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of, or trade in, the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within these exemptions.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec). However, not for profit issuers that distribute outside of Québec must rely on the exemption in section 2.38 of NI 45-106.

(2) Meaning of "no commission or other remuneration"

Sections 2.38(b) and 3.38(b) provide that "no commission or other remuneration is paid in connection with the sale of the security". This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

4.9 Exchange contracts

The dealer registration exemption for exchange contracts contained in section ~~3-23.45~~ of NI 45-106 (and as limited by section 3.0 of NI 45-106) is only available in Alberta, British Columbia, Québec and Saskatchewan. In Manitoba and Ontario exchange contracts are governed by commodity futures legislation.

Except in Saskatchewan the dealer registration exemption for exchange contracts contained in section ~~3-23.45(1)(b)~~ (and as limited by section 3.0) of NI 45-106 ~~allows~~provides for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, ~~while an unsolicited trade does not require registration,~~ if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.

PART 5 – FORMS**5.1 Report of Exempt Distribution**

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file Form 45-106F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

In determining if it is required to file a report in a particular jurisdiction, the issuer/underwriter should consider the following questions:

- (a) ~~is~~is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance on when a distribution occurs in the jurisdiction.)
- (b) ~~if~~if there is a distribution in the jurisdiction, what exemption from the ~~dealer registration requirement and the prospectus requirement~~ is the issuer relying on for the distribution of the security? ~~and~~
- (c) ~~does~~Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, ~~or~~and
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or the regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I ("Schedule I") discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently the information listed in Schedule I will not be made publicly available.

5.2 Forms required under the offering memorandum exemption

NI 45-106 designates two forms of offering memorandum—the The first, Form 45-106F2~~2~~, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under ~~section~~sections 2.9(1)-~~or~~, 3.9(1), 2.9(2) and 3.9(2) of NI 45-106 is Form 45-106F4.

~~The British Columbia regulator has specified the same offering memorandum forms (Form 45-106F2 and Form 45-106F3) and risk acknowledgment form (Form 45-106F4) for use in that jurisdiction under B.C. Policy 13-601 *Required Forms*.~~

5.3 Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

5.4 Risk Acknowledgement Form Respecting Close Personal Friends and Close Business Associates – Saskatchewan

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 (and under section 3.6(1)) if the person intends to rely upon the "family, friends and business associates exemption" in section 2.5 (or in section 3.5) of NI 45-106 based on a relationship of close personal friendship or close business association. The form of risk acknowledgment required in these circumstances is Form 45-106F5.

PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1 Resale restrictions

In most jurisdictions, securities distributed under ~~an~~ prospectus exemption may be subject to restrictions on their resale. The particular resale, or "first trade", restrictions depend on the parties to the ~~trade~~distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt ~~trade~~distribution will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities* ("NI 45-102"). While NI 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be ~~traded~~distributed under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

[Amended and Restated •]

APPENDIX "L"

Amendments to
National Instrument 45-102 *Resale of Securities*

1. **National Instrument 45-102 *Resale of Securities* is amended by this Instrument.**
2. **Section 1.1 is amended, in the definition of "trade", by striking out ",," after "trade";**
3. **Section 2.5 is amended by**
 - a. **repealing subparagraph (2)3. and substituting**
 3. If the distribution date is on or after March 30, 2004, or, in Québec, on or after September 14, 2005, and
 - (i) if the issuer is a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend stating:

Unless permitted under securities legislation, the holder of this security must not trade the security before [insert the date that is 4 months and a day after the distribution date]",
 - or
 - (ii) if the issuer is not a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend stating:

Unless permitted under securities legislation, the holder of this security must not trade the security before the date that is 4 months and a day after the later of (i) [insert the distribution date], and (ii) the date the issuer became a reporting issuer in any province or territory.
 - b. **adding the following after subparagraph (2)3.:**
 - 3.1 If the security is entered into a direct registration or other electronic book-entry system, or if the beneficial security holder did not otherwise directly receive a certificate representing the security, written notice containing the legend restriction notation set out in paragraphs (i) or (ii) of item 3, as applicable, was delivered to the beneficial security holder.
 - c. **repealing subsection 3 and substituting:**
 - (3) Items 3 and 3.1 of subsection (2) do not apply to a trade of an underlying security if the certificate representing the underlying security is issued or the written notice is delivered at least four months after the distribution date.
4. **Section 2.8 is amended by**
 - a. **repealing subsection 3 and substituting:**
 - (3) The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, under subsection (2) must
 - (a) complete and sign a Form 45-102F1 no earlier than one business day before the Form 45-102F1 is filed;
 - (b) file the completed and signed Form 45-102F1 on SEDAR at least seven days before the first trade of the securities that is part of the distribution; and
 - (c) file, within three days after the completion of any trade, an insider report prepared in accordance with either Form 55-102F2 or Form 55-102F6 under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.
 - b. **repealing subsection 4 and substituting:**

- (4) A Form 45-102F1 filed under subsection (3) expires on the earlier of
- (a) thirty days after the date the Form 45-102F1 was filed, and
 - (b) the date the selling security holder, or the lender, pledgee, mortgagee or other encumbrancer, files the last of the insider reports reflecting the sale of all securities referred to in the Form 45-102F1.

c. adding the following after subsection 4:

- (5) A selling security holder, or the lender, pledgee, mortgagee or other encumbrancer must not file a new Form 45-102F1 in respect of a class of securities of a reporting issuer until the Form 45-102F1 in respect of that class of securities previously filed by that person or company has expired.

5. **Section 2.9(1) is amended by striking out "continuation" and substituting "reorganization".**
6. **Appendix B is amended by adding "New Brunswick" below Manitoba in the Appendix.**
7. **Appendix D is amended by repealing the text before the heading "Transitional Provisions" and substituting the following:**

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- section 2.3 [Accredited investor] ;
- section 2.5 [Family, friends and business associates] (except in Ontario);
- section 2.7 [Founder, control person and family] (Ontario);
- section 2.8 [Affiliates];
- section 2.9 [Offering memorandum] (in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan);
- section 2.10 [Minimum amount investment];
- section 2.12 [Asset acquisition];
- section 2.13 [Petroleum, natural gas and mining properties];
- section 2.14 [Securities for debt];
- section 2.19 [Additional investment in investment funds];
- section 2.30 [Isolated distribution by issuer] ;
- section 2.31 [Dividends and distributions], if the security was acquired in the circumstances referred to in subsection 2.31(2) and that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- section 2.40 [RRSP/RRIF], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed in this Appendix,

- (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- section 2.42 [Conversion, exchange or exercise], if the security acquired in the circumstances referred to in clause (a) of subsection 2.42(1) was acquired in accordance with the terms and conditions of a previously issued security and that previously issued security was distributed under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- section 5.2 [TSX Venture exchange offering], if the security acquired under section 5.2 was acquired by
 - (a) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, the issuer's underwriter, or a member of the underwriter's "professional group" (as defined in National Instrument 33-105 *Underwriting Conflicts*), or
 - (b) any other purchaser in excess of \$40,000 for the portion of the securities in excess of 40,000;

as well as the following local exemptions from the prospectus requirement:

- section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*;
- clauses 77(1)(u) and (w) and subclauses 77(1)(ab)(ii) and (iii) of the *Securities Act* (Nova Scotia);
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.5 of NI 45-102.

8. Appendix D is amended by repealing the text after the heading "Ontario Provisions" and substituting the following:

Definitions

In this Appendix

"**1998 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

"**2001 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

"**2004 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

"**2005 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on September 14, 2005;

"**[2008] OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on •;

"**convertible security**" means, in Ontario, 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;

"exchangeable security" means, in Ontario, 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, in Ontario, 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;

"multiple convertible security" means, in Ontario, 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;

"OSC Rule 45-502" means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

"Type 1 trade" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

"underlying security" means, in Ontario, 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.

(a) *Securities Act* (Ontario)

Clauses 72(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Ontario) and subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario), or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

(b) 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501

Section 2.1 of the 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501;

Section 2.2 of the 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501.

(c) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.3 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.5 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.12 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.13 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.14 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.16 of the 2004 OSC Rule 45-501.

(d) 1998 OSC Rule 45-501

Section 2.4 of the 1998 OSC Rule 45-501

Section 2.5 of the 1998 OSC Rule 45-501

Section 2.11 of the 1998 OSC Rule 45-501

(e) Other

Any provision under which an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade or in a trade under section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501.

9. Appendix E is amended by repealing the text before the heading "Transitional Provisions" and substituting the following:

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- section 2.1 [Rights offering];
- section 2.2 [Reinvestment plan];
- section 2.4 [Private issuer];
- section 2.11 [Business combination and reorganization];
- section 2.16 [Take-over bid and issuer bid];
- section 2.17 [Offer to acquire to security holder outside local jurisdiction];
- section 2.18 [Investment fund reinvestment];
- section 2.20 [Private investment club];
- section 2.21 [Private investment fund - loan and trust pools];
- section 2.24 [Employee, executive officer, director and consultant];
- section 2.26 [Distributions among current or former employees, executive officers, directors or consultants of non-reporting issuer];
- section 2.27 [Permitted transferees];
- section 2.31 [Dividends and distributions], if the security was acquired in the circumstances referred to in subsection 2.31(2), that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.40 [RRSP/RRIF], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.42 [Conversion, exchange or exercise - security of own issue], if the security acquired in the circumstances referred to in clause (a) of subsection 2.42 (1) was acquired in accordance with the terms and conditions of a previously issued security and that previously issued security was distributed under

- (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.42 [*Conversion, exchange or exercise - security of a reporting issuer*] for a security being traded in the circumstances referred to in clause (b) of subsection 2.42 (1);

as well as the following local exemptions from the prospectus requirement:

- Alberta Securities Commission Rule 45-502 *Trade with RESP*, if not included in Appendix D;
- Nova Scotia Securities Commission Blanket Order No. 46;
- Prince Edward Island Local Rule 45-510 - *Exempt Distributions - Exemptions for Trades Pursuant to Take-over Bids and Issuer Bids*;
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.6 of NI 45-102.

10. Appendix E is amended by repealing the text after the heading "Ontario Provisions" and substituting the following:

Definitions

In this Appendix

"**1998 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

"**2001 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

"**2004 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

"**convertible security**" means, in Ontario, 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;

"**exchangeable security**" means, in Ontario, 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, in Ontario, 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;

"**multiple convertible security**" means, in Ontario, 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;

"**OSC Rule 45-502**" means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

"**OSC Rule 45-503**" means Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants*;

"**Type 1 trade**" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;

- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

"Type 2 trade" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(f) of the *Securities Act* (Ontario) other than a distribution to an associated consultant or investor consultant as defined in OSC Rule 45-503 or a distribution to an associated consultant or investor relations person as defined in MI 45-105;
- (b) clause 72(1)(h), (i), (j), (k) or (n) of the *Securities Act* (Ontario); or
- (c) section 2.5, 2.8 or 2.15 of the 2001 OSC Rule 45-501; or
- (d) section 2.5, 2.8 or 2.15 of the 2004 OSC Rule 45-501; and

"underlying security" means, in Ontario, 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.

(a) *Securities Act* (Ontario)

Clauses 72(1)(f), (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Ontario), except for a trade made under 72(1)(f)(iii) of the *Securities Act* (Ontario) that is:

- (i) included in Appendix D or F of this Instrument, or
- (ii) contemplated by section 6.5 of 2004 OSC Rule 45-501; and

an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

Clause 72(1)(h) of the *Securities Act* (Ontario) except for a distribution under clause 72(1)(h) of the *Securities Act* (Ontario) of an underlying security that was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade.

(b) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.1 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.5 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.6 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.6 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.7 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.7 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.8 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.6 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.15 of the 2004 OSC Rule 45-501.

(c) 1998 OSC Rule 45-501

Section 2.7 of the 1998 OSC Rule 45-501;

Section 2.8 of the 1998 OSC Rule 45-501;

Section 2.9 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.9 of the 1998 OSC Rule 45-501 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;

Section 2.10 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.10 of the 1998 OSC Rule 45-501 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;

Section 2.17 of the 1998 OSC Rule 45-501;

Subsection 2.18(1) of the 1998 OSC Rule 45-501 after the issuer had ceased to be a private issuer for the purposes of the *Securities Act* (British Columbia).

(d) Other

Sections 2.1 and 3.1 of Ontario Securities Commission Rule 45-502.

11. *Appendix F is amended by repealing the text after the heading "Underwriters (Section 2.13)" and substituting the following:*

Section 2.33 [*Acting as underwriter*] of NI 45-106 and section 2.11 [*Business combination and reorganization*] or subsection 2.42 (1) [*Conversion, exchange or exercise*] of NI 45-106, if the original security was acquired under section 2.33 of NI 45-106 or one of the underwriter exemptions in the transitional provisions listed below

12. *This amendment comes into force •.*

APPENDIX "M"**Proposed Amended
National Instrument 45-102
Resale of Securities****Table of Contents**

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National Instrument 45-102***Resale of Securities*****PART 1 DEFINITIONS****1.1 Definitions - In this Instrument**

"control distribution" means a trade described in the provisions of securities legislation listed in Appendix A;

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

"distribution date" means

- (a) in respect of a trade that is not a control distribution, the date the security that is the subject of the trade was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder,
- (b) in respect of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the selling security holder,
- (c) in respect of a trade of an underlying security that is not a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder, or
- (d) in respect of a trade of an underlying security that is a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was acquired by the selling security holder;

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

"MI 45-102" means this Instrument prior to its amendment on September 14, 2005;

"MI 45-103" means Multilateral Instrument 45-103 *Capital Raising Exemptions* prior to its repeal on September 14, 2005;

"MI 45-105" means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* prior to its repeal on September 14, 2005;

"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 otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"private company" has the same meaning as in securities legislation;

"private issuer" means, as the context requires,

- (a) a private issuer as defined in securities legislation,
- (b) a private issuer as defined in NI 45-106, or
- (c) in Ontario, for purposes of the definition of a private issuer as it existed in 1998 OSC Rule 45-501 (as defined in the Ontario transitional provisions in Appendix D) prior to its repeal on November 30, 2001, a person that
 - (i) is not a reporting issuer or a mutual fund,

- (ii) is an issuer all of whose issued and outstanding shares
 - (A) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements among the issuer and the holders of its securities; and
 - (B) are beneficially owned, directly or indirectly, by not more than 50 persons or companies, counting any two or more joint registered holders as one beneficial owner, exclusive of persons
 - (I) that are employed by the issuer or an affiliated entity of the issuer, or
 - (II) that beneficially owned, directly or indirectly, shares of the issuer while employed by it or an affiliated entity of it and at all times since ceasing to be so employed have continued to beneficially own, directly or indirectly, at least one share of the issuer, and
- (iii) has not distributed any securities to the public;

"SEDAR" has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*; and

"trade" in Québec, has the same meaning as in NI 45-106;

"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;

PART 2 FIRST TRADES

- 2.1 Application** - In Manitoba and Yukon, sections 2.2 to 2.7 and 2.10 to 2.14 do not apply.
- 2.2 Removal of Resale Provisions** - In Newfoundland and Labrador, Nova Scotia and Ontario, the provisions in securities legislation listed in Appendix C, respectively, do not apply.
- 2.3 Section 2.5 Applies** - If a security was distributed under any of the provisions listed in Appendix D, the first trade of that security is subject to section 2.5.
- 2.4 Section 2.6 Applies** - If a security was distributed under any of the provisions listed in Appendix E, the first trade of that security is subject to section 2.6.
- 2.5 Restricted Period**
- (1) Unless the conditions in subsection (2) are satisfied, a trade that is specified by section 2.3 or other securities legislation to be subject to this section is a distribution.
 - (2) Subject to subsection (3), for the purposes of subsection (1) the conditions are:
 - 1. The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.
 - 2. At least four months have elapsed from the distribution date.
 - 3. If the distribution date is on or after March 30, 2004, or, in Québec, on or after September 14, 2005, and
 - (i) if the issuer is a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend stating:

Unless permitted under securities legislation, the holder of this security must not trade the security before *[insert the date that is 4 months and a day after the distribution date]*,

or

- (ii) if the issuer is not a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend stating:

Unless permitted under securities legislation, the holder of this security must not trade the security before the date that is 4 months and a day after the later of (i) [*insert the distribution date*], and (ii) the date the issuer became a reporting issuer in any province or territory.

- 3.1. If the security is entered into a direct registration or other electronic book-entry system, or if the beneficial security holder did not otherwise directly receive a certificate representing the security, written notice containing the legend restriction notation set out in paragraphs (i) or (ii) of item 3, as applicable, was delivered to the beneficial security holder.
4. The trade is not a control distribution.
5. No unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade.
6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
7. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- (3) Items 3 and 3.1 of subsection (2) do not apply to a trade of an underlying security if the certificate representing the underlying security is issued or the written notice is delivered at least four months after the distribution date.

2.6 Seasoning Period

- (1) Unless the conditions in subsection (3) are satisfied, a trade that is specified by section 2.4 or other securities legislation to be subject to this section is a distribution.
- (2) The first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection (3) are satisfied.
- (3) For the purposes of subsections (1) and (2), the conditions are:
1. The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.
 2. The trade is not a control distribution.
 3. No unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade.
 4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 5. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

2.7 Exemption for a Trade if the Issuer Becomes a Reporting Issuer After the Distribution Date – Item 1 of subsection 2.5 (2), 2.6 (3) or 2.8 (2) does not apply if the issuer became a reporting issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and is a reporting issuer in a jurisdiction of Canada at the time of the trade.

2.8 Exemption for a Trade by a Control Person

- (1) The prospectus requirement does not apply to a control distribution, or a distribution by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a debt made in good faith by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt if the security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution, if the conditions in subsection (2) are satisfied.

- (2) For the purposes of subsection (1), the conditions are:
1. The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.
 2. The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, has held the securities for at least four months.
 3. No unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade.
 4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 5. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- (3) The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, under subsection (2) must
- (a) complete and sign a Form 45-102F1 no earlier than one business day before the Form 45-102F1 is filed;
 - (b) file the completed and signed Form 45-102F1 on SEDAR at least seven days before the first trade of the securities that is part of the distribution; and
 - (c) file, within three days after the completion of any trade, an insider report prepared in accordance with either Form 55-102F2 or Form 55-102F6 under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.
- (4) A Form 45-102F1 filed under subsection (3) expires on the earlier of
- (a) thirty days after the date the Form 45-102F1 was filed, and
 - (b) the date the selling security holder, or the lender, pledgee, mortgagee or other encumbrancer, files the last of the insider reports reflecting the sale of all securities referred to in the Form 45-102F1.
- (5) A selling security holder, or the lender, pledgee, mortgagee or other encumbrancer must not file a new Form 45-102F1 in respect of a class of securities of a reporting issuer until the Form 45-102F1 in respect of that class of securities previously filed by that person or company has expired.

2.9 Determining Time Periods

- (1) In determining the period of time that an issuer was a reporting issuer in a jurisdiction of Canada for the purposes of section 2.5, 2.6 or 2.8, if the issuer was a party to an amalgamation, merger, reorganization or arrangement, the selling security holder may include the period of time that one of the parties to the amalgamation, merger, reorganization or arrangement was a reporting issuer in a jurisdiction of Canada immediately before the amalgamation, merger, reorganization or arrangement.
- (2) In determining the period of time that a selling security holder has held a security for the purposes of section 2.5 or 2.8, if the selling security holder acquired the security from an affiliate of the selling security holder, the selling security holder may include the period of time that the affiliate held the security.
- (3) In determining the period of time that a selling security holder has held an underlying security for the purposes of section 2.8, the selling security holder may include the period of time the selling security holder held the convertible security, exchangeable security or multiple convertible security.
- (4) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held a security under item 2 of subsection 2.8(2), the selling security holder may include the period of time the debtor held the security.
- (5) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held an underlying security under item 2 of subsection 2.8(2), the selling security holder may include the period of time the debtor held the convertible security, exchangeable security or multiple convertible security.

