Saskatchewan Financial Services Commission

HOW TO RAISE CAPITAL USING EXEMPTIONS

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HOW TO RAISE CAPITAL USING EXEMPTIONS

This publication provides information about how businesses can raise capital without complying with the registration and prospectus requirements of *The Securities Act, 1988* (Saskatchewan). Businesses can do this by using exemptions from these requirements contained in the Act and Securities Regulations. This publication is designed for Saskatchewan Issuers.

Securities regulation is a complex area of the law. Therefore this publication is a general guide only. It does not deal with all of the provisions of the Act or Securities Regulations. You should still read the Act and Securities Regulations and consult your professional advisers when dealing with securities matters.

The Act and Securities Regulations are available on the Commission's web site at http://www.sfsc.gov.sk.ca/ssc/rules.shtml. Forms are found at the end of the Regulations.

The Commission does not require filings with it to be made by lawyers or accountants or other professional advisers. If you feel comfortable complying with the requirements of the Act and Securities Regulations on your own you are free to do so.

Commission staff is always prepared to discuss what exemptions might be available, and the other provisions of the Act or Securities Regulations. However, we do not have the mandate or resources to give you business or legal advice. **We will not provide this advice.**

One final caution. This publication deals with the Saskatchewan requirements. If you plan to sell securities in other provinces, you must obtain information about their requirements by contacting the securities regulators in those provinces. The Commission only regulates the selling of securities in Saskatchewan.

PART 1 KEY TERMS

The following key terms are included to clarify some of the terms used in this publication. These are working definitions only but are important in understanding the workings of the Act and Securities Regulations. For full legal definitions see the provisions of the Act and Securities Regulations.

"Act" means *The Securities Act, 1988* (Saskatchewan).

"affiliate" is defined in subsections 2(2), (3) and (4) of the Act.

"Commission" means the Saskatchewan Financial Services Commission. See *The Saskatchewan Financial Services Commission Ac*t and *The Saskatchewan Financial Services Commission Assignment Regulation*s at http://www.sfsc.gov.sk.ca/legislation.shtml.

"Commission Regulations" means regulations made by the Commission under the terms *of The Securities Commission (Regulation Procedures) Regulations.* See at http://www.sfsc.gov.sk.ca/ssc/rules.shtml.

"Continuous Disclosure Requirements" refers to an Issuer's ongoing obligations to file with the Commission and send to its security holders financial statements, material change reports and security holder meeting information. These obligations will usually include all or part of the requirements of Commission Regulation National Instrument 51-102 *Continuous Disclosure Obligations*.

"control person" means a person whom or company which holds more than 20% of the voting securities of an Issuer. See the definition in clause 2(1)(k) of the Act.

"Director" means the Director of the Commission. See the definition in clause 2(1)(p) of the Act.

"distribution" means a trade of new securities from the treasury of an Issuer (primary distribution). It also includes certain trades of securities of an Issuer that are already issued (secondary distribution) where the vendor of the securities is an incorporator, promoter or control person of the Issuer. It does not include all secondary distributions of securities. See the definition in clause 2(1)(r) of the Act.

This term is important because when you make a distribution, you trigger the prospectus requirements in section 58 of the Act.

"founder" means a person whom or company which takes the initiative in founding, organizing or substantially reorganizing an Issuer. An Issuer can have more than one founder. A director of

an Issuer is not necessarily a founder of the Issuer unless that individual could be said to be a founder of the Issuer as well. With respect to a trade the person or company must be actively involved with the Issuer at the time of the trade in question to meet the definition. See the definition in section 1.1 of MI 45-103.

"Issuer" means a person whom or company which issues or intends to issue securities. This includes companies, partnerships, trusts, individuals or any legal entity that issues securities. See the definition in clause 2(1)(x) of the Act.

"MI 45-102" means Commission Regulation Multilateral Instrument 45-102 *Resale of Securities*.

"MI 45-103" means Commission Regulation Multilateral Instrument 45-103 *Capital Raising Exemptions* http://www.sfsc.gov.sk.ca/ssc/listg.shtml#45-103.

"MI 45-105" means Commission Regulation Multilateral Instrument 45-105 *Trades To Employees, Senior Officers, Directors, and Consultants.*

"NI 45-101" means Commission Regulation National Instrument 45-101 *Rights Offerings*.