- 2.10 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Prospectus** - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if
- (a) a receipt was obtained for a prospectus qualifying the distribution of the convertible security, exchangeable security or multiple convertible security;
 - (b) the trade is not a control distribution; and
 - (c) the issuer of the underlying security is a reporting issuer at the time of the trade.
- 2.11 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid** - Section 2.6 does not apply to a trade of a security of an offeror if
- (a) a securities exchange take-over bid circular or securities exchange issuer bid circular relating to the distribution of the security was filed by the offeror on SEDAR;
 - (b) the trade is not a control distribution; and
 - (c) the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid or issuer bid.
- 2.12 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Securities Exchange Take-over Bid Circular or Issuer Bid Circular** - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if
- (a) a securities exchange take-over bid circular or a securities exchange issuer bid circular relating to the distribution of the convertible security, exchangeable security or multiple convertible security was filed by the offeror on SEDAR;
 - (b) the trade is not a control distribution;
 - (c) the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid or issuer bid; and
 - (d) the issuer of the underlying security is a reporting issuer at the time of the trade.
- 2.13 Trades by Underwriters** - A trade by an underwriter of securities distributed under any of the provisions listed in Appendix F is a distribution.
- 2.14 First Trades in Securities of a Non-Reporting Issuer Distributed under a Prospectus Exemption**
- (1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if
 - (a) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
 - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
 - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
 - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and

- (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (iii) to a person or company outside of Canada.
- (2) The prospectus requirement does not apply to the first trade of an underlying security if
 - (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
 - (c) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security; and
 - (d) the condition in paragraph (1)(c) is satisfied.

PART 3 EXEMPTION

3.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 4 EFFECTIVE DATE

- 4.1 Effective Date** - This Instrument comes into force on March 30, 2004.

Appendix A
to
National Instrument 45-102
Resale of Securities

Control Distributions

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Definition of "control person" in section 1(l) and subclause (iii) of the definition of "distribution" contained in section 1(p) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph (b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
Newfoundland and Labrador	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
New Brunswick	Definition of "control person" and clause (c) of the definition of "distribution" contained in subsection 1 (1) of the <i>Securities Act</i> (New Brunswick)
Northwest Territories	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Ontario	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
Prince Edward Island	Clause (iii) of the definition of "distribution" in section 1 of the <i>Securities Act</i> (Prince Edward Island)
Québec	Paragraph 9 of the definition of "distribution" contained in section 5 of the <i>Securities Act</i> (Québec)
Saskatchewan	Subclauses 2(1)(r)(iii), (iv) and (v) of <i>The Securities Act, 1988</i> (Saskatchewan)

Appendix B
to
National Instrument 45-102
Resale of Securities

Reporting Issuer Jurisdictions

Alberta
British Columbia
Manitoba
New Brunswick
Nova Scotia
Ontario
Québec
Saskatchewan

Appendix C
to
National Instrument 45-102
Resale of Securities

Non-Applicable Resale Provisions
(Section 2.2)

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Newfoundland and Labrador	Clause 54(5)(a), subsections 54(7), 54(9), 54(10), 73(4), 73(5), 73(6) as it relates to clause 72(1)(r), 73(7) but not as it relates to subsection 54(6) and 54(7), 73(12), 73(18), 73(19) and 73(24) of the Securities Act (Newfoundland and Labrador)
Nova Scotia	Subsections 77(5), 77(6), 77(7), 77(7A), 77(7B), 77(8), 77(9), 77(10)(a) and 77(11) of the <i>Securities Act</i> (Nova Scotia)
Ontario	Subsections 72(4), 72(5), 72(6) as it relates to clause 72(1)(r), and 72(7) of the <i>Securities Act</i> (Ontario)

Appendix D
to
National Instrument 45-102
Resale of Securities

Restricted Period Trades
(Section 2.3)

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- section 2.3 [Accredited investor] ;
- section 2.5 [Family, friends and business associates] (except in Ontario);
- section 2.7 [Founder, control person and family] (Ontario);
- section 2.8 [Affiliates];
- section 2.9 [Offering memorandum] (in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan);
- section 2.10 [Minimum amount investment];
- section 2.12 [Asset acquisition];
- section 2.13 [Petroleum, natural gas and mining properties];
- section 2.14 [Securities for debt];
- section 2.19 [Additional investment in investment funds];
- section 2.30 [Isolated distribution by issuer] ;
- section 2.31 [Dividends and distributions], if the security was acquired in the circumstances referred to in subsection 2.31(2) and that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- section 2.40 [RRSP/RRIF], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- section 2.42 [Conversion, exchange or exercise], if the security acquired in the circumstances referred to in clause (a) of subsection 2.42(1) was acquired in accordance with the terms and conditions of a previously issued security and that previously issued security was distributed under
 - (a) one of the exemptions listed in this Appendix,

- (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
- (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- section 5.2 [TSX Venture exchange offering], if the security acquired under section 5.2 was acquired by
 - (a) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, the issuer's underwriter, or a member of the underwriter's "professional group" (as defined in National Instrument 33-105 *Underwriting Conflicts*), or
 - (b) any other purchaser in excess of \$40,000 for the portion of the securities in excess of 40,000;

as well as the following local exemptions from the prospectus requirement:

- section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*;
- clauses 77(1)(u) and (w) and subclauses 77(1)(ab)(ii) and (iii) of the *Securities Act* (Nova Scotia);
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.5 of NI 45-102.

Transitional Provisions

1. General - An exemption from the prospectus requirement listed in Appendix D of MI 45-102 in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102. The exemptions listed in Appendix D on March 30, 2004 were:

- Sections 131(1)(b), (c), (l), and (m) of the *Securities Act* (Alberta);
- Section 122(d) and 122.2 of the Alberta Securities Commission Rules, section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*, subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Section 131(1)(f)(iii) of the *Securities Act* (Alberta), if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Alberta), the Alberta Securities Commission Rules or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the *Securities Act* (British Columbia);
- Sections 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (British Columbia) and subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Sections 74(2)(11)(ii), 74(2)(11)(iii) and 74(2)(13) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder or the right to purchase, convert or exchange or otherwise acquire, was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or MI 45-103 referred to in this Appendix, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Section 74(2)(12) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or MI 45-103 referred to in this Appendix, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Clauses 54(3)(f) and (g) and 73(1)(a), (b), (c), (d), (h), (l), (m), (p) and (q) of the *Securities Act* (Newfoundland and Labrador), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103, or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;

- Subclause 73(1)(f)(iii) of the *Securities Act* (Newfoundland and Labrador) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Newfoundland and Labrador) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories), subsections 3.1(2), 4.1(2), 4.1(4), 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Clauses 77(1)(a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) and (ad) of the *Securities Act* (Nova Scotia), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subclause 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z) of Blanket Order No.1 of the Registrar of Securities (Nunavut), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subparagraph 3(e)(iii) of Blanket Order No.1 of the Registrar of Securities (Nunavut) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Nunavut) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Clauses 13(1)(a), (b), (c), (g) and (i) of the *Securities Act* (Prince Edward Island), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subclause 13(1)(e)(iii) of the *Securities Act* (Prince Edward Island) if the right to purchase, convert or exchange was previously acquired under one the above-listed exemptions under the *Securities Act* (Prince Edward Island) or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subclauses 81(1)(f)(iii) and (iv) of *The Securities Act, 1988* (Saskatchewan) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) or MI 45-103 referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Clause 81(1)(e) of *The Securities Act, 1988* (Saskatchewan) if the person or company from whom the securities were acquired obtained the securities under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix;

2. Québec Provisions

- Sections 43, 47, 48 and 51 of the *Securities Act* (Québec) as they read prior to their amendment or repeal by sections 7 and 8 of *An Act to amend the Securities Act and other legislative provisions*;
- Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act* (Québec) before March 30, 2004 if the exemption included as a condition a restricted period of 12 months.

3. Ontario Provisions

Definitions

In this Appendix

"**1998 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

"**2001 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

"**2004 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

"**2005 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on September 14, 2005;

"**[2008] OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on •;

"**convertible security**" means, in Ontario, 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;

"**exchangeable security**" means, in Ontario, 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, in Ontario, 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;

"**multiple convertible security**" means, in Ontario, 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;

"**OSC Rule 45-502**" means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

"**Type 1 trade**" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

"**underlying security**" means, in Ontario, 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.

(a) Securities Act (Ontario)

Clauses 72(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Ontario) and subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario), or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

(b) 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501

Section 2.1 of the 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501;

Section 2.2 of the 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501.

(c) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.3 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.5 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.12 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.13 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.14 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.16 of the 2004 OSC Rule 45-501.

(d) 1998 OSC Rule 45-501

Section 2.4 of the 1998 OSC Rule 45-501

Section 2.5 of the 1998 OSC Rule 45-501

Section 2.11 of the 1998 OSC Rule 45-501

(e) Other

Any provision under which an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade or in a trade under section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501.

Appendix E
to
National Instrument 45-102
Resale of Securities

Seasoning Period Trades
(Section 2.4)

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- section 2.1 [Rights offering];
- section 2.2 [Reinvestment plan];
- section 2.4 [Private issuer];
- section 2.11 [Business combination and reorganization];
- section 2.16 [Take-over bid and issuer bid];
- section 2.17 [Offer to acquire to security holder outside local jurisdiction];
- section 2.18 [Investment fund reinvestment];
- section 2.20 [Private investment club];
- section 2.21 [Private investment fund - loan and trust pools];
- section 2.24 [Employee, executive officer, director and consultant];
- section 2.26 [Distributions among current or former employees, executive officers, directors or consultants of non-reporting issuer];
- section 2.27 [Permitted transferees];
- section 2.31 [Dividends and distributions], if the security was acquired in the circumstances referred to in subsection 2.31(2), that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.40 [RRSP/RRIF], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.42 [Conversion, exchange or exercise - security of own issue], if the security acquired in the circumstances referred to in clause (a) of subsection 2.42 (1) was acquired in accordance with the terms and conditions of a previously issued security and that previously issued security was distributed under

- (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- section 2.42 [Conversion, exchange or exercise - security of a reporting issuer] for a security being traded in the circumstances referred to in clause (b) of subsection 2.42 (1);
- as well as the following local exemptions from the prospectus requirement:
- Alberta Securities Commission Rule 45-502 *Trade with RESP*, if not included in Appendix D;
 - Nova Scotia Securities Commission Blanket Order No. 46;
 - Prince Edward Island Local Rule 45-510 - *Exempt Distributions - Exemptions for Trades Pursuant to Take-over Bids and Issuer Bids*;
 - an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.6 of NI 45-102.

Transitional Provisions

1. General:

An exemption from the prospectus requirement listed in Appendix E of MI 45-102 in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102. The exemptions listed in Appendix E of MI 45-102 on March 30, 2004 were:

- Section 131(1)(f) if not included in Appendix D of this Instrument, sections 131(h), (i), (j), (k), and (y) of the *Securities Act* (Alberta) and sections 107(1) (j.1) and (k.1) prior to their repeal by section 5 of the *Securities Amendment Act, 1989* (Alberta), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Section 74(2)(11)(iii) if not included in Appendix D or F and sections 74(2)(7), (8) if not included in Appendix F, (9) to (11), (13), (22) and (24) of the *Securities Act* (British Columbia);
- Section 128(g) of the *Securities Rules* (British Columbia), section 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Section 74(2)(12) of the *Securities Act* (British Columbia), if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or a multilateral instrument referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Clauses 54(3) and 73(1)(f) if not included in Appendix D or F of this Instrument, (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Newfoundland and Labrador), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;

- Clause 77(1)(f) of the *Securities Act* (Nova Scotia) if not included in Appendix D or F of this Instrument, and clauses 77(1)(h), (i) if not included in Appendix F, (j), (k), (n), (v), (va), (ac), (ae) and (af) of the *Securities Act* (Nova Scotia), and clause 78(1)(a) of the *Securities Act* (Nova Scotia) as it relates to clause 41(2)(j) of the *Securities Act* (Nova Scotia) and Blanket Order No. 37, 38 if not included in Appendix F, 46 and 45-503 if not included in Appendix F, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Nunavut), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Clauses 13(1)(e) if not included in Appendix D or F of this Instrument, (f) if not included in Appendix F, (h) and (k) of the *Securities Act* (Prince Edward Island) or section 3.1 or 3.2 of Rule 45-501, section 1.1 of Prince Edward Island Rule 45-502, section 2.1 or 2.2 of Prince Edward Island Rule 45-506 or section 2.1 or 2.2 of Prince Edward Island Rule 45-510, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Clauses 81(1)(a.1), (e) if not included in Appendix D of this Instrument, (f) if not included in Appendix D or F of this Instrument, (f.1), (g), (h), (i) if not included in Appendix F, (i.1), (j), (k), (o), (cc) and (dd) of *The Securities Act, 1988* (Saskatchewan), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102.

2. Québec Provisions

- Sections 50 and 52 of the *Securities Act* (Québec) as they read prior to their repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*;
- Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act* (Québec) before March 30, 2004 if the exemption included as a condition a seasoning period of 12 months.

3. Ontario provisions

Definitions

In this Appendix

"**1998 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

"**2001 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

"**2004 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

"**convertible security**" means, in Ontario, 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;

"**exchangeable security**" means, in Ontario, 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, in Ontario, 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;

"**multiple convertible security**" means, in Ontario, 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;

"**OSC Rule 45-502**" means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

"**OSC Rule 45-503**" means Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants*;

"**Type 1 trade**" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

"**Type 2 trade**" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(f) of the *Securities Act* (Ontario) other than a distribution to an associated consultant or investor consultant as defined in OSC Rule 45-503 or a distribution to an associated consultant or investor relations person as defined in MI 45-105;
- (b) clause 72(1)(h), (i), (j), (k) or (n) of the *Securities Act* (Ontario); or
- (c) section 2.5, 2.8 or 2.15 of the 2001 OSC Rule 45-501; or
- (d) section 2.5, 2.8 or 2.15 of the 2004 OSC Rule 45-501; and

"**underlying security**" means, in Ontario, 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.

(a) Securities Act (Ontario)

Clauses 72(1)(f), (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Ontario), except for a trade made under 72(1)(f)(iii) of the *Securities Act* (Ontario) that is:

- (i) included in Appendix D or F of this Instrument, or
- (ii) contemplated by section 6.5 of 2004 OSC Rule 45-501; and

an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

Clause 72(1)(h) of the *Securities Act* (Ontario) except for a distribution under clause 72(1)(h) of the *Securities Act* (Ontario) of an underlying security that was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade.

(b) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.1 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.5 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.6 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.6 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.7 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.7 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.8 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.6 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.15 of the 2004 OSC Rule 45-501.

(c) 1998 OSC Rule 45-501

Section 2.7 of the 1998 OSC Rule 45-501;

Section 2.8 of the 1998 OSC Rule 45-501;

Section 2.9 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.9 of the 1998 OSC Rule 45-501 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;

Section 2.10 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.10 of the 1998 OSC Rule 45-501 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;

Section 2.17 of the 1998 OSC Rule 45-501;

Subsection 2.18(1) of the 1998 OSC Rule 45-501 after the issuer had ceased to be a private issuer for the purposes of the *Securities Act* (British Columbia).

(d) Other

Sections 2.1 and 3.1 of Ontario Securities Commission Rule 45-502.

Appendix F
to
National Instrument 45-102
Resale of Securities

Underwriters
(Section 2.13)

Section 2.33 [*Acting as underwriter*] of NI 45-106 and section 2.11 [*Business combination and reorganization*] or subsection 2.42 (1) [*Conversion, exchange or exercise*] of NI 45-106, if the original security was acquired under section 2.33 of NI 45-106 or one of the underwriter exemptions in the transitional provisions listed below

Transitional Provisions:

An exemption from the prospectus requirement listed in Appendix F of MI 45-102 in effect on March 30, 2004. Exemptions listed in Appendix F of MI 45-102 on March 30, 2004 were:

- Section 74(2)(15) of the *Securities Act* (British Columbia) and section 74(2)(8) or 74(2)(11)(iii) of the *Securities Act* (British Columbia) if the original security was acquired under section 74(2)(15) of the *Securities Act* (British Columbia);
- Clause 73(1)(r) of the *Securities Act* (Newfoundland and Labrador) and section 73(1)(i) or 73(1)(f)(iii) of the *Securities Act* (Newfoundland and Labrador) if the original security was acquired under section 73(1)(r) of the *Securities Act* (Newfoundland and Labrador);
- Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories);
- Clause 77(1)(r) of the *Securities Act* (Nova Scotia) and clause 77(1)(i) or 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) or Blanket Order No. 38 or 45-503 if the original security was acquired under clause 77(1)(r) of the *Securities Act* (Nova Scotia);
- Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut);
- Clause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario);
- Clause 72(1)(i) of the *Securities Act* (Ontario) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario);
- Clause 72(1)(r) of the *Securities Act* (Ontario);
- Section 2.1 of Prince Edward Island Rule 45-509 and subclause 13(1)(e) (iii) or clause 13(1)(f) of the *Securities Act* (Prince Edward Island) or section 1.1 of Prince Edward Island Rule 45-502 if the original security was acquired under section 2.1 of Prince Edward Island Rule 45-509;
- Section 55 of the *Securities Act* (Québec) as it read prior to its repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*;
- Clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan) and clause 81(1)(i) or subclause 81(1)(f)(iii) of *The Securities Act, 1988* (Saskatchewan) if the original security was acquired under clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan).

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APPENDIX "N"

National Instrument 45-102
Resale of Securities

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National Instrument 45-102
Resale of Securities

PART 1 **DEFINITIONS**

1.1 **Definitions** - In this Instrument

"control distribution" means a trade described in the provisions of securities legislation listed in Appendix A;

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

"distribution date" means

- (a) in respect of a trade that is not a control distribution, the date the security that is the subject of the trade was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder,
- (b) in respect of a trade that is a control distribution, the date the security that is the subject of the trade was acquired by the selling security holder,
- (c) in respect of a trade of an underlying security that is not a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed in reliance on an exemption from the prospectus requirement by the issuer or, in the case of a control distribution, by the selling security holder, or
- (d) in respect of a trade of an underlying security that is a control distribution, the date the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was acquired by the selling security holder;

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

"MI 45-102" means this Instrument prior to its amendment on September 14, 2005;

"MI 45-103" means Multilateral Instrument 45-103 *Capital Raising Exemptions* prior to its repeal on September 14, 2005;

"MI 45-105" means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* prior to its repeal on September 14, 2005;

"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 otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

"private company" has the same meaning as in securities legislation;

"private issuer" means, as the context requires,

- (a) a private issuer as defined in securities legislation,
- (b) a private issuer as defined in NI 45-106, or
- (c) in Ontario, for purposes of the definition of a private issuer as it existed in 1998 OSC Rule 45-501 (as defined in the Ontario transitional provisions in Appendix D) prior to its repeal on November 30, 2001, a person that
 - (i) is not a reporting issuer or a mutual fund,
 - (ii) is an issuer all of whose issued and outstanding shares

- (A) are subject to restrictions on transfer contained in the constating documents of the issuer or one or more agreements among the issuer and the holders of its securities; and
- (B) are beneficially owned, directly or indirectly, by not more than 50 persons or companies, counting any two or more joint registered holders as one beneficial owner, exclusive of persons
 - (I) that are employed by the issuer or an affiliated entity of the issuer, or
 - (II) that beneficially owned, directly or indirectly, shares of the issuer while employed by it or an affiliated entity of it and at all times since ceasing to be so employed have continued to beneficially own, directly or indirectly, at least one share of the issuer, and
- (iii) has not distributed any securities to the public;

"SEDAR" has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*; and

"trade"; in Québec, has the same meaning as in NI 45-106;

"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.±

PART 2 FIRST TRADES

2.1 Application - In Manitoba and Yukon, sections 2.2 to 2.7 and 2.10 to 2.14 do not apply.

2.2 Removal of Resale Provisions - In Newfoundland and Labrador, Nova Scotia and Ontario, the provisions in securities legislation listed in Appendix C, respectively, do not apply.

2.3 Section 2.5 Applies - If a security was distributed under any of the provisions listed in Appendix D, the first trade of that security is subject to section 2.5.

2.4 Section 2.6 Applies - If a security was distributed under any of the provisions listed in Appendix E, the first trade of that security is subject to section 2.6.

2.5 Restricted Period

- (1) Unless the conditions in subsection (2) are satisfied, a trade that is specified by section 2.3 or other securities legislation to be subject to this section is a distribution.
- (2) Subject to subsection (3), for the purposes of subsection (1) the conditions are:
 - 1. The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.
 - 2. At least four months have elapsed from the distribution date.
 - ~~3.3.~~ If the distribution date is on or after March 30, ~~2004~~2004, or, ~~in Québec, on or after September 14, 2005 in Québec, 2005,~~ and
 - (i) ~~(a) if the issuer is a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend, or an ownership statement issued under a direct registration system or other electronic book entry system acceptable to the regulator and, in Québec, the securities regulatory authority, bears a legend restriction notation, stating:~~
 - " Unless permitted under securities legislation, the holder of this security must not trade the security before [insert the date that is 4 months and a day after the distribution date]."

or

~~(b) the issuer is not a reporting issuer on the distribution date, the certificate representing the security carries a legend, or an ownership statement issued under a direct registration system or other electronic book-entry system acceptable to the regulator and, in Québec, the securities regulatory authority bears a legend restriction notation, stating:~~

~~(ii) " if the issuer is not a reporting issuer on the distribution date, the certificate representing the security, if any, carries a legend stating:~~

~~_____ Unless permitted under securities legislation, the holder of this security must not trade the security before the date that is 4 months and a day after the later of (i) [*insert the distribution date*], and (ii) the date the issuer became a reporting issuer in any province or territory."~~

3.1. If the security is entered into a direct registration or other electronic book-entry system, or if the beneficial security holder did not otherwise directly receive a certificate representing the security, written notice containing the legend restriction notation set out in paragraphs (i) or (ii) of item 3, as applicable, was delivered to the beneficial security holder.

4. The trade is not a control distribution.

5. No unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade.

6. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

7. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

(3) ~~Item 3(a) Items 3 and 3.1~~ of subsection (2) ~~does do~~ not apply to a trade of an underlying security if the certificate representing the underlying security ~~or the ownership statement issued under a direct registration book-entry system or other electronic system acceptable to the regulator and, in Québec, the securities regulatory authority, is issued~~ or the written notice is delivered at least four months after the distribution date.

2.6 Seasoning Period

(1) Unless the conditions in subsection (3) are satisfied, a trade that is specified by section 2.4 or other securities legislation to be subject to this section is a distribution.

(2) The first trade of securities issued by a private company or private issuer made after the issuer has ceased to be a private company or private issuer is a distribution unless the conditions in subsection (3) are satisfied.

(3) For the purposes of subsections (1) and (2), the conditions are:

1. The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.

2. The trade is not a control distribution.

3. No unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade.

4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.

5. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

2.7 Exemption for a Trade if the Issuer Becomes a Reporting Issuer After the Distribution Date – Item 1 of subsection 2.5 (2), 2.6 (3) or 2.8 (2) does not apply if the issuer became a reporting issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and is a reporting issuer in a jurisdiction of Canada at the time of the trade.

2.8 Exemption for a Trade by a Control Person

- (1) The prospectus requirement does not apply to a control distribution, or a distribution by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a debt made in good faith by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt if the security was acquired by the lender, pledgee, mortgagee or other encumbrancer in a control distribution, if the conditions in subsection (2) are satisfied.
- (2) For the purposes of subsection (1), the conditions are:
 1. The issuer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade.
 2. The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, has held the securities for at least four months.
 3. No unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade.
 4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
 5. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.
- (3) The selling security holder, or the lender, pledgee, mortgagee or other encumbrancer if the distribution is for the purpose of liquidating a debt, under subsection (2) must
 - (a) complete and sign a Form 45-102F1 no earlier than one business day before the form Form 45-102F1 is filed;
 - (b) file the completed and signed Form 45-102F1 on SEDAR at least seven days before the first trade of the securities that is part of the distribution; and
 - (c) file, within three days after the completion of any trade, an insider report prepared in accordance with either Form 55-102F2 or Form 55-102F6 under National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI).
- (4) A Form 45-102F1 filed under subsection (3) expires on the earlier of
 - (a) thirty days from the date the form was filed, after the date the Form 45-102F1 was filed, and
 - (b) the date the selling security holder, or the lender, pledgee, mortgagee or other encumbrancer, files the last of the insider reports reflecting the sale of all securities referred to in the Form 45-102F1.
- (5) A selling security holder, or the lender, pledgee, mortgagee or other encumbrancer must not file a new Form 45-102F1 in respect of a class of securities of a reporting issuer until the Form 45-102F1 in respect of that class of securities previously filed by that person or company has expired.

2.9 Determining Time Periods

- (1) In determining the period of time that an issuer was a reporting issuer in a jurisdiction of Canada for the purposes of section 2.5, 2.6 or 2.8, if the issuer was a party to an amalgamation, merger, continuation reorganization or arrangement, the selling security holder may include the period of time that one of the parties to the amalgamation, merger, continuation reorganization or arrangement was a reporting issuer in a jurisdiction of Canada immediately before the amalgamation, merger, continuation reorganization or arrangement.
- (2) In determining the period of time that a selling security holder has held a security for the purposes of section 2.5 or 2.8, if the selling security holder acquired the security from an affiliate of the selling security holder, the selling security holder may include the period of time that the affiliate held the security.

- (3) In determining the period of time that a selling security holder has held an underlying security for the purposes of section 2.8, the selling security holder may include the period of time the selling security holder held the convertible security, exchangeable security or multiple convertible security.
- (4) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held a security under item 2 of subsection 2.8(2), the selling security holder may include the period of time the debtor held the security.
- (5) In determining the period of time that a lender, pledgee, mortgagee or other encumbrancer has held an underlying security under item 2 of subsection 2.8(2), the selling security holder may include the period of time the debtor held the convertible security, exchangeable security or multiple convertible security.

2.10 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Prospectus - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) a receipt was obtained for a prospectus qualifying the distribution of the convertible security, exchangeable security or multiple convertible security;
- (b) the trade is not a control distribution; and
- (c) the issuer of the underlying security is a reporting issuer at the time of the trade.

2.11 Exemption for a Trade in a Security Acquired in a Take-over Bid or Issuer Bid - Section 2.6 does not apply to a trade of a security of an offeror if

- (a) a securities exchange take-over bid circular or securities exchange issuer bid circular relating to the distribution of the security was filed by the offeror on SEDAR;
- (b) the trade is not a control distribution; and
- (c) the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid or issuer bid.

2.12 Exemption for a Trade in an Underlying Security if the Convertible Security, Exchangeable Security or Multiple Convertible Security is Qualified by a Securities Exchange Take-over Bid Circular or Issuer Bid Circular - Section 2.6 does not apply to a trade in an underlying security issued or transferred under the terms of a convertible security, exchangeable security or multiple convertible security if

- (a) a securities exchange take-over bid circular or a securities exchange issuer bid circular relating to the distribution of the convertible security, exchangeable security or multiple convertible security was filed by the offeror on SEDAR;
- (b) the trade is not a control distribution;
- (c) the offeror was a reporting issuer on the date the securities of the offeree issuer were first taken up under the take-over bid or issuer bid; and
- (d) the issuer of the underlying security is a reporting issuer at the time of the trade.

2.13 Trades by Underwriters - A trade by an underwriter of securities distributed under any of the provisions listed in Appendix F is a distribution.

2.14 First Trades in Securities of a Non-Reporting Issuer Distributed under a Prospectus Exemption

- (1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if
 - (a) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

- (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
 - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
 - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and
- (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (iii) to a person or company outside of Canada.
- (2) The prospectus requirement does not apply to the first trade of an underlying security if
 - (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada at the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;
 - (c) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security; and
 - (d) the condition in paragraph (1)(c) is satisfied.

PART 3 EXEMPTION

3.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 4 EFFECTIVE DATE

- 4.1 Effective Date** - This Instrument comes into force on March 30, 2004.

Appendix A
to
National Instrument 45-102
Resale of Securities

Control Distributions

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Definition of "control person" in section 1(l) and subclause (iii) of the definition of "distribution" contained in section 1(p) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph (c) of the definition of "distribution" contained in section 1(1) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph (b) of the definition of "primary distribution to the public" contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
Newfoundland and Labrador	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
New Brunswick	Definition of "control person" and clause (c) of the definition of "distribution" contained in subsection 1 (1) of the <i>Securities Act</i> (New Brunswick)
Northwest Territories	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Nova Scotia	Clause 2(1)(l)(iii) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Definition of "control person" and paragraph (iii) of the definition of "distribution" contained in subsection 1(1) of Blanket Order No. 1 of the Registrar of Securities.
Ontario	Paragraph (c) of the definition of "distribution" contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
Prince Edward Island	Clause (iii) of the definition of "distribution" in section 1 of the <i>Securities Act</i> (Prince Edward Island)
Québec	Paragraph 9 of the definition of "distribution" contained in section 5 of the <i>Securities Act</i> (Québec)
Saskatchewan	Subclauses 2(1)(r)(iii), (iv) and (v) of <i>The Securities Act, 1988</i> (Saskatchewan)

Appendix B
to
National Instrument 45-102
Resale of Securities

Reporting Issuer Jurisdictions

Alberta
British Columbia
Manitoba
New Brunswick
Nova Scotia
Ontario
Québec
Saskatchewan

Appendix C
to
National Instrument 45-102
Resale of Securities

Non-Applicable Resale Provisions
(Section 2.2)

JURISDICTION**SECURITIES LEGISLATION REFERENCE**

Newfoundland and Labrador

Clause 54(5)(a), subsections 54(7), 54(9), 54(10), 73(4), 73(5), 73(6) as it relates to clause 72(1)(r), 73(7) but not as it relates to subsection 54(6) and 54(7), 73(12), 73(18), 73(19) and 73(24) of the Securities Act (Newfoundland and Labrador)

Nova Scotia

Subsections 77(5), 77(6), 77(7), 77(7A), 77(7B), 77(8), 77(9), 77(10)(a) and 77(11) of the *Securities Act* (Nova Scotia)

Ontario

Subsections 72(4), 72(5), 72(6) as it relates to clause 72(1)(r), and 72(7) of the *Securities Act* (Ontario)

Appendix D
to
National Instrument 45-102
Resale of Securities

Restricted Period Trades
(Section 2.3)

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- ~~subsection~~ section 2.3(2) [*Accredited investor*];
- ~~subsection~~ section 2.5(2) [*Family, friends and business associates*] (except in Ontario);
- ~~subsection~~ section 2.7(2) [*Founder, control person and family*] (Ontario);
- ~~subsection~~ section 2.8(2) [*Affiliates*];
- ~~subsection 2.9(3)~~ [*Offering memorandum*] (in British Columbia, New Brunswick, Nova Scotia, and Newfoundland and Labrador);
- ~~subsection~~ section 2.9(5) [*Offering memorandum*] (in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec and Saskatchewan);
- ~~subsection~~ section 2.10(2) [*Minimum amount investment*];
- ~~subsection~~ section 2.12(2) [*Asset acquisition*];
- ~~subsection~~ section 2.13(2) [*Petroleum, natural gas and mining properties*];
- ~~subsection~~ section 2.14(2) [*Securities for debt*];
- ~~subsection~~ section 2.19(2) [*Additional investment in investment funds*];
- ~~subsection~~ section 2.30(2) [*Isolated ~~trade~~ distribution by issuer*];
- ~~section 2.31~~ [*Dividends and distributions*], if the security was acquired in the circumstances referred to in subsection 2.31(2) and that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- ~~subsection~~ section 2.40(2) [*RRSP/RRIF*], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed ~~above~~ in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;
- ~~subsection~~ section 2.42(3) [*Conversion, exchange or exercise*], if the security acquired in the circumstances referred to in clause (a) of subsection 2.42(1) was acquired in accordance with the terms and

conditions of a previously issued security and that previously issued security was distributed under

- (a) one of the exemptions listed ~~above~~ in this Appendix,
- (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of this Instrument, or
- (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102;

- section 5.2 [TSX Venture exchange offering], if the security acquired under section 5.2 was acquired by
 - (a) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, the issuer's underwriter, or a member of the underwriter's "professional group" (as defined in National Instrument 33-105 *Underwriting Conflicts*), or
 - (b) any other purchaser ~~who purchases~~ in excess of \$40,000 for the portion of the securities in excess of \$40,000;

as well as the following local exemptions from the prospectus requirement:

- section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*;
- clauses 77(1)(u) and (w) and subclauses 77(1)(ab)(ii) and (iii) of the *Securities Act* (Nova Scotia);
- an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.5 of NI 45-102.

Transitional Provisions

1. General - An exemption from the prospectus requirement listed in Appendix D of MI 45-102 in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.5 of MI 45-102. The exemptions listed in Appendix D on March 30, 2004 were:

- Sections 131(1)(b), (c), (l), and (m) of the *Securities Act* (Alberta);
- Section 122(d) and 122.2 of the Alberta Securities Commission Rules, section 3.1 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*, subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Section 131(1)(f)(iii) of the *Securities Act* (Alberta), if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Alberta), the Alberta Securities Commission Rules or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Sections 74(2)(1) to (6), (16), (18), (19), (23) and (25) of the *Securities Act* (British Columbia);
- Sections 128(a), (b), (c), (e), (f) and (h) of the *Securities Rules* (British Columbia) and subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Sections 74(2)(11)(ii), 74(2)(11)(iii) and 74(2)(13) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder or the right to purchase, convert or exchange or otherwise acquire, was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or MI 45-103 referred to in this Appendix, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Section 74(2)(12) of the *Securities Act* (British Columbia) if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or MI 45-103 referred to in this Appendix, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;

- Clauses 54(3)(f) and (g) and 73(1)(a), (b), (c), (d), (h), (l), (m), (p) and (q) of the *Securities Act* (Newfoundland and Labrador), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103, or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subclause 73(1)(f)(iii) of the *Securities Act* (Newfoundland and Labrador) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Newfoundland and Labrador) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories), subsections 3.1(2), 4.1(2), 4.1(4), 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Clauses 77(1)(a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) and (ad) of the *Securities Act* (Nova Scotia), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subclause 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) if the right to purchase, convert or exchange was previously acquired under one of the above listed exemptions under the *Securities Act* (Nova Scotia) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Paragraphs 3(a), (b), (c), (k), (l), (m), (r), (s), (t), (u), (w) and (z) of Blanket Order No.1 of the Registrar of Securities (Nunavut), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subparagraph 3(e)(iii) of Blanket Order No.1 of the Registrar of Securities (Nunavut) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under Blanket Order No. 1 of the Registrar of Securities (Nunavut) or MI 45-103, or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Clauses 13(1)(a), (b), (c), (g) and (i) of the *Securities Act* (Prince Edward Island), subsections 3.1(2), 4.1(2), 4.1(4), and 5.1(2) of MI 45-103 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subclause 13(1)(e)(iii) of the *Securities Act* (Prince Edward Island) if the right to purchase, convert or exchange was previously acquired under one the above-listed exemptions under the *Securities Act* (Prince Edward Island) or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Subclauses 81(1)(f)(iii) and (iv) of *The Securities Act, 1988* (Saskatchewan) if the convertible security, exchangeable security or multiple convertible security was acquired under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) or MI 45-103 referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102;
- Clause 81(1)(e) of *The Securities Act, 1988* (Saskatchewan) if the person or company from whom the securities were acquired obtained the securities under one of the exemptions of *The Securities Act, 1988* (Saskatchewan) referred to in this Appendix;

2. Québec Provisions

- Sections 43, 47, 48 and 51 of the *Securities Act* (Québec) as they read prior to their amendment or repeal by sections 7 and 8 of *An Act to amend the Securities Act and other legislative provisions*;
- Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act* (Québec) before March 30, 2004 if the exemption included as a condition a restricted period of 12 months.

3. Ontario Provisions

Definitions

In this Appendix

"**1998 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

"**2001 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

"**2004 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

"**2005 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on September 14, 2005;

"**[2008] OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions that came into force on ●*;

"**convertible security**" means, in Ontario, 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;

"**exchangeable security**" means, in Ontario, 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, in Ontario, 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;

"**multiple convertible security**" means, in Ontario, 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;

"**OSC Rule 45-502**" means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

"**Type 1 trade**" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

"**underlying security**" means, in Ontario, 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.

(a) *Securities Act* (Ontario)

Clauses 72(1)(a), (b), (c), (d), (l), (m), (p) and (q) of the *Securities Act* (Ontario) and subclause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the right to purchase, convert or exchange was previously acquired under one of the above-listed exemptions under the *Securities Act* (Ontario), or an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.5 of MI 45-102

(b) **2005 OSC Rule 45-501 and [2008] OSC Rule 45-501**

Section 2.1 of the 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501;

Section 2.2 of the 2005 OSC Rule 45-501 and [2008] OSC Rule 45-501.

(c) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.3 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.5 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.12 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.13 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.14 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.16 of the 2004 OSC Rule 45-501.

(d) 1998 OSC Rule 45-501

Section 2.4 of the 1998 OSC Rule 45-501

Section 2.5 of the 1998 OSC Rule 45-501

Section 2.11 of the 1998 OSC Rule 45-501

(e) Other

Any provision under which an underlying security was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade or in a trade under section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501.

Appendix E
to
National Instrument 45-102
Resale of Securities

Seasoning Period Trades
(Section 2.4)

Except in Manitoba and the Yukon, the following exemptions from the prospectus requirement in NI 45-106:

- ~~subsection~~section 2.1(2) [*Rights offering*];
- ~~subsection~~section 2.2(4) [*Reinvestment plan*];
- ~~subsection~~section 2.4(2) [*Private issuer*];
- ~~subsection~~section 2.11(2) [*Business combination and reorganization*];
- ~~subsection~~section 2.16(2) [*Take-over bid and issuer bid*];
- ~~subsection~~section 2.17(2) [*Offer to acquire to security holder outside local jurisdiction*];
- ~~subsection~~section 2.18(6) [*Investment fund reinvestment*];
- ~~subsection~~section 2.20(2) [*Private investment club*];
- ~~subsection~~section 2.21(3) [*Private investment fund - loan and trust pools*];
- ~~subsection~~section 2.24(4) [*Employee, executive officer, director and consultant*];
- ~~subsection~~section 2.26(3) [~~Trades~~ Distributions among current or former employees, executive officers, directors or consultants of non-reporting issuer];
- ~~subsection~~section 2.27(4) [*Permitted transferees*];
- ~~subsection~~ 2.30(3) [~~Incorporation or organization~~];
- ~~subsection~~section 2.31(3) [~~Dividends and distributions~~]; if the security was acquired in the circumstances referred to in subsection 2.31(2), that security was initially acquired by the issuer under
 - (a) one of the exemptions listed in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- ~~subsection~~section 2.40(2) [*RRSP/RRIF*], if the security acquired under section 2.40 was initially acquired by an individual or an associate of the individual or an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary under
 - (a) one of the exemptions listed ~~above~~ in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- ~~subsection~~section 2.42(3) [*Conversion, exchange or exercise - security of own issue*], if the security acquired in the circumstances referred to in clause (a) of subsection 2.42 (1) was acquired in accordance

with the terms and conditions of a previously issued security and that previously issued security was distributed under

- (a) one of the exemptions listed ~~above~~ in this Appendix,
 - (b) an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of this Instrument, or
 - (c) an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102;
- -section 2.42(3) [*Conversion, exchange or exercise - security of a reporting issuer*] for a security being traded in the circumstances referred to in clause (b) of subsection 2.42 (1);
- as well as the following local exemptions from the prospectus requirement:
- Alberta Securities Commission Rule 45-502 *Trade with RESP*, if not included in Appendix D;
 - Nova Scotia Securities Commission Blanket Order No. 46;
 - Prince Edward Island Local Rule 45-510 - *Exempt Distributions - Exemptions for Trades Pursuant to Take-over Bids and Issuer Bids*;
 - an exemption from the prospectus requirement in a jurisdiction of Canada that specifies that the first trade is subject to section 2.6 of NI 45-102.