"offering memorandum" means any document that contains information about the business affairs of an Issuer that is to be given to investors to assist them in deciding whether to buy the securities of the Issuer. See the definition in clause 2(1)(ff) of the Act. While this definition is triggered by, among other things, the use certain exemptions, this definition is not triggered by the use of the exemptions in MI 45-103.

"promoter" means a person whom or company which takes the initiative in founding, organizing or substantially reorganizing an Issuer. An Issuer can have more than one promoter. A director of an Issuer is not necessarily a promoter of the Issuer unless that individual could be said to be a promoter of the Issuer as well. See the definition in clause 2(1)(mm) of the Act.

"Regulations" means *The Securities Regulations* (Saskatchewan).

"Resale Restrictions" refers to certain restrictions contained in MI 45-102 on the resale of securities by an investor who bought those securities under certain statutory exemptions from the prospectus requirements of the Act contained in the Act or Securities Regulations. Statutory exemptions from the registration requirements of the Act contained in the Act or Securities Regulations do not trigger Resale Restrictions. Use of discretionary exemptions from the registration and prospectus requirements of the Act do not trigger Resale Restrictions unless the Resale Restriction is specifically built into the terms and conditions of the discretionary exemption granted by the Commission.

This means that an investor who purchases securities under certain statutory exemptions from the prospectus requirements of the Act contained in the Act or Securities Regulations and under some discretionary exemptions from the prospectus requirements of the Act will not be able to resell those securities to someone else unless certain requirements are met.

The purpose of Resale Restrictions is to ensure there is a level playing field and buyers and sellers of securities have access to the same information about Issuers and their securities.

There are basically three types of Resale Restrictions:

Type 1: Arises as a result of the definition of distribution in the Act and prohibits the resale of securities of an Issuer by an incorporator, promoter or control person of the Issuer unless with respect to the sale:

1. The prospectus requirements of the Act have been met;

2. A statutory exemption from the prospectus requirements of the Act is available;

3. A discretionary exemption from the prospectus requirements of the Act is obtained from the Commission; or

4. The vendor of the securities can bring itself within the provisions of section 2.8 of MI 45-102 to utilize the exemption from the Resale Restrictions in that section.

Type 2: Flows from the provisions of sections 2.3 and 2.5 of MI 45-102. Section 2.3 of MI 45-102 Act states that if a security of an Issuer was acquired by an investor under one of the statutory exemptions from the prospectus requirements of the Act or Securities Regulations listed in Appendix D to MI 45-102, the resale of those securities is a distribution within the meaning of the Act and subject to the prospectus requirements of the Act unless a statutory exemption from those requirements is available or the vendor obtains a discretionary exemption from those requirements from the Commission.

Section 2.5 of MI 45-102 goes on to provide an additional exemption from the prospectus requirements of the Act for the resale of the securities by a vendor where the Issuer of the securities is and has been a reporting issuer within the meaning of the Act (see the definition in clause 2(1)(qq) of the Act) or in another jurisdiction of Canada for four months (the seasoning period) and the securities have been held by the vendor for at least four months (the hold period). If the Issuer of the securities is not a reporting issuer anywhere in Canada the Resale

Restriction under section 2.5 of MI 45-102 will never expire and the securities may never become re-saleable under section 2.5 of MI 45-102. The exemption in section 2.5 of MI 45-102 is dependent on security certificates carrying the required legend and the vendor not being an incorporator, promoter or control person of the Issuer of the securities. Section 2.8 of MI 45-102 provides an additional exemption from Resale Restrictions for incorporators, promoters, and control persons of Issuers.

Type 3: Flows from the provisions of sections 2.4 and 2.6 of MI 45-102. Section 2.4 of MI 45-102 states that if a security of an Issuer was acquired by an investor under one of the statutory exemptions from the prospectus requirements of the Act or Securities Regulations listed in Appendix E to MI 45-102, the resale of those securities is a distribution within the meaning of the Act and subject to the prospectus requirements of the Act unless a statutory exemption from those requirements is available or the vendor obtains a discretionary exemption from those requirements from the Commission.