Transitional Provisions

1. General:

An exemption from the prospectus requirement listed in Appendix E of MI 45-102 in effect on March 30, 2004 or an exemption from the prospectus requirement that specified prior to September 14, 2005 that the first trade was subject to section 2.6 of MI 45-102. The exemptions listed in Appendix E of MI 45-102 on March 30, 2004 were:

- Section 131(1)(f) if not included in Appendix D of this Instrument, sections 131(h), (i), (j), (k), and (y) of the *Securities Act* (Alberta) and sections 107(1) (j.1) and (k.1) prior to their repeal by section 5 of the *Securities Amendment Act, 1989* (Alberta), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Section 74(2)(11)(iii) if not included in Appendix D or F and sections 74(2)(7), (8) if not included in Appendix F, (9) to (11), (13), (22) and (24) of the *Securities Act* (British Columbia);
- Section 128(g) of the *Securities Rules* (British Columbia), section 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Section 74(2)(12) of the *Securities Act* (British Columbia), if the security acquired by the selling security holder under the realization on collateral was initially acquired by a person or company under any of the sections of the *Securities Act* (British Columbia), the *Securities Rules* (British Columbia) or a multilateral instrument referred to in this Appendix or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Clauses 54(3) and 73(1)(f) if not included in Appendix D or F of this Instrument, (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Newfoundland and Labrador), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;

- Clause 77(1)(f) of the *Securities Act* (Nova Scotia) if not included in Appendix D or F of this Instrument, and clauses 77(1)(h), (i) if not included in Appendix F, (j), (k), (n), (v), (va), (ac), (ae) and (af) of the *Securities Act* (Nova Scotia), and clause 78(1)(a) of the *Securities Act* (Nova Scotia) as it relates to clause 41(2)(j) of the *Securities Act* (Nova Scotia) and Blanket Order No. 37, 38 if not included in Appendix F, 46 and 45-503 if not included in Appendix F, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Paragraphs 3(e), (f), (g), (h), (i), (n), (x), (y) and (mm) of Blanket Order No. 1 of the Registrar of Securities (Nunavut), except for a trade made under subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) that is included in Appendix D or F of this Instrument or a trade made under paragraph 3(g) that is included in Appendix F of this Instrument, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Clauses 13(1)(e) if not included in Appendix D or F of this Instrument, (f) if not included in Appendix F, (h) and (k) of the *Securities Act* (Prince Edward Island) or section 3.1 or 3.2 of Rule 45-501, section 1.1 of Prince Edward Island Rule 45-502, section 2.1 or 2.2 of Prince Edward Island Rule 45-506 or section 2.1 or 2.2 of Prince Edward Island Rule 45-510, subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102;
- Clauses 81(1)(a.1), (e) if not included in Appendix D of this Instrument, (f) if not included in Appendix D or F of this Instrument, (f.1), (g), (h), (i) if not included in Appendix F, (i.1), (j), (k), (o), (cc) and (dd) of *The Securities Act, 1988* (Saskatchewan), subsection 2.1(2) of MI 45-103 and sections 2.1, 2.2, 2.3 and 2.4 of MI 45-105 or under an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102.

2. Québec Provisions

- Sections 50 and 52 of the *Securities Act* (Québec) as they read prior to their repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*;
- Prospectus and registration exemptions granted pursuant to section 263 of the *Securities Act* (Québec) before March 30, 2004 if the exemption included as a condition a seasoning period of 12 months.

3. Ontario provisions

Definitions

In this Appendix

"**1998 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on December 22, 1998;

"**2001 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

"**2004 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

~~"**2005 OSC Rule 45-501**" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* that came into force on September 14, 2005;~~

"**convertible security**" means, in Ontario, 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;

"**exchangeable security**" means, in Ontario, 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, in Ontario, 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;

"**multiple convertible security**" means, in Ontario, 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;

"**OSC Rule 45-502**" means Ontario Securities Commission Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans*;

"**OSC Rule 45-503**" means Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives and Consultants*;

"**Type 1 trade**" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(a), (b), (c), (d), (l), (m), (p) or (q) of the *Securities Act* (Ontario);
- (b) section 2.4, 2.5 or 2.11 of the 1998 OSC Rule 45-501;
- (c) section 2.3, 2.12, 2.13 or 2.14 of the 2001 OSC Rule 45-501; or
- (d) section 2.3, 2.12, 2.13, 2.14 or 2.16 of the 2004 OSC Rule 45-501; and

"**Type 2 trade**" means, in Ontario, a distribution in a security under an exemption from the prospectus requirement in:

- (a) clause 72(1)(f) of the *Securities Act* (Ontario) other than a distribution to an associated consultant or investor consultant as defined in OSC Rule 45-503 or a distribution to an associated consultant or investor relations person as defined in MI 45-105;
- (b) clause 72(1)(h), (i), (j), (k) or (n) of the *Securities Act* (Ontario); or
- (c) section 2.5, 2.8 or 2.15 of the 2001 OSC Rule 45-501; or
- (d) section 2.5, 2.8 or 2.15 of the 2004 OSC Rule 45-501; and

"**underlying security**" means, in Ontario, 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.

(a) Securities Act (Ontario)

Clauses 72(1)(f), (i) if not included in Appendix F, (j), (k) and (n) of the *Securities Act* (Ontario), except for a trade made under 72(1)(f)(iii) of the *Securities Act* (Ontario) that is:

- (i) included in Appendix D or F of this Instrument, or
- (ii) contemplated by section 6.5 of ~~Ontario Securities Commission~~ 2004 OSC Rule 45-501-Exempt Distributions; and

an exemption from the prospectus requirement that specifies that the first trade is subject to section 2.6 of MI 45-102

Clause 72(1)(h) of the *Securities Act* (Ontario) except for a distribution under clause 72(1)(h) of the *Securities Act* (Ontario) of an underlying security that was distributed on conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired in a Type 1 trade.

(b) 2001 OSC Rule 45-501 and 2004 OSC Rule 45-501

Section 2.1 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.5 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.6 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.6 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.7 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if an underlying security was distributed under section 2.7 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501 on a forced conversion or exchange of a multiple convertible security, convertible security or exchangeable security acquired:

- (a) in a Type 2 trade;
- (b) under section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1 of OSC Rule 45-503, other than a trade by an associated consultant or investor consultant as defined in OSC Rule 45-503; or
- (c) under a provision in Part 2 of MI 45-105;

Section 2.8 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501;

Section 2.11 of the 2001 OSC Rule 45-501 and the 2004 OSC Rule 45-501 if section 2.6 of MI 45-102 would have been applicable to a first trade in that security by the person making the exempt distribution under section 2.11 of the 2001 OSC Rule 45-501 or the 2004 OSC Rule 45-501;

Section 2.15 of the 2004 OSC Rule 45-501.

(c) 1998 OSC Rule 45-501

Section 2.7 of the 1998 OSC Rule 45-501;

Section 2.8 of the 1998 OSC Rule 45-501;

Section 2.9 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.9 of the 1998 OSC Rule 45-501 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;

Section 2.10 of the 1998 OSC Rule 45-501 if an underlying security was distributed under section 2.10 of the 1998 OSC Rule 45-501 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;

Section 2.17 of the 1998 OSC Rule 45-501;

Subsection 2.18(1) of the 1998 OSC Rule 45-501 after the issuer had ceased to be a private issuer for the purposes of the *Securities Act* (British Columbia).

(d) Other

Sections 2.1 and 3.1 of Ontario Securities Commission Rule 45-502.

Appendix F
to
National Instrument 45-102
Resale of Securities

Underwriters
(Section 2.13)

~~Subsection~~Section 2.33(2) [Acting as underwriter] of NI 45-106 and ~~subsection~~section 2.11(2) [Business combination and reorganization] or ~~subsection~~ 2.42 (31) [Conversion, exchange or exercise] of this NI 45-106, if the original security was acquired under ~~subsection~~section 2.33(2) of NI 45-106 or one of the underwriter exemptions in the transitional provisions listed below

Transitional Provisions:

An exemption from the prospectus requirement listed in Appendix F of MI 45-102 in effect on March 30, 2004. Exemptions listed in Appendix F of MI 45-102 on March 30, 2004 were:

- Section 74(2)(15) of the *Securities Act* (British Columbia) and section 74(2)(8) or 74(2)(11)(iii) of the *Securities Act* (British Columbia) if the original security was acquired under section 74(2)(15) of the *Securities Act* (British Columbia);
- Clause 73(1)(r) of the *Securities Act* (Newfoundland and Labrador) and section 73(1)(i) or 73(1)(f)(iii) of the *Securities Act* (Newfoundland and Labrador) if the original security was acquired under section 73(1)(r) of the *Securities Act* (Newfoundland and Labrador);
- Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Northwest Territories);
- Clause 77(1)(r) of the *Securities Act* (Nova Scotia) and clause 77(1)(i) or 77(1)(f)(iii) of the *Securities Act* (Nova Scotia) or Blanket Order No. 38 or 45-503 if the original security was acquired under clause 77(1)(r) of the *Securities Act* (Nova Scotia);
- Paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) and paragraph 3(g) or subparagraph 3(e)(iii) of Blanket Order No. 1 of the Registrar of Securities (Nunavut) if the original security was acquired under paragraph 3(v) of Blanket Order No. 1 of the Registrar of Securities (Nunavut);
- Clause 72(1)(f)(iii) of the *Securities Act* (Ontario) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario);
- Clause 72(1)(i) of the *Securities Act* (Ontario) if the original security was acquired under clause 72(1)(r) of the *Securities Act* (Ontario);
- Clause 72(1)(r) of the *Securities Act* (Ontario);
- Section 2.1 of Prince Edward Island Rule 45-509 and subclause 13(1)(e) (iii) or clause 13(1)(f) of the *Securities Act* (Prince Edward Island) or section 1.1 of Prince Edward Island Rule 45-502 if the original security was acquired under section 2.1 of Prince Edward Island Rule 45-509;
- Section 55 of the *Securities Act* (Québec) as it read prior to its repeal by section 8 of *An Act to amend the Securities Act and other legislative provisions*;
- Clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan) and clause 81(1)(i) or subclause 81(1)(f)(iii) of *The Securities Act, 1988* (Saskatchewan) if the original security was acquired under clause 81(1)(u) of *The Securities Act, 1988* (Saskatchewan).

[Amended ~~September 14, 2005~~•]

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APPENDIX "O"

**Proposed Amended
Form 45-102F1**

**Notice of Intention to Distribute Securities under Section 2.8 of
NI 45-102 Resale of Securities**

Reporting issuer

1. Name of reporting issuer:

Selling security holder

2. Your name:

3. The offices or positions you hold in the reporting issuer:

4. Are you selling securities as a lender, pledgee, mortgagee or other encumbrancer?

5. Number and class of securities of the reporting issuer you beneficially own:

Distribution

6. Number and class of securities you propose to sell:

7. Will you sell the securities privately or on an exchange or market? If on an exchange or market, provide the name.

Warning

It is an offence to submit information that, in a material respect and in light of the circumstances in which it is submitted, is misleading or untrue.

Certificate

I certify that

- (1) I have no knowledge of a material fact or material change with respect to the issuer of the securities that has not been generally disclosed; and
- (2) the information given in this form is true and complete.

Date

.....
Your name (Selling security holder)

.....
Your signature (or if a company, the signature of your authorized signatory)

.....
Name of your authorized signatory

INSTRUCTION:

File this form electronically through SEDAR with the securities regulatory authority in each jurisdiction where you sell securities and with the Canadian exchange on which the securities are listed. Where the securities are being sold on an exchange, the form should be filed in every jurisdiction across Canada.

Notice to selling security holders - collection and use of personal information

The personal information required in this form is collected for and used by the listed securities regulatory authorities to administer and enforce securities legislation in their jurisdictions. This form is publicly available by authority of National Instrument 45-102 and the securities legislation in each of the jurisdictions. The personal information collected will not be used or disclosed other than for the stated purposes without first obtaining your consent. Corporate filers should seek the consent of any individuals whose personal information appears in this form before filing this form.

If you have questions about the collection and use of your personal information, or the personal information of your authorized signatory, contact any of the securities regulatory authorities listed below.

Alberta Securities Commission

4th Floor, 300 - 5th Avenue SW
Calgary, AB T2P 3C4
Attention: Information Officer
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: Assistant Manager, Financial Reporting
Telephone: (604) 899-6730 or (800) 373-6393 (in B.C.)
Facsimile: (604) 899-6506

Securities Commission of Newfoundland and Labrador

P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's, NFLD A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

Department of Justice, Northwest Territories**Legal Registries**

P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Director, Legal Registries
Telephone: (867) 873-7490
Facsimile: (867) 873-0243

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Attention: Corporate Finance
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Department of Justice, Nunavut**Legal Registries Division**

P.O. Box 1000 - Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Director, Legal Registries Division
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

Ontario Securities Commission

Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122

Prince Edward Island Securities Office

Consumer, Corporate and Insurance Services Division
Office of the Attorney General
P.O. Box 2000
Charlottetown, PE C1A 7N8
Attention: Superintendent of Securities
Telephone: (902) 368- 4550
Facsimile: (902) 368-5283

**Saskatchewan Financial Services Commission
Securities Division**

601 - 1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Legal/Registration
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

Autorité des marchés financiers

Tour de la Bourse
800 square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Attention: Responsable de l'accès à l'information

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APPENDIX "P"

Form 45-102F1

**Notice of Intention to Distribute Securities under Section 2.8 of
NI 45-102 Resale of Securities**

Reporting issuer

1. Name of reporting issuer:

Selling security holder

2. Your name:

3. The offices or positions you hold in the reporting issuer:

4. Are you selling securities as a lender, pledgee, mortgagee or other encumbrancer?

5. Number and class of securities of the reporting issuer you beneficially own:

Distribution

6. Number and class of securities you propose to sell:

7. Will you sell the securities privately or on an exchange or market? If on an exchange or market, provide the name.

Warning

It is an offence to submit information that, in a material respect and in light of the circumstances in which it is submitted, is misleading or untrue.

Certificate

I certify that

- (1) I have no knowledge of a material fact or material change with respect to the issuer of the securities that has not been generally disclosed; and
- (2) the information given in this form is true and complete.

Date

.....
Your name (Selling security holder)

.....
Your signature (or if a company, the signature of
your authorized signatory)

.....
Name of your authorized signatory

INSTRUCTION:

File this form electronically through SEDAR with the securities regulatory authority in each jurisdiction where you sell securities and with the Canadian exchange on which the securities are listed. Where the securities are being sold on an exchange, the form should be filed in every jurisdiction across Canada.

Notice to selling security holders - collection and use of personal information

The personal information required in this form is collected for and used by the listed securities regulatory authorities to administer and enforce securities legislation in their jurisdictions. This form is publicly available by authority of National Instrument 45-102 and the securities legislation in each of the jurisdictions. The personal information collected will not be used or disclosed other than for the stated purposes without first obtaining your consent. Corporate filers should seek the consent of any individuals whose personal information appears in this form before filing this form.

If you have questions about the collection and use of your personal information, or the personal information of your authorized signatory, contact any of the securities regulatory authorities listed below.

Alberta Securities Commission

4th Floor, 300 - 5th Avenue SW
Calgary, AB T2P 3C4
Attention: Information Officer
Telephone: (403) 297-6454
Facsimile: (403) 297-6156

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1L2
Attention: ~~Assistant~~ Manager, Financial and Insider Reporting
Telephone: (604) 899-6730 or (800) 373-6393 (in B.C.)
Facsimile: (604) 899-6506

Securities Commission of Newfoundland and Labrador

P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's, NFLD A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187

**Department of Justice, Northwest Territories
Legal Registries**

P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Director, Legal Registries
Telephone: (867) 873-7490
Facsimile: (867) 873-0243

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, NS B3J 3J9
Attention: Corporate Finance
Telephone: (902) 424-7768
Facsimile: (902) 424-4625

Department of Justice, Nunavut**Legal Registries Division**

P.O. Box 1000 - Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Director, Legal Registries Division
Telephone: (867) 975-6190
Facsimile: (867) 975-6194

Ontario Securities Commission

Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Administrative Assistant to the Director of Corporate Finance
Telephone: (416) 593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-81778122

Prince Edward Island Securities Office

Consumer, Corporate and Insurance Services Division
Office of the Attorney General
P.O. Box 2000
Charlottetown, PE C1A 7N8
Attention: ~~Registrar~~Superintendent of Securities
Telephone: (902) 368-4550
~~Fax~~Facsimile: (902) 368-5283

**Saskatchewan Financial Services Commission
Securities Division**

~~6th Floor, 601 -~~ 1919 Saskatchewan Drive
Regina, SK S4P 3V74H2
Attention: Deputy Director, Legal/Registration
Telephone: (306) 787-5879
Facsimile: (306) 787-5899

Autorité des marchés financiers

Tour de la Bourse
800 square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Attention: ~~Responsible~~Responsable de l'accès à l'information

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Appendix "Q"**(in Ontario)****Amendments to
Companion Policy 45-102CP To National Instrument 45-102 Resale of Securities**

1. **Companion Policy 45-102CP To National Instrument 45-102 Resale of Securities is amended by this Instrument.**
2. **Section 1.3(2) is amended by striking out "NI 45-106" and substituting "NI 45-102".**
3. **Section 1.7 is repealed and the following is substituted:**
 - 1.7 **Legending of Securities** – (1) Items 3 and 3.1 of subsection 2.5(2) of NI 45-102 impose legend or legend notation requirements for securities distributed under any of the provisions listed in Appendix D to NI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of NI 45-102. This requirement applies to securities transferred during the restricted period, whether to initial or subsequent transferees. However, because of the definition of "distribution date", in the case of most resales, the subsequent purchaser's restricted period will expire four months and a day after the original distribution date.

(2) If the security is entered into a direct registration or other electronic book-entry system, or where a certificate representing the security is not issued directly to a beneficial security holder, the issuer must provide written notice of the legend restriction notation to the beneficial security holder. We would consider providing written notice of the legend restriction notation to the beneficial security holder in a subscription agreement or including the legend restriction notation in an ownership statement issued under a direct registration system or other electronic book-entry system delivered directly to the beneficial security holder to be ways of meeting the written notice requirement.

(3) In addition to the written notice condition contemplated in item 3.1 of subsection 2.5(2), issuers may want to assist purchasers of restricted securities with compliance with the resale restrictions in item 2 of subsection 2.5(2) through other means. For example, issuers can request that the direct registration or electronic book-entry system in which the security is entered apply any available procedures to restrict trading in the security, such as the assignment of a separate CUSIP number to the security for the duration of the restricted period. There may be alternative procedures available depending on the capabilities of the particular direct registration system or other electronic book-entry system.

(4) Issuers may add additional wording to that found in item 3 of subsection 2.5(2) of NI 45-102. If you supplement the specified text of the legend on the certificate or the legend notation on the written notice, that additional wording cannot alter the meaning of the specified wording. You should also look to section 1.10 for further guidance on the legending of convertible and underlying securities.
4. **Section 1.10 is amended by striking out "on the ownership statement" and substituting "in the written notice".**
5. **Section 1.11 is amended by striking out "will no longer" and substituting "does not".**
6. **Section 1.16 is repealed and the following is substituted:**
 - 1.16 **Filing of Form 45-102F1** - Section 2.8 of NI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in section 2.8 are met. Selling security holders are required to give advance notice of intention to resell their securities under subsection 2.8(3) of NI 45-102 by filing a completed and signed Form 45-102F1. Under subsection 2.8(4), the advance notice expires on the earlier of the date the selling security holder files the last of the insider reports reflecting the sale of all securities referred to in the Form and 30 days after the Form 45-102F1 is filed. A new Form 45-102F1 must be filed in accordance with subsection 2.8(3) if the selling security holder wishes to continue to resell securities from a control block. Form 45-102F1 should be filed on SEDAR under the issuer's profile under "*Continuous Disclosure – Resale of Securities* (NI 45-102) - Form 45-102F1" in the jurisdiction of the issuer's principal regulator under National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*. Consult National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) and the current CSA SEDAR Filer Manual (including code updates) for further information about filing documents electronically.

7. *The following is added as section 1.17 after section 1.16:*

1.17 Application of section 2.10 – Section 2.10 of NI 45-102 applies when securities qualified by a prospectus are convertible into or exchangeable for securities of a reporting issuer other than the issuer of the convertible or exchangeable securities. Those securities would be converted or exchanged in reliance on the dealer registration exemption in paragraph 3.42(1)(b) of NI 45-106 and the prospectus exemption in subsection 2.42(1). As a result, those securities would be subject to a seasoning period requirement because distributions under subsection 2.42(1) of NI 45-106 for a security being distributed in the circumstances referred to in clause (b) of subsection 2.42(1) are listed in Appendix E of NI 45-102. Section 2.10 removes the seasoning period requirement for the underlying securities provided the requirements of that section are met.

8. *This amendment comes into force on •.*

APPENDIX "R"**Proposed Amended
Companion Policy 45-102CP
to National Instrument 45-102
*Resale of Securities*****1.1 Application**

- (1) National Instrument 45-102 (NI 45-102) has been implemented in all jurisdictions.
- (2) Except for sections 2.1, 2.8 and 2.9, Part 2 of NI 45-102 does not apply in Manitoba and Yukon.

1.2 Purpose

- (1) NI 45-102 provides that first trades of securities distributed under certain exemptions from the prospectus requirement are distributions unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were distributed under any of the provisions listed in Appendix D to NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.5 of NI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period and that a four month restricted period has elapsed from the date of the initial distribution. If the securities were distributed under any of the provisions listed in Appendix E to NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.6 of NI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period. NI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Appendices D and E to NI 45-102 list the new harmonized exemptions in National Instrument 45-106 *Registration and Prospectus Exemptions* (NI 45-106) and local exemptions that are subject to the resale restrictions under section 2.5 or 2.6 of NI 45-102, while Appendix F lists the new harmonized exemptions in NI 45-106 applicable to underwriters. Each of these appendices also contains transitional provisions applicable to securities acquired under exemptions listed in the Appendices to MI 45-102 as Appendices D, E and F read on March 30, 2004. For all local exemptions that come into effect after September 14, 2005, you should look to the local instrument itself to see if it specifies that the securities acquired are subject to section 2.5 or 2.6 of NI 45-102 as well as to Appendix D and E to NI 45-102. You may also wish to consult the CSA Notice listing local registration and prospectus exemptions in place in each jurisdiction of Canada, which the CSA will update periodically.
- (3) Nothing in NI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period under a prospectus or an exemption from the prospectus requirement. This includes the further exemption found in section 2.14. For example, if a person or company obtains a discretionary exemption order or ruling that imposes any of the resale restrictions contained in section 2.5, 2.6 or 2.8 on a security that is the subject of the order or ruling, the person or company may rely on section 2.14 to resell the security.

1.3 Transition

- (1) When Multilateral Instrument 45-102 *Resale of Securities* ("former MI 45-102") came into force on November 30, 2001, that instrument imposed harmonized resale restrictions on the first trade of securities made on or after that date, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to November 30, 2001. These securities were subject to prescribed restricted periods and seasoning periods of either four or twelve months. When MI 45-102 was implemented on March 30, 2004, the securities of all reporting issuers became subject to four month restricted and seasoning periods under section 2.5 and 2.8 or four month seasoning periods under section 2.6 of MI 45-102. This meant that any existing restricted period or seasoning period imposed under Part 2 of former MI 45-102 that exceeded four months was reduced to four months under MI 45-102. Under NI 45-102, securities of all reporting issuers continue to be subject to a four month restricted period under subsection 2.5(2) or 2.8(2) of the Instrument.
- (2) Item 3. of subsection 2.5(2) of MI 45-102 required that the certificate or the ownership statement evidencing a security that is the subject of the first trade carry either a legend or a legend restriction notation disclosing the resale restrictions. This legend requirement applied only to securities distributed on or after MI 45-102 comes into effect on March 30, 2004 in all jurisdictions except Quebec. We have added language to Item 3. of

subsection 2.5(2) of NI 45-102 to clarify that the legend requirement in NI 45-102 will only apply to securities distributed in Quebec on or after NI 45-102 comes into effect on September 14, 2005.

- (3) Issuers may continue to replace those certificates that are legended in accordance with former MI 45-102 with a certificate (or an acceptable electronic alternative) carrying the legend (or legend restriction notation) specified in item 3. of subsection 2.5(2) of NI 45-102. As was the case under former MI 45-102, certificates representing securities distributed prior to November 30, 2001 do not have to be legended.

1.4 Open System Jurisdictions - Sections 2.5 and 2.6 of NI 45-102 do not apply in Manitoba, and Yukon as those jurisdictions do not impose restrictions on first trades in securities distributed under an exemption from the prospectus requirement in those jurisdictions unless the trade is a control distribution.

1.5 Example of Application of Section 2.5 - If an issuer distributes securities to a purchaser in British Columbia, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of British Columbia. If the issuer relies upon a British Columbia prospectus exemption listed in Appendix D to NI 45-102, section 2.3 of NI 45-102 applies and the first trade of the securities is subject to section 2.5 of NI 45-102. Section 2.5 provides that the first trade is a distribution unless, among other conditions, a four month restricted period has elapsed. If the British Columbia purchaser seeks to resell the securities into Ontario, a prospectus must be filed in Ontario or a prospectus exemption relied upon unless the conditions in subsection 2.5(2) of NI 45-102 are satisfied.

1.6 Reporting Issuer Status - Reporting issuer status in any jurisdiction will satisfy the reporting issuer requirements in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102. See section 1.11 for guidance if an issuer becomes a reporting issuer by filing a prospectus after the distribution date.

1.7 Legending of Securities – (1) Items 3 and 3.1 of subsection 2.5(2) of NI 45-102 impose legend or legend notation requirements for securities distributed under any of the provisions listed in Appendix D to NI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of NI 45-102. This requirement applies to securities transferred during the restricted period, whether to initial or subsequent transferees. However, because of the definition of "distribution date", in the case of most resales, the subsequent purchaser's restricted period will expire four months and a day after the original distribution date.

(2) If the security is entered into a direct registration or other electronic book-entry system, or where a certificate representing the security is not issued directly to a beneficial security holder, the issuer must provide written notice of the legend restriction notation to the beneficial security holder. We would consider providing written notice of the legend restriction notation to the beneficial security holder in a subscription agreement or including the legend restriction notation in an ownership statement issued under a direct registration system or other electronic book-entry system delivered directly to the beneficial security holder to be ways of meeting the written notice requirement.

(3) In addition to the written notice condition contemplated in item 3.1 of subsection 2.5(2), issuers may want to assist purchasers of restricted securities with compliance with the resale restrictions in item 2 of subsection 2.5(2) through other means. For example, issuers can request that the direct registration or electronic book-entry system in which the security is entered apply any available procedures to restrict trading in the security, such as the assignment of a separate CUSIP number to the security for the duration of the restricted period. There may be alternative procedures available depending on the capabilities of the particular direct registration system or other electronic book-entry system.

(4) Issuers may add additional wording to that found in item 3 of subsection 2.5(2) of NI 45-102. If you supplement the specified text of the legend on the certificate or the legend notation on the written notice, that additional wording cannot alter the meaning of the specified wording. You should also look to section 1.10 for further guidance on the legending of convertible and underlying securities.

1.8 Calculation of Restricted and Seasoning Periods - The restricted period in item 2 of subsection 2.5(2) of NI 45-102 is calculated from the distribution date, that is, the date the securities were distributed in reliance on an exemption from the prospectus requirement by the issuer or a control person. For example, if an issuer or control person distributes securities under a private placement exemption to a purchaser in Saskatchewan and the private placee resells the securities during the restricted period to a purchaser in Alberta under a further private placement exemption, upon resale by the Alberta purchaser, that purchaser will determine whether the restricted period has expired by calculating the time period from the date the issuer or control person distributed the securities to the Saskatchewan purchaser.

1.9 No Unusual Effort - Persons interested in the meaning of the concept of "no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade" found in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102 should look to the case law, in particular the order of the Ontario Securities Commission dated April

24, 1985 in the matter of Daon Development Corporation and Daon Corporation as well as to the definition of unusual effort in section 4 of the Alberta Securities Commission Rules.

- 1.10 Underlying Securities** - The restricted period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security. If the applicable restricted period or seasoning period expired prior to the conversion or exchange, subsection 2.5(3) provides that an issuer is not required to place a legend on the certificate representing the underlying securities or a legend restriction notation in the written notice.
- 1.11 Becoming a Reporting Issuer By Filing a Prospectus After the Distribution Date** - If an issuer is not a reporting issuer at the distribution date but subsequently becomes a reporting issuer after the distribution date by filing and obtaining a receipt for a prospectus in one of the jurisdictions listed in Appendix B, section 2.7 of NI 45-102 provides that the seasoning requirement in sections 2.5, 2.6 and 2.8 of NI 45-102 does not apply. This means that the securities issued prior to the prospectus being filed may then be resold, provided that the restricted period under section 2.5 or 2.8 of NI 45-102 has expired.
- 1.12 Realization of Pledged Securities** - The prospectus exemption in section 2.8 of NI 45-102 is available for realizations of pledged securities under either a power of sale or by way of foreclosure. This means that a pledgee, mortgagee or other encumbrancer can rely on the exemption in section 2.8 of NI 45-102 to immediately effect a resale of pledged securities under a power of sale or to foreclose and take the securities on its own books for subsequent resale.
- 1.13 Securities Exchange Take-over Bid or Issuer Bid** - Section 2.11 of NI 45-102 provides relief from the seasoning requirement for a trade of securities issued in connection with a securities exchange take-over bid or securities exchange issuer bid if a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror under securities legislation of the local jurisdiction. A bid circular may be filed for either a formal bid or an exempt bid. The basis for this exemption is that a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus-level disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. If a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular must meet the disclosure standards in securities legislation relating to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid for the exemption in section 2.11 to be available.
- 1.14 Exemptions for Certain Trades in the Local Jurisdiction** - The exemption in section 2.10 of NI 45-102 is subject to a condition that the issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of NI 45-102 are subject to a condition that the offeror was a reporting issuer in the local jurisdiction on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid and, in the case of the exemption in section 2.12, an additional condition that issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. Issuers cannot rely on a prospectus filed in another jurisdiction nor can an offeror rely on a take-over bid circular or issuer bid circular filed in another jurisdiction to satisfy these conditions
- 1.15 Resales of Securities of a Non-Reporting Issuer**
- (1) For the purposes of section 2.14 of NI 45-102, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly owned by residents of Canada and the number of owners directly or indirectly that are residents of Canada, an issuer should use reasonable efforts to
 - (a) determine securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada;
 - (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
 - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.
 - (2) Lists of beneficial owners of securities maintained by intermediaries under SEC Rule 14a-13 under the *1934 Act* or other securities law analogous to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* may be useful in determining the percentages referred to in subsection (1).
- 1.16 Filing of Form 45-102F1** - Section 2.8 of NI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in section 2.8 are met. Selling security holders are required to give advance notice

of intention to resell their securities under subsection 2.8(3) of NI 45-102 by filing a completed and signed Form 45-102F1. Under subsection 2.8(4), the advance notice expires on the earlier of the date the selling security holder files the last of the insider reports reflecting the sale of all securities referred to in the Form and 30 days after the Form 45-102F1 is filed. A new Form 45-102F1 must be filed in accordance with subsection 2.8(3) if the selling security holder wishes to continue to resell securities from a control block. Form 45-102F1 should be filed on SEDAR under the issuer's profile under "*Continuous Disclosure – Resale of Securities* (NI 45-102) - Form 45-102F1" in the jurisdiction of the issuer's principal regulator under National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*. Consult National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) and the current CSA SEDAR Filer Manual (including code updates) for further information about filing documents electronically.

- 1.17 Application of section 2.10** – Section 2.10 of NI 45-102 applies when securities qualified by a prospectus are convertible into or exchangeable for securities of a reporting issuer other than the issuer of the convertible or exchangeable securities. Those securities would be converted or exchanged in reliance on the dealer registration exemption in paragraph 3.42(1)(b) of NI 45-106 and the prospectus exemption in subsection 2.42(1). As a result, those securities would be subject to a seasoning period requirement because distributions under subsection 2.42(1) of NI 45-106 for a security being distributed in the circumstances referred to in clause (b) of subsection 2.42(1) are listed in Appendix E of NI 45-102. Section 2.10 removes the seasoning period requirement for the underlying securities provided the requirements of that section are met.

[Amended •]

APPENDIX "S"**Companion Policy 45-102CP
to National Instrument 45-102
Resale of Securities****1.1 Application**

- (1) National Instrument 45-102 ("NI 45-102") has been implemented in all jurisdictions.
- (2) Except for sections 2.1, 2.8 and 2.9, Part 2 of NI 45-102 does not apply in Manitoba and Yukon.

1.2 Purpose

- (1) NI 45-102 provides that first trades of securities distributed under certain exemptions from the prospectus requirement are distributions unless certain conditions are met. The conditions impose restrictions on the resale of the securities. If the securities were distributed under any of the provisions listed in Appendix D to NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.5 of NI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period and that a four month restricted period has elapsed from the date of the initial distribution. If the securities were distributed under any of the provisions listed in Appendix E to NI 45-102 or under other securities legislation which specifies that the first trade is subject to section 2.6 of NI 45-102, the conditions include that the issuer is and has been a reporting issuer for a four month seasoning period. NI 45-102 also provides an exemption for a control distribution and a sale by a pledgee of pledged securities if the sale would be a distribution for the purposes of securities legislation.
- (2) Appendices D and E to NI 45-102 list the new harmonized exemptions in National Instrument 45-106 *Registration and Prospectus Exemptions* (NI 45-106) and local exemptions that are subject to the resale restrictions under section 2.5 or 2.6 of NI 45-102, while Appendix F lists the new harmonized exemptions in NI 45-106 applicable to underwriters. Each of these appendices also contains transitional provisions applicable to securities acquired under exemptions listed in the Appendices to MI 45-102 as Appendices D, E and F read on March 30, 2004. For all local exemptions that come into effect after September 14, 2005, you should look to the local instrument itself to see if it specifies that the securities acquired are subject to section 2.5 or 2.6 of NI 45-102 as well as to Appendix D and E to NI 45-102. You may also wish to consult the CSA Notice listing local registration and prospectus exemptions in place in each jurisdiction of Canada, which the CSA will update periodically.
- (3) Nothing in NI 45-102 is intended to restrict the ability of a purchaser to resell securities during the restricted period or seasoning period under a prospectus or an exemption from the prospectus requirement. This includes the further exemption found in section 2.14. For example, if a person or company obtains a discretionary exemption order or ruling that imposes any of the resale restrictions contained in section 2.5, 2.6 or 2.8 on a security that is the subject of the order or ruling, the person or company may rely on section 2.14 to resell the security.

1.3 Transition

- (1) When Multilateral Instrument 45-102 *Resale of Securities* ("former MI 45-102") came into force on November 30, 2001, that instrument imposed harmonized resale restrictions on the first trade of securities made on or after that date, even if the securities were distributed, or acquired by the selling security holder in the case of a trade that is a control distribution, prior to November 30, 2001. These securities were subject to prescribed restricted periods and seasoning periods of either four or twelve months. When MI 45-102 was implemented on March 30, 2004, the securities of all reporting issuers became subject to four month restricted and seasoning periods under section 2.5 and 2.8 or four month seasoning periods under section 2.6 of MI 45-102. This meant that any existing restricted period or seasoning period imposed under Part 2 of former MI 45-102 that exceeded four months was reduced to four months under MI 45-102. Under NI 45-102, securities of all reporting issuers continue to be subject to a four month restricted period under subsection 2.5(2) or 2.8(2) of the Instrument.
- (2) Item 3. of subsection 2.5(2) of MI 45-102 required that the certificate or the ownership statement evidencing a security that is the subject of the first trade carry either a legend or a legend restriction notation disclosing the resale restrictions. This legend requirement applied only to securities distributed on or after MI 45-102 comes into effect on March 30, 2004 in all jurisdictions except Quebec. We have added language to Item 3. of

subsection 2.5(2) of NI 45-102 to clarify that the legend requirement in NI 45-102 will only apply to securities distributed in Quebec on or after NI 45-106~~102~~ comes into effect on September 14, 2005.

- (3) Issuers may continue to replace those certificates that are legended in accordance with former MI 45-102 with a certificate (or an acceptable electronic alternative) carrying the legend (or legend restriction notation) specified in item 3. of subsection 2.5(2) of NI 45-102. As was the case under former MI 45-102, certificates representing securities distributed prior to November 30, 2001 do not have to be legended.

1.4 Open System Jurisdictions - Sections 2.5 and 2.6 of NI 45-102 do not apply in Manitoba, and Yukon as those jurisdictions do not impose restrictions on first trades in securities distributed under an exemption from the prospectus requirement in those jurisdictions unless the trade is a control distribution.

1.5 Example of Application of Section 2.5 - If an issuer distributes securities to a purchaser in British Columbia, the issuer must file a prospectus or rely upon a prospectus exemption under the securities legislation of British Columbia. If the issuer relies upon a British Columbia prospectus exemption listed in Appendix D to NI 45-102, section 2.3 of NI 45-102 applies and the first trade of the securities is subject to section 2.5 of NI 45-102. Section 2.5 provides that the first trade is a distribution unless, among other conditions, a four month restricted period has elapsed. If the British Columbia purchaser seeks to resell the securities into Ontario, a prospectus must be filed in Ontario or a prospectus exemption relied upon unless the conditions in subsection 2.5(2) of NI 45-102 are satisfied.

1.6 Reporting Issuer Status - Reporting issuer status in any jurisdiction will satisfy the reporting issuer requirements in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102. See section 1.11 for guidance if an issuer becomes a reporting issuer by filing a prospectus after the distribution date.

1.7 Legending of Securities ~~Item 3. (1) Items 3 and 3.1~~ of subsection 2.5(2) of NI 45-102 ~~imposes a~~impose legend ~~requirement or legend notation requirements~~ for securities distributed under any of the provisions listed in Appendix D to NI 45-102 or another prospectus exemption of any jurisdiction subject to the resale restrictions in subsection 2.5(2) of NI 45-102. ~~Beneficial security holders must receive either a paper~~This requirement applies to securities transferred during the restricted period, whether to initial or subsequent transferees. However, because of the definition of "distribution date", in the case of most resales, the subsequent purchaser's restricted period will expire four months and a day after the original distribution date.

(2) If the security is entered into a direct registration or other electronic book-entry system, or where a certificate representing their security or an electronic alternative such as an ownership statement under a the security is not issued directly to a beneficial security holder, the issuer must provide written notice of the legend restriction notation to the beneficial security holder. We would consider providing written notice of the legend restriction notation to the beneficial security holder in a subscription agreement or including the legend restriction notation in an ownership statement issued under a direct registration system or other electronic book-entry system delivered directly to the beneficial security holder to be ways of meeting the written notice requirement.

(3) In addition to the written notice condition contemplated in item 3.1 of subsection 2.5(2), issuers may want to assist purchasers of restricted securities with compliance with the resale restrictions in item 2 of subsection 2.5(2) through other means. For example, issuers can request that the direct registration or electronic book-entry system in which the security is entered apply any available procedures to restrict trading in the security, such as the assignment of a separate CUSIP number to the security for the duration of the restricted period. There may be alternative procedures available depending on the capabilities of the particular direct registration system, scheduled to be phased into operation during 2005. If a paper certificate is issued, the certificate must carry the legend specified in item 3 that notifies the beneficial security holder of the applicable resale restrictions. Similarly, an ownership statement must carry a restricted legend notation that notifies the beneficial security holder of the applicable resale restrictions, or other electronic book-entry system.

(4) Issuers may add additional wording to that found in item 3.3 of subsection 2.5(2) of NI 45-102. If you supplement the specified text of the legend on the certificate or the ~~restricted~~ legend notation on the ~~ownership statement~~written notice, that additional wording cannot alter the meaning of the specified wording. You should also look to section 1.10 for further guidance on the legending of convertible and underlying securities.

1.8 Calculation of Restricted and Seasoning Periods - The restricted period in item 2 of subsection 2.5(2) of NI 45-102 is calculated from the distribution date, that is, the date the securities were distributed in reliance on an exemption from the prospectus requirement by the issuer or a control person. For example, if an issuer or control person distributes securities under a private placement exemption to a purchaser in Saskatchewan and the private placee resells the securities during the restricted period to a purchaser in Alberta under a further private placement exemption, upon resale by the Alberta purchaser, that purchaser will determine whether the restricted period has expired by calculating the time period from the date the issuer or control person distributed the securities to the Saskatchewan purchaser.