Section 2.6 of MI 45-102 goes on to provide an additional exemption from the prospectus requirements of the Act for the resale of the securities by a vendor where the Issuer of the securities has been a reporting issuer within the meaning of the Act or in another jurisdiction of Canada for at least four months (the seasoning period). There is no minimum period for which the securities must have been held by the vendor as long as this requirement is met. If the Issuer of the securities is not a reporting issuer anywhere in Canada the securities may never become re-saleable under section 2.6 of MI 45-102. The exemption in section 2.6 of MI 45-102 is dependant on the vendor not being an incorporator, promoter or control person of the Issuer of the securities. Section 2.8 of MI 45-102 provides an additional exemption from Resale Restrictions for incorporators, promoters, and control persons of Issuers.

The seasoning periods discussed above are not applicable if the Issuer of the securities files a prospectus after the securities in question were initially sold by the Issuer. See section 2.7 of MI 45-102.

MI 45-102 should be reviewed in its entirety when dealing with Resale Restrictions. There are additional exemptions from Resale Restrictions in MI 45-102. These are available in specialized situations that are not as relevant in the context of capital raising - securities acquired as a result of the exercise of a conversion right where the convertible security was acquired under a prospectus or certain take-over or issuer bids, securities acquired as a result of certain take-over or issuer bids or securities of a non reporting issuer sold outside of Canada where the Issuer of the securities has little connection to Canada (sections 2.10, 2.11, 2.12 and 2.14 of MI 45-102).

Also note that MI 45-102 has been adopted by a number of jurisdictions of Canada and Resale Restrictions applying in Saskatchewan will also apply in those jurisdiction.

The Resale Restrictions are complex. The most important thing is to realize that they are applicable and alert investors before they buy securities of an Issuer that there are restrictions on the resale of the securities being purchased.

"Section 80.2 Disclosure" refers to the requirement under section 80.2 of the Act that every offering memorandum must contain a statement of the rights of action that an investor has when they purchase securities. Those rights are found in subsection 80.3(3) and Part XIX of the Act and may include among others:

1. A right of withdrawal from an agreement to purchase securities on two business days written notice to the seller of the securities (see subsection 80.3(3) of the Act); and

2. Where the offering memorandum contains a misrepresentation, the right to bring an action for rescission or damage within certain time periods (see sections 138 and 147 of the Act).

A sample of such disclosure is set out in Sections 8.1 and 8.2 of this publication. These can be used in most offering memorandums.

Section 80.2 of the Act simply means that if rights of action are available with respect to the trade in question, the offering memorandum with respect to the trade must disclose those rights of action. Not all of the rights of action are available in all cases. Section 80.2 of the Act does not create additional rights of action; it just requires disclosure where the rights of action are available.

These provisions do not apply to sales made using MI 45-103.

"Securities Regulations" means Regulations and Commission Regulations.

"security" includes such things as shares, limited partnership units, trust units, investment contracts, debt instruments or promissory notes issued by Issuers. This list is not exhaustive. The Commission interprets this term broadly. See the definition in clause 2(1)(ss) of the Act.

"trade" means any transfer, sale or disposition of a security for valuable consideration.

It includes any advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a transfer, sale or disposition of a security for valuable consideration. It includes activity done to promote or convince an investor to purchase securities before money is paid for

the securities. It includes advertising the sale of the securities. The Commission interprets this term broadly.

It does not include a gift of securities where there is no valuable consideration. For example most bequests of securities under a will would not be a trade in securities.

See the definition in clause 2(1)(vv) of the Act.

If you need approval from the Commission with respect to a trade of securities you should get such approval before you start to get expressions of interest or to advertise. This Commission does not, except in rare cases, issue approval after trading has begun. You should review General Ruling/Order 47-901 *Testing the Waters* for limited activities that can be carried out prior to obtaining approval from the Commission when using certain provisions of the Act.

This term is important because when you trade, you trigger the registration requirements in section 27 of the Act.

For easier understanding we sometimes use the word "**sell**" instead of "**trade**" in this publication. It has the same meaning.

PART 2 INTRODUCTION

2.1 Basic Principles of the Act

The Act is consumer protection legislation that is aimed at protecting investors. The Commission's mandate is to protect investors' interests by regulating the sale of securities.

When carrying out its mandate, the Commission tries to ensure that its rules do not unnecessarily interfere with the efficient raising of capital. The system of regulation must be strong enough to encourage public confidence in the capital markets. Businesses can only raise capital in such an environment.