- 1.9 No Unusual Effort** - Persons interested in the meaning of the concept of "no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade" found in subsections 2.5(2), 2.6(3) and 2.8(2) of NI 45-102 should look to the case law, in particular the order of the Ontario Securities Commission dated April 24, 1985 in the matter of Daon Development Corporation and Daon Corporation as well as to the definition of unusual effort in section 4 of the Alberta Securities Commission Rules.
- 1.10 Underlying Securities** - The restricted period or seasoning period applicable to trades in underlying securities is calculated from the distribution date of the convertible security, exchangeable security or multiple convertible security. If the applicable restricted period or seasoning period expired prior to the conversion or exchange, subsection 2.5(3) provides that an issuer is not required to place a legend on the certificate representing the underlying securities or a legend restriction notation on the ownership statement written notice.
- 1.11 Becoming a Reporting Issuer By Filing a Prospectus After the Distribution Date** - If an issuer is not a reporting issuer at the distribution date but subsequently becomes a reporting issuer after the distribution date by filing and obtaining a receipt for a prospectus in one of the jurisdictions listed in Appendix B, section 2.7 of NI 45-102 provides that the seasoning requirement in sections 2.5, 2.6 and 2.8 of NI 45-102 ~~will no longer~~ does not apply. This means that the securities issued prior to the prospectus being filed may then be resold, provided that the restricted period under section 2.5 or 2.8 of NI 45-102 has expired.
- 1.12 Realization of Pledged Securities** - The prospectus exemption in section 2.8 of NI 45-102 is available for realizations of pledged securities under either a power of sale or by way of foreclosure. This means that a pledgee, mortgagee or other encumbrancer can rely on the exemption in section 2.8 of NI 45-102 to immediately effect a resale of pledged securities under a power of sale or to foreclose and take the securities on its own books for subsequent resale.
- 1.13 Securities Exchange Take-over Bid or Issuer Bid** - Section 2.11 of NI 45-102 provides relief from the seasoning requirement for a trade of securities issued in connection with a securities exchange take-over bid or securities exchange issuer bid if a securities exchange take-over bid circular or securities exchange issuer bid circular is filed by the offeror under securities legislation of the local jurisdiction. A bid circular may be filed for either a formal bid or an exempt bid. The basis for this exemption is that a securities exchange take-over bid circular or securities exchange issuer bid circular for a formal bid is required to contain prospectus-level disclosure for the offeror or other issuer whose securities are being offered in exchange for the securities of the offeree issuer. If a take-over bid circular or issuer bid circular is prepared in connection with an exempt bid, the circular must meet the disclosure standards in securities legislation relating to the form and content of a take-over bid circular or issuer bid circular, as the case may be, for a formal bid for the exemption in section 2.11 to be available.
- 1.14 Exemptions for Certain Trades in the Local Jurisdiction** - The exemption in section 2.10 of NI 45-102 is subject to a condition that the issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. The exemptions in sections 2.11 and 2.12 of NI 45-102 are subject to a condition that the offeror was a reporting issuer in the local jurisdiction on the date securities of the offeree issuer are first taken up under the take-over bid or issuer bid and, in the case of the exemption in section 2.12, an additional condition that issuer of the underlying security was a reporting issuer in the local jurisdiction at the time of the trade. Issuers cannot rely on a prospectus filed in another jurisdiction nor can an offeror rely on a take-over bid circular or issuer bid circular filed in another jurisdiction to satisfy these conditions
- 1.15 Resales of Securities of a Non-Reporting Issuer**
- (1) For the purposes of section 2.14 of NI 45-102, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly owned by residents of Canada and the number of owners directly or indirectly that are residents of Canada, an issuer should use reasonable efforts to
 - (a) determine securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada;
 - (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
 - (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.
 - (2) Lists of beneficial owners of securities maintained by intermediaries under SEC Rule 14a-13 under the 1934 Act or other securities law analogous to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* may be useful in determining the percentages referred to in subsection (1).

- 1.16 Filing of Form 45-102F1** - Section 2.8 of NI 45-102 provides that the prospectus requirement does not apply to a control distribution if the conditions in section 2.8 are met. Selling security holders are required to give advance notice of intention to resell their securities under subsection 2.8(3) of NI 45-102 by filing a completed and signed Form 45-102F1. ~~The~~Under subsection 2.8(4), the advance notice expires on the earlier of the date the selling security holder files the last of the insider reports reflecting the sale of all securities referred to in the Form and 30 days after the Form 45-102F1 is filed. A new Form 45-102F1 must be filed in accordance with subsection 2.8(3) if the selling security holder wishes to continue to resell securities from a control block. Form 45-102F1 should be filed on SEDAR under the issuer's profile under "Continuous Disclosure – Resale of Securities (NI 45-102) - Form 45-102F1" in the jurisdiction of the issuer's principal regulator under National Policy 43-201 ~~Mutual Reliance Review System for Prospectuses and AIFs~~11-202 Process for Prospectus Reviews in Multiple Jurisdictions. Consult National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) and the current CSA SEDAR Filer Manual (including code updates) for further information about filing documents electronically.
- 1.17 Application of section 2.10** – Section 2.10 of NI 45-102 applies when securities qualified by a prospectus are convertible into or exchangeable for securities of a reporting issuer other than the issuer of the convertible or exchangeable securities. Those securities would be converted or exchanged in reliance on the dealer registration exemption in paragraph 3.42(1)(b) of NI 45-106 and the prospectus exemption in subsection 2.42(1). As a result, those securities would be subject to a seasoning period requirement because distributions under subsection 2.42(1) of NI 45-106 for a security being distributed in the circumstances referred to in clause (b) of subsection 2.42(1) are listed in Appendix E of NI 45-102. Section 2.10 removes the seasoning period requirement for the underlying securities provided the requirements of that section are met.

[Amended September 14, 2005.]

APPENDIX "T"**Amendments to National Instrument 51-102
*Continuous Disclosure Obligations*****PART 1 AMENDMENTS**

- 1.1 National Instrument 51-102 *Continuous Disclosure Obligations* is amended in subparagraphs 13.3(2)(c)(iv), 13.3(3)(e)(iv), and 13.4(2)(c)(iv) by *striking out* "registration requirement and prospectus requirement in section 2.35" and *substituting* "prospectus requirement in section 2.35 and registration requirement in section 3.35".

PART 2 EFFECTIVE DATE

- 2.1 These amendments are effective •.

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ONTARIO SECURITIES COMMISSION NOTICE AND REQUEST FOR COMMENT**PROPOSED REPEAL AND REPLACEMENT OF****NATIONAL INSTRUMENT 45-106 PROSPECTUS AND REGISTRATION EXEMPTIONS,
FORM 45-106F1, FORM 45-106F2, FORM 45-106F3, FORM 45-106F4, FORM 45-106F5 AND
COMPANION POLICY 45-106CP PROSPECTUS AND REGISTRATION EXEMPTIONS****RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS,
FORM 45-501F1 AND
COMPANION POLICY 45-501CP ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS****- AND -****PROPOSED AMENDMENTS TO****NATIONAL INSTRUMENT 45-102 RESALE OF SECURITIES, FORM 45-102F1 AND
COMPANION POLICY 45-102CP RESALE OF SECURITIES****1. INTRODUCTION**

The Canadian Securities Administrators (the **CSA**) are proposing changes to National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**), Form 45-106F1, Form 45-106F2, Form 45-106F3, Form 45-106F4, Form 45-106F5 (collectively, **NI 45-106 Forms**), Companion Policy 45-106CP *Prospectus and Registration Exemptions* (**NI 45-106CP**), National Instrument 45-102 *Resale of Securities* (**NI 45-102**), Form 45-102F1 and Companion Policy 45-102CP *Resale of Securities* (**NI 45-102CP**). These proposed amendments (the **CSA Amendments**) are described in the related CSA notice (the **CSA Notice**) to which this Ontario Securities Commission (the **Commission** or **we**) notice is appended.

Concurrent with the CSA Amendments, the CSA has also proposed National Instrument 31-103 *Registration Requirements* (**Proposed NI 31-103**) which contemplates the implementation of a new dealer registration regime. Further information regarding Proposed NI 31-103 is contained in the CSA notice accompanying Proposed NI 31-103 published on February 29, 2008.

In connection with the CSA Amendments and Proposed NI 31-103, the Commission is proposing related amendments to:

- Rule 45-501 *Ontario Prospectus and Registration Exemptions* (**Rule 45-501**);
- Form 45-501F1 – Report of Exempt Distribution (**Form 45-501F1**); and
- Companion Policy 45-501CP *Ontario Prospectus and Registration Exemptions* (**Policy 45-501CP**, together with Rule 45-501 and Form 45-501F1, the **Current 45-501 Materials**).

The proposed amendments to NI 45-106, NI 45-106 Forms, NI 45-106CP and the Current 45-501 Materials will be effected by repealing and replacing each of these respective instruments. The proposed amendments to NI 45-102, Form 45-102F1 and NI 45-102CP will be effected by amendment instruments.

The purpose of this Commission notice is to supplement the CSA Notice and describe and request comment on the proposed amendments to the Current 45-501 Materials (the **Ontario Amendments**).

Changes to the *Securities Act* (Ontario) (the **Act**) that would be required to implement Proposed NI 31-103 also may affect the proposed NI 45-106. At this time the Government of Ontario has not completed its consideration of possible legislative amendments. Any statutory amendments will only become law if they are passed by the Legislative Assembly of Ontario.

If and when a consultation draft of the legislation is published, this could result in the Commission having to publish a modified rule proposal in Ontario.

2. REQUEST FOR PUBLIC COMMENT**(a) CSA Amendments**

Please refer to the CSA Notice requesting comment on proposed amendments to NI 45-106, NI 45-106 Forms, NI 45-106CP, NI 45-102, Form 45-102F1 and NI 45-102CP (collectively, the **Proposed CSA Materials**).

(b) Ontario Amendments

The Commission is publishing for a 90-day comment period the following documents:

- proposed amended and restated Rule 45-501 (**Proposed Rule 45-501**);
- proposed amended and restated Form 45-501F1 (**Proposed Form 45-501F1**); and
- proposed amended and restated Companion Policy 45-501CP (**Proposed Policy 45-501CP**, together with Proposed Rule 45-501 and Proposed Form 45-501F1, the **Proposed 45-501 Materials**).

3. SCHEDULES

Schedule 1	Proposed Rule 45-501
Schedule 2	Proposed Form 45-501F1
Schedule 3	Proposed Policy 45-501CP
Schedule 4	Blackline comparison of Proposed Policy 45-501CP to Policy 45-501CP

4. SUBSTANCE AND PURPOSE OF PROPOSED CHANGES**(a) CSA Amendments**

Please refer to the CSA Notice requesting comment on the Proposed CSA Materials for a discussion of the substance and purpose of the CSA Amendments.

(b) Ontario Amendments

The proposed amendments to the Current 45-501 Materials are related to the CSA Amendments and Proposed NI 31-103 and are intended to improve the effectiveness of those materials following the implementation of the CSA Amendments and Proposed NI 31-103.

The Current 45-501 Materials continue to be in force. If the Proposed 45-501 Materials are adopted they will replace the Current 45-501 Materials. Summaries of the consequential amendments to Current Rule 45-501 and Current 45-501CP are set out below. This summary does not provide a complete list of all the proposed changes.

(i) Summary of Amendments to Rule 45-501

The most significant changes to Rule 45-501 are summarized in the following outline:

- We are proposing to delete clause (c) of the definition of “executive officer”. Clause (c) is redundant because all of the persons covered by the text of clause (c) are also covered by the text of subsection (d) of the definition. A comparable change to the definition of “executive officer” in NI 45-106 is also proposed in the CSA Amendments.
- We are proposing to delete section 2.7 to accommodate the creation of a national, harmonized exemption for a self-directed RESP in NI 45-106, as proposed in the CSA Amendments (see proposed section 2.45 of NI 45-106). As a result of the removal of this exemption from Rule 45-501, the definitions for “self-directed RESP” and “subscriber” have also been deleted.
- We are proposing to eliminate the filing requirement in section 2.8 of Rule 45-501 for supranational agencies that wish to use section 2.34 of NI 45-106 to trade debt securities. The elimination of this requirement conforms to corresponding changes in section 2.34 of NI 45-106.
- In conjunction with the CSA Amendments, we are proposing to move the prospectus and registration exemptions for trades in debt securities of any school board in Ontario or of a corporation established under regulations made under subsection 248(1) of the *Education Act* (Ontario) currently located in section 2.34 of NI 45-106 to Proposed Rule 45-501 (see sections 2.7 and 3.7 of Proposed Rule 45-501). This change concerns the relocation of these exemptions from a national instrument to an Ontario rule and does not impact the substance of the exemptions.
- We are proposing to eliminate section 6.5 of Rule 45-501 which requires that forward-looking information in an offering memorandum provided to a prospective purchaser comply with certain preparation and disclosure

requirements in Part 4A and Part 4B of National Instrument 51-102 *Continuous Disclosure Obligations*. Eliminating section 6.5 will harmonize Ontario's requirements in this area with the rest of the CSA jurisdictions.

- We are proposing to restructure Rule 45-501 so that the registration and prospectus exemptions set out in Part 2 are independent of each other. This change is intended to facilitate implementation of the new dealer registration regime in Proposed NI 31-103. As a result, prospectus exemptions will be located in Part 2 of Proposed Rule 45-501 and registration exemptions will be located in Part 3 of Proposed Rule 45-501. The CSA Amendments also propose separation of the registration and prospectus exemptions currently in Part 2 of NI 45-106.
- We are proposing to add a provision to Rule 45-501 that contemplates the elimination of certain dealer registration exemptions from Rule 45-501 following the implementation of Proposed NI 31-103. Accordingly, section 3.0 of Proposed Rule 45-501 provides that the dealer registration exemptions in Part 3 (except for the exemption for certain trades in commodity futures options and commodity futures contracts) will not apply on the date that is six months after the coming into force of Proposed NI 31-103. This proposed change corresponds with the elimination of the registration exemptions from NI 45-106 as set out in the CSA Amendments.

(ii) *Summary of Amendments to Policy 45-501CP*

We have made changes to Policy 45-501CP to reflect the amendments to Rule 45-501 and to update section cross-references to other instruments. The Proposed Policy 45-501CP also includes guidance regarding the impact of Proposed NI 31-103.

5. AUTHORITY – ONTARIO

The following provisions of the Act provide the Commission with authority to adopt the CSA Amendments and the Ontario Amendments:

- Paragraphs 143(1)(8) and (20) authorize the Commission to make rules which provide for exemptions from the registration requirements and prospectus requirements under the Act and for the removal of exemptions for those requirements.
- Paragraph 143(1)(48) authorizes the Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.
- Paragraph 143(1)(54) authorizes the Commission to make rules respecting exemptions from or varying the requirements of subsections 72(4), (5), (6) and (7) of the Act.

6. ANTICIPATED COSTS AND BENEFITS

The Commission believes that CSA Amendments and the Ontario Amendments will, when implemented, yield benefits and reduce costs to market participants for the reasons discussed below.

(i) *Harmonized exemptions*

NI 45-106 harmonizes many of the prospectus and registration exemptions currently available across Canada. The CSA Amendments codify exemptive relief previously granted by the CSA. They also harmonize in a national rule certain exemptions which were previously local in application. Market participants wishing to effect an exempt distribution will continue to look primarily to NI 45-106 for prospectus and, until the implementation of Proposed NI 31-103, registration exemptions, which will result in reduced transaction costs.

(ii) *Consolidation of local exemptions*

The local exemptions for Ontario school board debt securities have been relocated to Proposed Rule 45-501 which, in our view, is a more appropriate instrument for an Ontario-only exemption such as this.

(iii) *Reduced filing and disclosure requirements*

Proposed changes in the CSA Amendments and Ontario Amendments will eliminate certain filing and disclosure requirements. Neither the CSA Amendments nor the Ontario Amendments introduce any significant new filing or disclosure requirements.

(iv) *Support implementation of Proposed NI 31-103*

The CSA Amendments and Ontario Amendments will facilitate the implementation of Proposed NI 31-103. Proposed NI 31-103 contemplates harmonized registration requirements across all CSA jurisdictions. Please refer to the CSA notice dated February 29, 2008 requesting comment on Proposed NI 31-103 for a discussion of the anticipated costs and benefits of Proposed NI 31-103.

7. ALTERNATIVES CONSIDERED

No alternatives to the Ontario Amendments were considered.

8. RELIANCE ON UNPUBLISHED STUDIES, ETC.

In developing the CSA Amendments and the Ontario Amendments, we did not rely upon any significant unpublished study, report or other written materials.

9. COMMENTS

Interested parties are invited to make written submissions on the Proposed 45-501 Materials and the Proposed CSA Materials. Please submit your comments in writing on or before May 30, 2008. If you are not sending your comments by email, a diskette containing the submissions (in Windows format, Word) should also be forwarded.

(a) Submissions on Proposed CSA Materials should be made to:

Gordon Smith
British Columbia Securities Commission
PO Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Fax: (604) 899-6814
e-mail: gsmith@bcsc.bc.ca

M^e Anne-Marie Beaudoin
Secrétaire de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax : (514) 864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

(b) Submissions on the Proposed 45-501 Materials should be made to:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
E-mail: jstevenson@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in Ontario and in certain other provinces requires the publication of a summary of the written comments received during the comment period. All comments will also be posted to the Commission web-site at www.osc.gov.on.ca and, if applicable, the websites of the other CSA jurisdictions, to improve the transparency of the policy-making process.

10. QUESTIONS

Questions may be referred to:

Jo-Anne Matear
Assistant Manager, Corporate Finance
(416) 593 2323
jmatear@osc.gov.on.ca

Jason Koskela
Legal Counsel, Corporate Finance
(416) 595 8922
jkoskela@osc.gov.on.ca

Robert F. Kohl (for Proposed NI 31-103)
Senior Legal Counsel, Registrant Regulation
(416) 593-8233
rkohl@osc.gov.on.ca

February 29, 2008

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SCHEDULE 1**PROPOSED AMENDED AND RESTATED
ONTARIO SECURITIES COMMISSION RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

Text boxes in this Rule refer to National Instrument 45-102 *Resale of Securities*. These text boxes are located above sections 2.1 to 2.9. These text boxes do not form part of this Rule.

PART 1: DEFINITIONS AND INTERPRETATION

- 1.1 Definitions
- 1.2 Affiliate
- 1.3 Control
- 1.4 Registration requirement

PART 2: PROSPECTUS EXEMPTIONS

- 2.1 Government incentive security
- 2.2 Government incentive security traded under section 2.1
- 2.3 Commodity futures option or contract
- 2.4 Security of a co-operative
- 2.5 Membership share of a credit union
- 2.6 Security of a credit union
- 2.7 School board debt
- 2.8 Execution Act
- 2.9 Trades in mutual fund securities to corporate sponsored plans

PART 3: REGISTRATION EXEMPTIONS

- 3.0 Application
- 3.01 Removal of registration exemptions - market intermediaries
- 3.1 Government incentive security
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- 3.3 Commodity futures option or contract
- 3.4 Security of a co-operative
- 3.5 Membership share of a credit union
- 3.6 Security of a credit union
- 3.7 School board debt

PART 4: REGISTRATION EXEMPTIONS FOR FINANCIAL INTERMEDIARIES AND SCHEDULE III BANKS

- 4.1 Certain trades by financial intermediaries and Schedule III banks
- 4.2 Adviser

PART 5: REMOVAL OF EXEMPTIONS

- 5.1 Removal of exemptions

PART 6: OFFERING MEMORANDUM

- 6.1 Application
- 6.2 Right of action for damages and right of rescission
- 6.3 Description of rights in offering memorandum
- 6.4 Delivery of offering memorandum

PART 7: REPORTING REQUIREMENTS

- 7.1 Report of exempt distribution
- 7.2 Required form of report of exempt distribution

PART 8: EXEMPTION

8.1 Exemption

PART 9: TRANSITION AND EFFECTIVE DATE

9.1 Repeal of former instrument

9.2 Effective date

FORM

Form 45-501F1 - Report of exempt distribution

PART 1: DEFINITIONS AND INTERPRETATION**1.1 Definitions** - In this Rule

“**bank**” means a bank named in Schedule I or II of the *Bank Act* (Canada);

“**Canadian financial institution**” means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

“**debt security**” means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;

“**director**” means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

“**entity**” means a company, syndicate, partnership, trust or unincorporated organization;

“**executive officer**” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer;

“**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, 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, 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;

“**NI 45-106**” means National Instrument 45-106 *Prospectus and Registration Exemptions*;

“**person**” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and

- (d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

“**Schedule III bank**” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“**spouse**” means an individual who

- (a) is married to another individual and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other individual, or
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender;

“**subsidiary**” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

1.2 **Affiliate** – For the purpose of this Rule, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

1.3 **Control** – For the purpose of this Rule, a person (first person) is considered to control another person (second person) if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

1.4 **Registration requirement** –

- (1) An exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.
- (2) An exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.
- (3) An exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered adviser is only available for a trade in a security if the adviser is registered in a category that permits the adviser to act as an adviser in the circumstances described in the exemption.