The Act embodies five main principles of securities regulation:

1. ***Only honest and knowledgeable persons should be able to sell securities.*** Section 27 of the Act, one of the key sections of the Act, requires that all persons or companies selling or giving advice about securities be registered with the Commission.

2. ***When securities are first offered to the public, investors must be given and be able to rely on truthful, complete and understandable disclosure documents.*** Section 58 of the Act, another key section of the Act, requires that a business offering its securities for sale to the public must obtain clearance from the Commission for a prospectus containing full, true and plain disclosure of all material facts about that business. This prospectus must be given to investors and allows investors to make an informed investment decision.

3. ***All buyers and sellers of securities should have equal access to information about businesses whose securities are trading in the market.*** Once a business sells its securities it has an ongoing obligation to send information to its security holders. This information includes financial statements, material change reports and information about security holder meetings. The Issuer must also file this information with the Commission. Information filed with the Commission is available for public viewing. This would be an Issuer's Continuous Disclosure Requirement.

4. ***Where appropriate, businesses should be exempted from the requirements of the Act where alternate investor protection measures exist.*** It is exemptions from the requirements of the Act that provide the safety value to avoid over-regulation and to deal with special situations. Some of these exemptions are the subject matter of this publication.

5. ***Persons taking undue advantage of investors should be held to account.*** The Act gives the Commission enforcement powers and creates civil liability against Issuers and their sellers for misrepresentations in disclosure documents like prospectuses and offering

memorandums and for failure to comply with the requirements of the Act. See Parts XVIII - Enforcement and XIX - Civil Liability of the Act.

In the capital raising context the Act really hinges on two key sections of the Act - section 27 which requires registration of anyone selling or giving advice in securities, and section 58 which requires the clearance from the Commission of a prospectus before securities are sold.

If your transaction involves securities the requirements of the Act are likely triggered and you must be careful to ensure that you meet these requirements.

If your transaction involves a trade in securities within the meaning of the Act, the registration requirements of the Act will be triggered and if that trade in securities is also a distribution of securities within the meaning of the Act, the prospectus requirements of the Act will also be triggered.

As the definitions of "securities" and "trade" in the Act are very broad and are interpreted broadly by the Commission, you could be trading in securities and subject to the requirements of the Act without even knowing it. The Commission will not, except in very rare cases, grant approvals with respect to a trade in securities (where such an approval is required) after the trade has commenced. Therefore if you need approval from the Commission for a trade in securities you had better get it before you commence trading or you could find yourself subject to the enforcement provisions of the Act.

2.2 Overview of Exemptions

Becoming registered under the Act or finding a registrant under the Act to sell your securities and clearing a prospectus with the Commission with respect to the securities you want to sell can be complex, expensive and time-consuming. You will want to avoid these requirements if at all possible while at the same time complying with the Act. This is where exemptions from the registration and prospectus requirements of the Act are useful.

Because there are situations where the registration and prospectus requirements of the Act would not be necessary for the protection of investors and because alternate protection is available in one way or another and the registration and prospectus requirements of the Act would therefore be over-regulation, the Act and Securities Regulations contains a number of waivers of or exemptions from these requirements.

There are basically two types of exemptions from the registration and prospectus requirements of the Act contained in the Act and Securities Regulations.

The first type is the statutory exemptions from the registration and prospectus requirements of the Act contained in sections 38, 39, 81 and 82 of the Act. Sections 38 and 39 contain exemptions from the registration requirements of the Act and sections 81 and 82 of the Act contain often but not always parallel exemptions from the prospectus requirements of the Act. You should note subsections 39(1) and 81(1) of the Act contain statutory exemptions with respect to certain types of trades in securities while subsection 39(2) and clause 82(1)(a) of the Act contain statutory exemptions with respect to trades in certain types of securities. These types of exemptions can also be found in Commission Regulations like NI 45-101, MI 45-103 and MI 45-105.

Commission Regulations like NI 45-101, MI 45-103 and MI 45-105 have been adopted in a number of jurisdictions and you can use these exemption in any jurisdiction has adopted them. In the case of MI 45-103 there are slight differences been jurisdictions you need to watch for but MI 45-103 reads the same in all jurisdictions that have adopted it so you need only look a one version to see any jurisdiction's requirements.

Part 4 of this publication outlines some of the more commonly used statutory exemptions in the incorporation and organization of an Issuer and the raising of capital. With respect to each statutory exemption dealt with we briefly describe:

- What the exemption allows;
- How it can be used;
- Restrictions or conditions that apply to the exemption;
- The procedure to use it; and
- Ongoing consequences of using the exemption.

The statutory exemptions are the first place you should look when wanting to avoid the registration and prospectus requirements of the Act in raising capital. This is because all you have to do to use them is meet the specific requirements of the exemption as set out in the Act or Securities Regulations. You would then be exempt from the registration and prospectus requirements of the Act. Involvement of the Commission in the use of statutory exemptions varies from nothing at all to requiring the use of a specific form of offering memorandum. Specific provisions of the Act or Securities Regulations with respect to the statutory exemption you are interested in should be reviewed in full to ensure that you are complying with all of its requirements.

MI 45-103 adopted by the Commission in June 2003 provided a second generation of four commonly used statutory exemptions found in the Act and should be reviewed first before turning to the statutory exemptions in the Act. Exemptions in MI 45-103 are generally easier to use. There is a companion policy to MI 45-103 that can be found on our web site that is helpful in understanding MI 45-103. These new exemptions are also discussed in Part 4 of this publication.

If you can't fit yourself within one of the statutory exemptions, you should turn to the second type of exemption from the registration and prospectus requirements of the Act, the discretionary exemption, found in section 83 of the Act. Section 83 of the Act allows for an application to the Commission for a ruling of the Commission that the registration and prospectus requirements of the Act not apply to the sale of securities in question. You would generally turn to the discretionary exemption after having reviewed the statutory exemptions available because the discretionary exemptions require more Commission involvement and therefore may be more time-consuming and more expensive to use. Part 5 of this publication gives details about this process.

Again, we remind you that raising capital by selling securities involves a technical area of the law. You should review the actual provisions of the Act and Securities Regulations and consult your professional adviser before you commence selling securities. **You are responsible to comply with the requirements of the Act and the Securities Regulations.**

PART 3 MAKING A SECURITIES OFFERING USING EXEMPTIONS

There are several steps involved in preparing for and carrying out a securities offering using exemptions from the registration and prospectus requirements of the Act.

3.1 Develop a business plan

Before you attempt to obtain any type of financing through selling securities or otherwise, you should develop a sensible and realistic business plan. This plan should describe in detail:

- The basics, including name of the business, the incorporating or organizational jurisdiction, the business and registered office address and the like;
- A history of your business;
- The product or service you sell;
- What and where your market is;
- Who your competition is;
- The risk associated with your business;
- Your managers and their backgrounds;
- The financial condition of your business;
- The proposed project and its costs;
- A budget which includes sources of funds to complete the project and how the funds will be used;
- Requirements for operating capital; and
- The expected effect of the completion of the project on your business.

If you do not know how to create a business plan, you should seek assistance. Lawyers, accountants and business consultants should be able to help you with this. Other sources of information are Saskatchewan Industry and Resources at http://www.ir.gov.sk.ca and the Canada-Saskatchewan Business Service Center at http://www.cbsc.org/sask/main.cfm.

3.2 Determine if a securities offering is appropriate for your business

The next step is to determine whether a security offering is the best way to obtain financing for your business. You will have to devote a significant amount of time to putting the offering together, obtaining any necessary approval from the Commission to offer the securities, and selling the securities to investors.

If your securities offering is successful, you will have given up a portion of your business and you must answer to your investors. These investors will expect periodic reports on the business's progress, and they may want to talk to management, attend meetings of directors, or visit the business facilities on a regular basis.

3.3 Select the most appropriate way of offering securities and the security type

If you decide to undertake a securities offering, the next step is to determine whether you can make your offering under a statutory or discretionary exemption from the registration and prospectus requirements of the Act, or whether you must get registered and clear a prospectus with the Commission. Your decisions will be based on a number of factors including the amount of capital you need to raise, the number of investors you think will be necessary to raise that amount, the potential investors' relationship to the business and its promoters or founders, the potential investor's knowledge of the business and its promoters or founders, the potential investors' business and investment experience and how much you can afford for professional services and offering expenses.

If you think you can use a statutory or discretionary exemption, you should do everything necessary to use the exemption before you begin your offering. See Parts 4 and 5 of this publication for details of these requirements. Because a discretionary exemption involves more Commission involvement you should consider statutory exemptions first. Also the Commission will expect you to use a statutory exemption if one is available rather than applying for a discretionary exemption.