PART 2: PROSPECTUS EXEMPTIONS

2.1 **Government incentive security** –

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

- (1) The prospectus requirement does not apply to a distribution by an issuer or a promoter of an issuer of a security of the issuer that is a government incentive security, if
- (a) in the aggregate in all jurisdictions in Canada, 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 that is not a promoter of the issuer and that is a registered dealer or registered adviser 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 security holder, or
 - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate 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 registered dealer 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 is 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 security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.

2.2 Government incentive security traded under section 2.1 –

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

The prospectus requirement does not apply to a distribution of a security that was previously traded under the exemption in section 2.1, or a predecessor exemption to section 2.1, if each of the parties to the trade is one of the not more than 50 purchasers referred to in the exemption or predecessor exemption.

2.3 Commodity futures option or contract –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The prospectus requirement does not apply to a distribution of a commodity futures option or commodity futures contract by a hedger through a dealer.
- (2) For the purposes of subsection (1), the terms “commodity futures option”, “dealer”, “commodity futures contract”, and “hedger” have the same meaning as in the CFA.

2.4 Security of a co-operative –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

The prospectus requirement does not apply to a distribution of a security issued by a corporation to which the *Co-operative Corporations Act* applies.

2.5 Membership share of a credit union –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

The prospectus requirement does not apply to a distribution of a membership share of a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.

2.6 Security of a credit union –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The prospectus requirement does not apply to a distribution of a security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- (2) The prospectus requirement does not apply to a distribution of a security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.

2.7 School board debt –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

The prospectus requirement does not apply to a distribution of a debt security of any school board in Ontario or of a corporation established under regulations made under section 248(1) of the *Education Act* (Ontario).

2.8 Execution Act –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

- (1) The prospectus requirement does not apply to a distribution of a security by a sheriff under the *Execution Act* if
 - (a) there is no published market 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* (Ontario) including statutory rights of rescission and damages, will not be available to the purchaser of these securities.
- (2) For the purposes of subsection (1), “published market” means, for a security, any market on which the security is traded if the prices at which it has been traded on the market are regularly published in a newspaper or a business or financial publication of general and regular circulation.

2.9 Trades in mutual fund securities to corporate sponsored plans –

This provision will not be cited in any Appendix of NI 45-102 *Resale of Securities*. These securities will be free trading.

The prospectus requirement does not apply to a distribution by a person of

- (a) a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
 - (i) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, and
 - (ii) the decision to purchase the security is not made by or at the direction of the employee; or
- (b) a security of a mutual fund that
 - (i) is administered by a trust corporation registered under the *Loan and Trust Corporations Act*,
 - (ii) consists of a pool of funds that
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the ITA, and
 - (B) is established by or related to persons that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund except the trust corporation that administers the fund, and
 - (iii) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act.

PART 3: REGISTRATION EXEMPTIONS

3.0 Application –

On • [being six months after the coming into force of National Instrument 31-103 *Registration Requirements*], Part 3, except for section 3.3, does not apply.

3.01 Removal of registration exemptions - market intermediaries –

- (1) Subject to subsection (2), the exemptions from the dealer registration requirement under the following sections are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:
 - (a) section 3.1 [*Government incentive security*],
 - (b) section 3.2 [*Government incentive security traded under section 3.1*]
 - (c) section 3.4 [*Security of a co-operative*],
 - (d) section 3.5 [*Membership share of a credit union*],
 - (e) section 3.6 [*Security of a credit union*], and
 - (f) section 3.7 [*School board debt*].
- (2) Subsection (1) does not apply to a trade in a security by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant.

3.1 Government incentive security –

- (1) The dealer registration requirement does not apply to a trade by an issuer or 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 in Canada, 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 that is not a promoter of the issuer and that is a registered dealer or registered adviser 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 security holder, or
 - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate 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 registered dealer 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 is 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 security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.

3.2 Government incentive security traded under section 3.1 –

The dealer registration requirement does not apply to a trade in a security that was previously traded

under the exemption in section 3.1, or a predecessor exemption to section 3.1, if each of the parties to the trade is one of the not more than 50 purchasers referred to in the exemption or predecessor exemption.

3.3 Commodity futures option or contract –

- (1) The dealer registration requirement does not apply to a trade in a commodity futures option or commodity futures contract by a hedger through a dealer.
- (2) For the purposes of subsection (1), the terms "commodity futures option", "dealer", "commodity futures contract", and "hedger" have the same meaning as in the CFA.

3.4 Security of a co-operative –

The dealer registration requirement does not apply to a trade in a security issued by a corporation to which the *Co-operative Corporations Act* applies.

3.5 Membership share of a credit union –

The dealer registration requirement does not apply to a trade in a membership share of a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.

3.6 Security of a credit union –

- (1) The dealer registration requirement does not apply to a trade in a security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
- (2) The dealer registration requirement does not apply to a security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.

3.7 School board debt –

The dealer registration requirement does not apply to a trade in a debt security of any school board in Ontario or of a corporation established under regulations made under section 248(1) of the *Education Act* (Ontario).

PART 4: REGISTRATION EXEMPTIONS FOR FINANCIAL INTERMEDIARIES AND SCHEDULE III BANKS**4.1 Certain trades by financial intermediaries and Schedule III banks –**

- (1) Subject to subsections (2) and (3), the registration requirement does not apply to a trade by a financial intermediary or a Schedule III bank
 - (a) of a type described in any section of Part 3 of NI 45-106 [*Prospectus and Registration Exemptions*] except the following:
 - (i) section 3.5 [*Family, friends and business associates*],
 - (ii) section 3.6 [*Family, friends and business associates – Saskatchewan*],
 - (iii) section 3.9 [*Offering memorandum*],
 - (iv) section 3.14 [*Securities for debt*],
 - (v) section 3.17 [*Offer to acquire to security holder outside local jurisdiction*],
 - (vi) section 3.18 [*Investment fund reinvestment*],
 - (vii) section 3.19 [*Additional investment in investment funds*],
 - (viii) section 3.40 [*RRSP/RRIF*],
 - (ix) section 3.45 [*Exchange contract*],
 - (x) section 3.48 [*Small security holder selling and purchase agreements*],
 - (xi) section 3.49 [*Advisor*], or
 - (xii) section 3.50 [*Investment dealer acting as portfolio manager*];
 - (b) of a type described in the following sections:
 - (i) section 3.3 [*Commodity futures option or contract*],

- (ii) section 3.4 [*Security of a co-operative*],
 - (iii) section 3.5 [*Membership share of a credit union*],
 - (iv) section 3.6 [*Security of a credit union*]; and
 - (v) section 3.7 [*School board debt*];
- (c) in a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
- (i) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or
 - (ii) the decision to purchase the security is not made by or at the direction of the employee; and
- (d) in a security of a mutual fund that
- (i) is administered by a trust corporation registered under the *Loan and Trust Corporations Act*,
 - (ii) consists of a pool of funds that,
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the ITA, and
 - (B) is established by or related to persons that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund except the trust corporation that administers the fund, and
 - (iii) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act.
- (2) The exemptions contained in paragraphs (1)(a) and (b) do not apply to a trade in a security of a mutual fund.
- (3) The exemptions from registration requirements set out in paragraphs (1)(a) and (b) are unaffected by the removal of the exemptions from the dealer registration requirement resulting from the application of either section 3.0 of NI 45-106 or section 3.01.
- 4.2 **Adviser** – The adviser registration requirement does not apply to
- (a) a financial intermediary that is regulated by the federal Office of the Superintendent of Financial Institutions if the financial intermediary is acting as an adviser in accordance with the legislation of the Parliament of Canada governing the financial intermediary, or
 - (b) a Schedule III bank if the Schedule III bank is acting as an adviser in accordance with the *Bank Act* (Canada).

PART 5: REMOVAL OF EXEMPTIONS

5.1 Removal of exemptions –

- (1) The exemptions from the adviser registration requirement in section 34 of the Act are not available to a person or company.
- (2) The exemptions from the dealer registration requirement in subsections 35(1) and (2) of the Act are not available for a trade in a security.
- (3) The exemptions from the prospectus requirement in subsections 72(1) and clauses 73(1)(a), (b) and (c) of the Act are not available for a distribution of a security.

PART 6: OFFERING MEMORANDUM

- 6.1 **Application** – This Part only applies to a distribution made in reliance on an exemption from the prospectus requirement in
- (a) section 2.3 of NI 45-106 [*Accredited investor*],
 - (b) section 2.4 of NI 45-106 [*Private issuer*],
 - (c) section 2.7 of NI 45-106 [*Founder, control person and family - Ontario*],
 - (d) section 2.8 of NI 45-106 [*Affiliates*],
 - (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
 - (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], and
 - (g) section 2.1 [*Government incentive security*].
- 6.2 **Right of action for damages and right of rescission** –
- (1) The rights referred to in section 130.1 of the Act apply in respect of an offering memorandum delivered to a prospective purchaser.
 - (2) Despite subsection (1), the rights referred to in section 130.1 of the Act do not apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a distribution made in reliance on the exemption from the prospectus requirement in section 2.3 of NI 45-106 [*Accredited investor*] if the prospective purchaser is
 - (a) a Canadian financial institution or a Schedule III bank,
 - (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada), or
 - (c) a subsidiary of any person referred to in paragraphs (a) and (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary.
- 6.3 **Description of rights in offering memorandum** – If a seller delivers an offering memorandum to a prospective purchaser in connection with a distribution to which the rights referred to in section 130.1 of the Act apply, the rights must be described in the offering memorandum.
- 6.4 **Delivery of offering memorandum** – If an offering memorandum is provided to a prospective purchaser, the seller must deliver to the Commission a copy of the offering memorandum or any amendment to a previously delivered offering memorandum within 10 days of the date of the distribution.

PART 7: REPORTING REQUIREMENTS

- 7.1 **Report of exempt distribution** – If an issuer distributes a security of its own issue under section 2.1 [*Government incentive security*], the issuer must file a report on or before the 10th day after the distribution.
- 7.2 **Required form of report of exempt distribution** – The required form of report under section 7.1 [*Report of exempt distribution*] is Form 45-501F1.

PART 8: EXEMPTION

- 8.1 **Exemption** – The Director may grant an exemption to Part 7, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 9: TRANSITION AND EFFECTIVE DATE

- 9.1 **Revocation of former rule** – Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on September 14, 2005 is revoked.
- 9.2 **Effective date** – This Rule comes into force on ●.

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SCHEDULE 2

**PROPOSED AMENDED AND RESTATED
FORM 45-501F1
REPORT OF EXEMPT DISTRIBUTION**

This is the form required under section 7.1 of Ontario Securities Commission Rule 45-501 for a report of exempt distribution.

Issuer information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office. If the issuer of the security distributed is an investment fund, state the name of the fund as the issuer, and provide the full name of the manager of the investment fund and the address and telephone number of the head office of the manager. Include the former name of the issuer if its name has changed since last report.

Item 2: State whether the issuer is or is not a reporting issuer and, if reporting, each of the jurisdictions in which it is reporting.

Item 3: Indicate the industry of the issuer by checking the appropriate box next to one of the industries listed below.

- | | |
|---|--|
| <input type="checkbox"/> Bio-tech | <input type="checkbox"/> Mining |
| <input type="checkbox"/> Financial Services | <input type="checkbox"/> exploration/development |
| <input type="checkbox"/> investment companies and funds | <input type="checkbox"/> production |
| <input type="checkbox"/> mortgage investment companies | <input type="checkbox"/> Oil and gas |
| <input type="checkbox"/> Forestry | <input type="checkbox"/> Real estate |
| <input type="checkbox"/> Hi-tech | <input type="checkbox"/> Utilities |
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Other (describe) |

Details of distribution

Item 4: Complete Schedule I to this report. Schedule I is designed to assist in completing the remainder of this report.

Item 5: State the distribution date. If the report is being filed for securities distributed on more than one distribution date, state all distribution dates.

Item 6: For each security distributed:

- (a) describe the type of security,
- (b) state the total number of securities distributed. If the security is convertible or exchangeable, describe the type of underlying security, the terms of exercise or conversion and any expiry date; and
- (c) state the exemption(s) relied on.

Item 8: Complete the following table for each Canadian and foreign jurisdiction where purchasers of the securities reside. Do not include in this table, securities issued as payment for commissions or finder's fees disclosed under item 8, below.

Each jurisdiction where purchasers reside	Number of purchasers	Price per security (Canadian \$) ¹	Total dollar value raised from purchasers in the jurisdiction (Canadian \$)
Total number of Purchasers			
Total dollar value of distribution in all jurisdictions (Canadian \$)			

Note 1: If securities are issued at different prices list the highest and lowest price the securities were sold for.

Commissions and finder's fees

Item 8: Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments for services incidental to the distribution, such as clerical, printing, legal or accounting services.

If the securities being issued as compensation are or include convertible securities, such as warrants or options, please add a footnote describing the terms of the convertible securities, including the term and exercise price. Do not include the exercise price of any convertible security in the total dollar value of the compensation unless the securities have been converted.

Full name and address of the person being compensated	Compensation paid or to be paid (cash and/or securities)				Total dollar value of compensation (Canadian \$)
	Cash (Canadian \$)	Securities			
		Number and type of securities issued	Price per security	Exemption relied on and date of distribution	

Item 9: Please include the attached "Authorization of Indirect Collection of Personal Information for Distributions in Ontario".

Certificate

On behalf of the issuer, I certify that the statements made in this report are true.

Date: _____

Name of issuer (please print)

Print name, title and telephone number of person signing

Signature

Item 10: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different than the person signing the certificate.

IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS REPORT.

Notice - Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the Ontario Securities Commission under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the Ontario Securities Commission at the following address:

Ontario Securities Commission
Suite 1903, Box 55, 20 Queen Street West
Toronto, Ontario M5H 3S8
Public official contact regarding indirect collection of information:
Administrative Assistant to the Director of Corporate Finance
Telephone (416) 593-8086

Authorization of Indirect Collection of Personal Information for Distributions in Ontario

The attached Schedule I contains personal information of purchasers and details of the distribution(s). The issuer hereby confirms that each purchaser listed in Schedule I of this report

- (a) has been notified by the issuer
 - (i) of the delivery to the Ontario Securities Commission of the information pertaining to the person as set out in Schedule I,
 - (ii) that this information is being collected indirectly by the Ontario Securities Commission under the authority granted to it in securities legislation,
 - (iii) that this information is being collected for the purposes of the administration and enforcement of Ontario securities legislation, and
 - (iv) of the title, business address and business telephone number of the public official in Ontario, as set out in this report, who can answer questions about the Ontario Securities Commission's indirect collection of the information, and
- (b) has authorized the indirect collection of the information by the Ontario Securities Commission.

Schedule I

Complete the following table.

Do not include in this table, securities issued as payment of commissions or finder's fees disclosed under item 8 of this report.

The information in this schedule will not be placed on the public file of the Ontario Securities Commission. However, freedom of information legislation in Ontario may require the Ontario Securities Commission to make this information available if requested.

Full name, residential address and telephone number of purchaser	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of distribution

Instructions:

1. File this report and the applicable fee at the following address:

Ontario Securities Commission

Suite 1900, Box 55, 20 Queen Street West

Toronto, Ontario M5H 3S8

Telephone: (416) 593-3682

Facsimile: (416) 593-8252

Public official contact regarding indirect collection of information:

Administrative Assistant to the Director of Corporate Finance

Telephone (416) 593-8086

2. If the space provided for any answer is insufficient, additional sheets may be used and must be cross-referenced to the relevant part and properly identified and signed by the person whose signature appears on the report.
3. One report may be used for multiple distributions occurring within 10 days of each other provided that the report is filed on or before the 10th day following the first of such distributions.
4. In order to determine the applicable fee, consult Ontario securities legislation.

SCHEDULE 3**PROPOSED AMENDED AND RESTATED
COMPANION POLICY 45-501CP
TO ONTARIO SECURITIES COMMISSION RULE 45-501****ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS****PART 1: APPLICATION**

- 1.1 Introduction
- 1.2 Purpose

PART 2: OTHER EXEMPTIONS AND DISCRETIONARY RELIEF

- 2.1 Other exemptions
- 2.2 Discretionary relief

PART 3: GENERAL

- 3.1 All trades are subject to securities legislation
- 3.2 Multi-jurisdictional trades
- 3.3 Responsibility for compliance
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- 6.1 Report of exempt distribution

PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

- 7.1 Resale restrictions

PART 1: APPLICATION

- 1.1 **Introduction** – Ontario Securities Commission Rule 45-501 *Ontario Registration and Prospectus Exemptions* (the Rule) concerns exemptions from the registration requirement and from the prospectus requirement.
- 1.2 **Purpose** – The purpose of this companion policy (the Policy) is to help users understand how the Commission interprets or applies certain provisions of the Rule. The Policy includes explanations, discussion and examples of various parts of the Rule.

PART 2: OTHER EXEMPTIONS AND DISCRETIONARY RELIEF

- 2.1 **Other exemptions** – In addition to the exemptions in the Rule, exemptions may also be available to persons under National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) and other provisions of Ontario securities legislation, including exemptions from the registration requirement under National Instrument 31-103 *Registration Requirements* (NI 31-103) (upon NI 31-103 coming into force).
- 2.2 **Discretionary relief** – In addition to the exemptions contained in the Rule and those available under other provisions of Ontario securities legislation, the Commission has the discretion to grant exemptions from the prospectus requirement and from the registration requirement.

PART 3: GENERAL**3.0 Availability of Registration Exemptions –**

With the exception of the dealer registration exemption set out in section 3.3 [Commodity futures option or contract], section 3.0 of the Rule withdraws the availability of all of the dealer registration exemptions set out in Part 3 of the Rule, after the coming into force of NI 31-103 (and the transition period provided for in section 3.0). The withdrawal of the availability of these registration exemptions reflects the anticipated adoption of a “business trigger” for the dealer registration requirement, as a precondition to the coming into force of NI 31-103.

Under the business trigger, persons who are not in the business of trading securities will not be subject to the dealer registration requirement and will not require an exemption from the dealer registration requirement for their trading activities. Persons who are in the business of trading securities will generally be required to register as a dealer. The exemptions from the dealer registration requirement set out in section 3.3 and Part 4 of the Rule relate to circumstances where the trading activity or person involved in the trading activity is subject to another regulatory regime.

3.1 All trades are subject to securities legislation –

- (1) Ontario securities legislation applies to any trade in a security in Ontario, whether or not the issuer of the security is a reporting issuer in Ontario.
- (2) The definition of “trade” includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, in Ontario must comply with Ontario securities legislation.

3.2 Multi-jurisdictional trades – A trade can occur in more than one jurisdiction. If it does, the person conducting the trade must comply with the securities legislation of each jurisdiction in which the trade occurs.**3.3 Responsibility for compliance –** A person trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person is responsible for determining whether, given the facts available, the exemption is available. A person trading securities under an exemption should retain all necessary documents that show that the person properly relied on the exemption. It is not appropriate for a person to assume an exemption is available.**3.4 Advisers –** Subsection 1.4(2) of the Rule provides that an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. Under Ontario securities legislation, persons engaged in the business of, or holding themselves out as being in the business of, advising others as to the investing in or buying or selling of securities are required to be registered as an adviser or have an exemption from this registration requirement. Accordingly, only

persons that are registered advisers or exempt from the requirement to be registered as advisers may act as advisers in connection with a trade made under the Rule.