You must decide the legal structure of the Issuer. Will it be a corporation, a limited partnership, a trust, a sole proprietorship, or some other legal structure? In making this decision you must consider the tax implications of each structure. Generally legal structures should be as simple as possible to accomplish your goals. Simple structures are easier for investors to understand.

You must consider how much of your business or control of your business you are willing to sell to others and on what terms and conditions.

The legal structure of the Issuer will determine the type of security you can offer:

- Common shares;
- Preferred shares;
- Debt securities such as debentures or promissory notes;
- Limited partnership units;
- Trust units; or
- Etc.

When deciding this, think about what type of security will be easiest to sell. Also will your target investors want to be paid dividends, interest or income distributions? These and other considerations will help you decide the type of security you will offer.

Once you decide the Issuer's legal structure and the type of security, then you must plan the offering. How many securities will you sell? For what price? What return will be offered? Can you realistically expect to pay this return? Investors will expect you to be reasonable.

You should also consider any Resale Restrictions on the securities and whether investors will accept these or will expect to be able to liquidate their investment or sell their securities. If so, how can you best deal with this?

3.4 Prepare an offering memorandum

If you are required to prepare an offering memorandum or you voluntarily choose to use an offering memorandum, you must clearly explain the Issuer's business, any risks that should be considered before investing and how the funds from the offering will be used. If you make any earnings or cost forecast or projection you must fully explain, justify and document the assumptions on which the forecast or projection is based. Undisclosed assumptions are a frequent problem, so you should carefully prepare any forecast or projection you plan to use in the offering memorandum. Guidance in preparing forecasts and projections can be found in sections 4250 and the auditing guidelines of the Handbook of the Canadian Institute of Chartered Accountants. An auditor's involvement is required in preparing forecasts or projections for offerings under certain exemptions. You should also double check figures and proofread all documents to avoid errors, omissions and discrepancies.

Only offering memorandums prepared for use under Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling*, Saskatchewan Local Policy Statement 45-602 *Qualified Investor Exemption in Clauses 39(1)(y) and 81(1)(s)* and part 4 of MI 45-103 have prescribed content requirements. See discussion later in this publication.

Offering memoranda that are carelessly prepared often do not create the confidence in investors to allow the offering to be successful and may cause the Commission to consider enforcement action.

Remember an offering memorandum is not just for the Commission. It is the business's only marketing tool. Don't just prepare it with the Commission in mind. When you prepare it, bear in mind that investors will be reading it and making a decision on whether to invest based on its contents and appearance.

Developing an offering memorandum can be demanding. However, you must remember that you will be asking investors to part with money that could be placed in a financial institution and insured against loss. Investing in small businesses is inherently risky, and the Commission seeks to ensure that investors have enough information to make an informed investment decision.

You should also bear in mind when preparing your offering memorandum that an investor will acquire certain rights of action against your business, your sellers and yourself for any misrepresentations in the offering memorandum or breach of the Act. See Part XIX of the Act - Civil Liability and part 4 of MI 45-103.

3.5 Obtain clearance for the offering from the Commission

The Commission's involvement in exempt offerings range from no involvement at all to the complete prior review and approval of an offering memorandum. See Part 4 of this publication for details.

Offering memoranda under Saskatchewan Local Policy Statement 5.1 *Community Ventures - Sections 83 Rulings* are the only offering memorandums reviewed by the Commission staff. The review normally results in some changes to the offering memorandum. However, the end result is often a more refined and hopefully a more useful offering memorandum.

The review usually takes place in stages. Staff will do an initial review of the offering memorandum and send a comment letter identifying matters that must be clarified or amended. Staff attempt to complete this initial review within 10 working days of receiving the offering memorandum. When you receive the comment letter you must deal with the comments raised, and file a revised offering memorandum black-lined to show the changes. This will speed up our review of the offering memorandum. Several reviews may be required before the offering memorandum is ready to be cleared for use.

Feel free to phone the Commission staff during the review process about the status of your offering memorandum.

The total length of the review period varies with the number of comments raised and how quickly you respond. However few offering memoranda are cleared in less than a month. You should therefore begin preparing for your offering well before you need the capital.