3.5 Underwriters –

- (1) Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the exemption from the prospectus requirement in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.
- (2) There may be legitimate transactions where a dealer purchases securities under an exemption from the prospectus requirement other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.
- (3) Where a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be looked at as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106 or the Rule.

3.6 Soliciting purchasers –

- (1) The exemptions from the dealer registration requirement identified in section 3.01 of the Rule are not available to a “market intermediary”. Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. The term “market intermediary” is defined in Ontario Securities Commission Rule 14-501 *Definitions*.
- (2) The Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employees are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities, the Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with Ontario securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

PART 4: INTERPRETATION

4.1 **Definitions** – Unless defined in the Rule, terms used in the Rule have the meaning given to them in Ontario securities legislation, including National Instrument 14-101 *Definitions*.

4.2 Executive officer –

- (1) The definition of “executive officer” in the Rule is based on the definition of the same term in National Instrument 51-102 *Continuous Disclosure Obligations*.
- (2) The definition includes someone who “performs a policy-making function” in respect of an issuer. The Commission is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.
- (3) Paragraph (c) of the definition of “executive officer” includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

4.3 Directors, executive officers and officers of non-corporate issuers –

- (1) Non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers for the purpose of complying with the Rule.
- (2) The term “director” is defined in the Rule and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

- (3) When the term “officer” is used in the Rule, a non-corporate issuer should refer to the definition in the Act, which defines the term to include any individual acting in a capacity similar to that of an officer of a company.

PART 5: OFFERING MEMORANDUM

5.1 Definition of offering memorandum –

- (1) “Offering memorandum” is defined in Ontario Securities Commission Rule 14-501.
- (2) The Commission is of the view that the phrase “prepared primarily for delivery to and review by a prospective purchaser” in the definition of offering memorandum means the document is prepared in contemplation of soliciting an investment from the prospective purchaser.

5.2 Mandatory and voluntary use of offering memorandum –

- (1) An issuer must prepare an offering memorandum for use in connection with a distribution made in reliance on the prospectus exemption in section 2.1 of the Rule [*Government incentive security*].
- (2) There is no obligation to prepare an offering memorandum for use in connection with a distribution made in reliance on a prospectus exemption in:
- (a) section 2.3 of NI 45-106 [*Accredited investor*],
 - (b) section 2.4 of NI 45-106 [*Private issuer*],
 - (c) section 2.7 of NI 45-106 [*Family, founder and control person - Ontario*],
 - (d) section 2.8 of NI 45-106 [*Affiliates*],
 - (e) section 2.10 of NI 45-106 [*Minimum amount investment*], or
 - (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*].

Business practice may dictate the preparation of offering material that is delivered voluntarily to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption in section 2.3, 2.4, 2.7, 2.8, 2.10 or 2.19 of NI 45-106. This offering material may constitute an “offering memorandum” as defined in OSC Rule 14-501 *Definitions*.

5.3 Right of action for damages and right of rescission –

- (1) Part 6 of the Rule provides for the application of the rights referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption in:
- (a) section 2.3 of NI 45-106 (subject to the provisions of subsection 6.2(2) of the Rule) [*Accredited investor*],
 - (b) section 2.4 of NI 45-106 [*Private issuer*],
 - (c) section 2.7 of NI 45-106 [*Family, founder and control person - Ontario*],
 - (d) section 2.8 of NI 45-106 [*Affiliates*],
 - (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
 - (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], or
 - (g) section 2.1 [*Government incentive security*].

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule, or voluntarily in connection with a distribution made in reliance on a prospectus exemption in section 2.3, 2.4, 2.7, 2.8, 2.10 or 2.19 of NI 45-106.

- (2) A document delivered in connection with a distribution in a security made otherwise than in reliance on the prospectus exemptions referred to in subsection (1) does not give rise to the rights referred to in section 130.1 of the Act or subject the selling security holder to the requirements of Part 6 of the Rule.

5.4 Content of offering memorandum –

- (1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.
- (2) Under section 6.3 of the Rule, the rights referred to in section 130.1 of the Act must be described in an offering memorandum delivered in connection with a distribution to which the rights apply.

5.5 Review of offering memorandum –

- (1) An offering memorandum or any amendment to a previously delivered offering memorandum delivered to the Commission under section 6.4 of the Rule is not generally reviewed or commented on by Commission staff.
- (2) If Commission staff becomes aware that an offering memorandum fails to disclose material information relating to a security that is the subject of a distribution, staff may seek to effect remedial action.

5.6 Preliminary offering material –

- (1) The Commission cautions against the practice of providing preliminary offering material to a prospective purchaser before furnishing a “final” offering memorandum unless the offering material contains a description of the rights referred to in section 130.1 of the Act in situations when the rights apply.
- (2) The only material delivered to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption referred to in section 6.1 of the Rule should be:
- (a) a “term sheet” (representing a skeletal outline of the features of a distribution without dealing extensively with the business or affairs of the issuer of the securities being distributed), and
 - (b) an offering memorandum describing the rights referred to in section 130.1 of the Act available to purchasers and complying in all other respects with Ontario securities legislation.

- 5.7 **Availability of offering memorandum –** Subject to *Freedom of Information and Protection of Privacy Act* requests, it is the Commission’s policy that an offering memorandum delivered to the Commission under section 6.4 of the Rule will not be made available to the public.

PART 6: REPORTING REQUIREMENTS

6.1 Report of exempt distribution –

- (1) Section 7.1 of the Rule requires an issuer that has distributed a security of its own issue under section 2.1 of the Rule [*Government incentive security*] to file Form 45-501F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution.
- (2) In determining if it is required to file a report in Ontario, an issuer should consider the following questions:
- (a) Is there a distribution in Ontario?

Please refer to Ontario securities legislation for guidance on when a distribution occurs in Ontario.
 - (b) If there is a distribution in Ontario, what exemption from the dealer registration requirement and the prospectus requirement is the issuer relying on for the distribution of the security?
 - (c) Does the exemption referred to in paragraph (b) trigger a reporting requirement?

Reports of exempt distribution are required for distributions made in reliance on the exemptions listed in section 6.1 of NI 45-106 and section 7.1 of the Rule.

- (3) Section 140 of the Act requires that information filed with the Commission be made available for public inspection during normal business hours except for information that the Commission believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the Commission be available to the public for inspection.

Based on these provisions of Ontario securities legislation, the Commission has determined that the information listed in Form 45-501F1 *Report of Exempt Distribution*, Schedule I discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection.

PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

7.1 Resale restrictions –

- (1) A security distributed under a prospectus exemption may be subject to restrictions on its resale. The particular resale – or “first trade” – restrictions depend on the parties to the trade and the particular prospectus exemption that was relied on to distribute the security. In certain circumstances, no resale restrictions will apply and the security acquired under an exempt distribution will be freely tradable.
- (2) Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities*. While the Rule contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in National Instrument 45-102 *Resale of Securities* to determine what resale restrictions, if any, apply to the security in question.
- (3) The resale restrictions operate by triggering the prospectus requirement unless certain conditions are satisfied. A security that is subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed in reliance on an exemption from the prospectus requirement in the Rule, NI 45-106 or another provision in Ontario securities legislation.

SCHEDULE 4**COMPANION POLICY 45-501CP
TO ONTARIO SECURITIES COMMISSION RULE 45-501****ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS****PART 1: ~~INTRODUCTION~~ APPLICATION**

- 1.1 Introduction
- 1.2 Purpose

PART 2: OTHER EXEMPTIONS AND DISCRETIONARY RELIEF

- 2.1 Other exemptions
- 2.2 Discretionary relief

PART 3: GENERAL

- 3.1 All trades are subject to securities legislation
- 3.2 Multi-jurisdictional trades
- 3.3 Responsibility for compliance
- 3.4 Advisers
- 3.5 Underwriters
- 3.6 Soliciting purchasers

PART 4: INTERPRETATION

- 4.1 Definitions
- 4.2 Executive officer
- 4.3 Directors, executive officers and officers of non-corporate issuers
- 4.4 ~~Investment fund~~

PART 5: OFFERING MEMORANDUM

- 5.1 Definition of offering memorandum
- 5.2 Mandatory and voluntary use of offering memorandum
- 5.3 Right of action for damages and right of rescission
- 5.4 Content of offering memorandum
- 5.5 Review of offering memorandum
- 5.6 Preliminary offering material
- 5.7 Availability of offering memorandum

PART 6: REPORTING REQUIREMENTS

- ~~6.1~~ 6.1 Report of exempt distribution

PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

- 7.1 Resale restrictions

PART 1: INTRODUCTION APPLICATION

- 1.1 **Introduction** — Ontario Securities Commission Rule 45-501 *Ontario Registration and Prospectus Exemptions* (the Rule) ~~provides concerns~~ exemptions from the ~~dealer~~ registration requirement and from the prospectus requirement.
- 1.2 **Purpose** — The purpose of this companion policy (the Policy) is to help users understand how the Commission interprets or applies certain provisions of the Rule. The Policy includes explanations, discussion and examples of various parts of the Rule.

PART 2: OTHER EXEMPTIONS AND DISCRETIONARY RELIEF

- 2.1 **Other exemptions** — In addition to the exemptions in the Rule, exemptions may also be available to persons under National Instrument 45-106 *Prospectus and Registration Exemptions (NI 45-106)* and other provisions of Ontario securities legislation, including exemptions from the registration requirement under National Instrument 31-103 *Registration Requirements (NI 31-103)* (upon NI 31-103 coming into force).
- 2.2 **Discretionary relief** — In addition to the exemptions contained in the Rule and those available under other provisions of Ontario securities legislation, the Commission has the discretion to grant exemptions from the prospectus requirement and from the ~~dealer~~ registration requirement.

PART 3: GENERAL**3.0 Availability of Registration Exemptions —**

With the exception of the dealer registration exemption set out in section 3.3 [Commodity futures option or contract], section 3.0 of the Rule withdraws the availability of all of the dealer registration exemptions set out in Part 3 of the Rule, after the coming into force of NI 31-103 (and the transition period provided for in section 3.0). The withdrawal of the availability of these registration exemptions reflects the anticipated adoption of a “business trigger” for the dealer registration requirement, as a precondition to the coming into force of NI 31-103.

Under the business trigger, persons who are not in the business of trading securities will not be subject to the dealer registration requirement and will not require an exemption from the dealer registration requirement for their trading activities. Persons who are in the business of trading securities will generally be required to register as a dealer. The exemptions from the dealer registration requirement set out in section 3.3 and Part 4 of the Rule relate to circumstances where the trading activity or person involved in the trading activity is subject to another regulatory regime.

3.1 All trades are subject to securities legislation —

- (1) ~~Market participants are reminded that~~ Ontario securities legislation applies to any trade in a security in Ontario, whether or not the issuer of the security is a reporting issuer in Ontario.
- (2) The definition of “trade” includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, in Ontario must comply with Ontario securities legislation.
- ~~(3) If a trade is exempted from the dealer registration requirement, so too is any act, solicitation or conduct in furtherance of that trade.~~

3.2 **Multi-jurisdictional trades** — ~~Market participants are reminded that a~~ A trade can occur in more than one jurisdiction. If it does, the person conducting the trade must comply with the securities legislation of each jurisdiction in which the trade occurs.

3.3 **Responsibility for compliance** — A person trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person ~~trading securities~~ is responsible for determining whether, given the facts available, the exemption is available. ~~Generally a~~ person trading securities under an exemption should retain all necessary documents that show that the person properly relied on the exemption. It is not appropriate for a person to assume an exemption is available.

3.4 **Advisers** — Subsection 1.4(2) of the Rule provides that an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an

exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. ~~In general terms~~ Under Ontario securities legislation, persons engaged in the business of, or holding themselves out as being in the business of, ~~providing investment advice~~ advising others as to the investing in or buying or selling of securities are required to be registered, ~~or exempted as an adviser or have an exemption from this registration, under Ontario securities legislation requirement~~. Accordingly, only persons that are registered advisers or exempt from the requirement to be registered or exempted from registration as advisers may act as advisers in connection with a trade made under the Rule.

3.5 Underwriters —

- (1) Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the exemption from ~~the dealer registration requirement and~~ the prospectus requirement in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.
- (2) There may be legitimate transactions where ~~an underwriter a dealer~~ purchases securities under an exemption from the ~~dealer registration requirement and~~ prospectus requirement other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the ~~underwriter dealer~~ purchases the securities with investment intent and not with a view to distribution.
- (3) Where ~~an underwriter a dealer~~ purchases securities through a series of exempt ~~trades transactions~~ in order to avoid the obligation to deliver a prospectus, the transactions will be looked at as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106 or the Rule.

3.6 Soliciting purchasers —

- (1) The exemptions from the dealer registration requirement ~~set out identified~~ in section ~~5-23.01~~ of the Rule are not available to a "market intermediary". Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. The term "market intermediary" is defined in Ontario Securities Commission Rule 14-501 *Definitions*.
- (2) The Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employees are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities, the Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with Ontario securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

PART 4: INTERPRETATION

- 4.1 **Definitions —** Unless defined in the Rule, terms used in the Rule have the meaning given to them in Ontario securities legislation, including National Instrument 14-101 *Definitions*.
- 4.2 **Executive officer —**
 - (1) The definition of "executive officer" in the Rule is based on the definition of the same term in National Instrument 51-102 *Continuous Disclosure Obligations*.
 - (2) The definition includes someone who "performs a policy-making function" in respect of an issuer. ~~We are~~ The Commission is of the view that an individual who "performs a policy-making function" in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.
 - (3) Paragraph ~~(d)~~ of the definition of "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

4.3 Directors, executive officers and officers of non-corporate issuers –

- (1) Non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers for the purpose of complying with the Rule.
- (2) The term “director” is defined in the Rule and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.
- (3) When the term “officer” is used in the Rule, a non-corporate issuer should refer to the definition in the Act, which defines the term to include any individual acting in a capacity similar to that of an officer of a company.

~~4.4 **Investment fund** Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by~~

- ~~(a) an underlying business owned by the trust or other entity, or~~
- ~~(b) the income producing properties owned by the trust or other entity.~~

~~Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.~~

PART 5: OFFERING MEMORANDUM**5.1 Definition of offering memorandum =**

- (1) “Offering memorandum” is defined in Ontario Securities Commission Rule 14-501.
- (2) ~~In our~~The Commission is of the view, that the phrase “prepared primarily for delivery to and review by a prospective purchaser” in the definition of offering memorandum means the document is prepared in contemplation of soliciting an investment from the prospective purchaser.

5.2 Mandatory and voluntary use of offering memorandum =

- (1) An issuer must prepare an offering memorandum for use in connection with a distribution made in reliance on the prospectus exemption in section 2.1 of the Rule [*Government incentive security*].
- (2) There is no obligation to prepare an offering memorandum for use in connection with a distribution made in reliance on ~~an~~ prospectus exemption in:
 - (a) section 2.3 of NI 45-106 [*Accredited investor*],
 - (b) section 2.4 of NI 45-106 [*Private issuer*],
 - (c) section 2.7 of NI 45-106 [*Family, founder and control person - Ontario*],
 - (d) section 2.8 of NI 45-106 [*Affiliates*],
 - (e) section 2.10 of NI 45-106 [*Minimum amount investment*], or
 - ~~(f)~~ ~~section 2.19 of NI 45-106 [*Additional investment in investment funds*].~~

Business practice may dictate the preparation of offering material that is delivered voluntarily to a prospective purchaser in connection with a distribution made in reliance on ~~an~~ prospectus exemption in section 2.3, 2.4, 2.7, 2.8, 2.10 or 2.19 of NI 45-106. This offering material may constitute an “offering memorandum” as defined in OSC Rule 14-501 *Definitions*.

5.3 Right of action for damages and right of rescission =

- (1) Part 6 of the Rule provides for the application of the rights referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective purchaser in connection with a distribution made in reliance on ~~an~~ prospectus exemption in:
 - (a) section 2.3 of NI 45-106 (subject to the provisions of subsection ~~4.26.2(32)~~ of the Rule) [*Accredited investor*],

- (b) section 2.4 of NI 45-106 [*Private issuer*],
- (c) section 2.7 of NI 45-106 [*Family, founder and control person - Ontario*],
- (d) section 2.8 of NI 45-106 [*Affiliates*],
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], or
- (fg) section 2.1 of the Rule [*Government incentive security*].

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule, or voluntarily in connection with a distribution made in reliance on ~~an~~ prospectus exemption in section 2.3, 2.4, 2.7, 2.8, 2.10 or 2.19 of NI 45-106.

- (2) A document delivered in connection with a distribution in a security made otherwise than in reliance on the prospectus exemptions referred to in subsection (1) does not give rise to the rights referred to in section 130.1 of the Act or subject the selling security holder to the requirements of Part 6 of the Rule.

5.4 Content of offering memorandum –

- (1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in section 2.1 of the Rule and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.
- (2) Under section 6.3 of the Rule, the rights referred to in section 130.1 of the Act must be described in an offering memorandum delivered in connection with a distribution to which the rights apply.

5.5 Review of offering memorandum –

- (1) An offering memorandum or any amendment to a previously delivered offering memorandum delivered to the Commission under section 6.4 of the Rule is not generally reviewed or commented on by Commission staff.
- (2) If Commission staff becomes aware that an offering memorandum fails to disclose material information relating to a security that is the subject of a distribution, staff may seek to effect remedial action.

5.6 Preliminary offering material –

- (1) The Commission cautions against the practice of providing preliminary offering material to a prospective purchaser before furnishing a “final” offering memorandum unless the offering material contains a description of the rights referred to in section 130.1 of the Act in situations when the rights apply.
- (2) The only material delivered to a prospective purchaser in connection with a distribution made in reliance on ~~an~~ prospectus exemption referred to in section 6.1 of the Rule should be:
 - (a) a “term sheet” (representing a skeletal outline of the features of a distribution without dealing extensively with the business ~~and/or~~ affairs of the issuer of the securities being distributed), and
 - (b) an offering memorandum describing the rights referred to in section 130.1 of the Act available to purchasers and complying in all other respects with Ontario securities legislation.

- 5.7 **Availability of offering memorandum –** Subject to *Freedom of Information and Protection of Privacy Act* requests, it is the Commission’s policy that an offering memorandum delivered to the Commission under section 6.4 of the Rule will not be made available to the public.

PART 6: REPORTING REQUIREMENTS**6.1 Report of exempt distribution—~~—~~ —**

- (1) Section 7.1 of the Rule requires an issuer that has distributed a security of its own issue under section 2.1 of the Rule [*Government incentive security*] to file Form 45-501F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution.
- (2) In determining if it is required to file a report in Ontario, an issuer should consider the following questions:
- (a) ~~is~~is there a distribution in Ontario?
Please refer to Ontario securities legislation for guidance on when a distribution occurs in Ontario;;
- (b) ~~if~~if there is a distribution in Ontario, what exemption from the dealer registration requirement and the prospectus requirement is the issuer relying on for the distribution of the security?
- (c) ~~does~~Does the exemption referred to in paragraph (b) trigger a reporting requirement?
Reports of exempt distribution are required for distributions made in reliance on the exemptions listed in section 6.1 of NI 45-106 and section 7.1 of the Rule.
- (3) Section 140 of the Act requires that information filed with the Commission be made available for public inspection during normal business hours except for information that the Commission believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the Commission be available to the public for inspection.

Based on these provisions of Ontario securities legislation, the Commission has determined that the information listed in Form 45-501F1 *Report of Exempt Distribution*, Schedule I discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection.

PART 7: RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION**7.1 Resale restrictions –**

- (1) A security distributed under ~~an~~ a prospectus exemption may be subject to restrictions on its resale. The particular resale – or “first trade” – restrictions depend on the parties to the trade and the particular prospectus exemption that was relied on to distribute the security. In certain circumstances, no resale restrictions will apply and the security acquired under an exempt distribution will be freely tradable.
- (2) Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities*. While the Rule contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in National Instrument 45-102 *Resale of Securities* to determine what resale restrictions, if any, apply to the security in question.
- (3) The resale restrictions operate by triggering the prospectus requirement unless certain conditions are satisfied. A security that is subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be ~~traded~~distributed in reliance on an exemption from the prospectus requirement in the Rule, NI 45-106 or another provision in Ontario securities legislation.