3.6 Sell the securities

Getting to the point where you can sell securities may have been a difficult task, but your greatest challenge may be finding investors. Offerings by start-up or smaller businesses tend to be high risk, and investors are often wary. Furthermore, securities dealers do not generally handle small offerings because they cannot make enough in commissions to cover their costs. In addition, some exemptions do not allow you to advertise your securities or pay commissions. For the most part, you will be relying on yourself and the management of your business to sell your offering. It is important that you allow plenty of time to sell your offering.

A well-planned project, a simple organizational and offering structure and a clear, concise, and understandable offering memorandum go a long way to ensuring a successful offering.

Registrants under the Act involved in selling securities under exemptions from the registration and prospectus requirements of the Act contained in the Act should be aware of the requirements of Saskatchewan Local Instrument 33-502 *Requirements For Sale Of Certain Securities*.

3.7 Amend offering memorandum

If there a material change in the affairs of the Issuer or the terms of the offering, the Act requires you to amend the offering memorandum, to file it with the Commission and to deliver it to investors (see section 80.1 of the Act and part 4 of MI 45-103).

3.8 Fulfil any reporting requirements

Some exemptions require that you report the final sales results to the Commission when the offering is completed. See Parts 4 and 5 of this publication for details.

3.9 Report to investors

Investors have placed their money in your business. They are entitled to regular, ongoing information about the business's financial condition. This information will also have to be filed with the Commission. Some, but not all, statutory exemptions create new Continuous Disclosure Requirements. See Part 4 of this publication for details. Some discretionary exemptions granted by the Commission create them as well. See Part 5 of this publication for details.

If there are Continuous Disclosure Requirements you must comply with them. When planning your offering you should make sure that the business will have the resources and organizational systems to prepare this material and send it to its security holders and the Commission.

PART 4 STATUTORY EXEMPTIONS

Here are some of the statutory exemptions from the registration and prospectus requirements of the Act Issuers use to raise capital and an explanation of how to use them. Remember, these are not all of the statutory exemptions in the Act or Securities Regulations, just some of the ones most commonly used to raise capital. There are other statutory exemptions in the Act or Securities Regulations dealing with stock dividends, reorganizations, the exercise of options, amalgamations, take-over and issuer bids, the redemption of securities, dividend reinvestment and stock purchase plans and many other transactions.

The statutory exemptions covered here are listed in the order most Issuers would use them as the Issuer moves from incorporation through to making a full prospectus securities offering.

Statutory exemptions can be stacked or used concurrently.

All citations in this part of the publication are from the Act unless otherwise stated.

All filing requirements:

1. With respect to offering memorandums and amendments to offering memorandums are found in subsections 81(3) and 81(3.1), section 80.1 and parts 4 and 8 of MI 45-103; and

2. With respect to reports of sales to the Commission after the exemption is used are found in subsection 81(4), Forms 12.2, 19 and 20 in the Regulations and parts 7 and 8 of MI 45-103. Part 8 of MI 45-103 now allows you to use MI 45-103F4 to report a sale of securities in lieu of a Form 19 or 20.

Where the use of statutory exemptions trigger new Continuous Disclosure Requirements this will never have the effect of reducing any more onerous Continuous Disclosure Requirements an Issuer may already be subject to.

All Resale Restrictions are found in the definition of distribution in the Act and MI 45-102. See the definition of Resale Restrictions in Part 1 of this publication. In the following paragraphs the Resale Restrictions triggered by the use of the statutory exemption are set out. You should note that Type 1 Resale Restrictions are triggered any time an incorporator, promoter or control person of an Issuer sells their securities in the Issuer no matter what statutory exemption was used to acquire them.

You should also be aware that the Commission generally will interpret a statutory exemption to include purely administrative non-trading activities of third parties not specifically mentioned in the statutory exemption. If you have questions in this regard check with the Commission staff.

When you make a filing under a statutory exemption, unless the statutory exemption requires the specific approval of the Commission or the Director, you will not receive confirmation of receipt of the filing from the Commission. If a filing fee has been paid you will not receive a receipt for the fee. If there is a problem with the filing you will receive a deficiency letter and if you do not receive such a letter you can assume the filing has been accepted. This acceptance is of course subject to withdrawal should the Commission become aware of problems with filing at a later date.

4.1 Incorporators Exemption - 39(1)(v) and 81(1)(p)

The Basics

- This exemption allows an Issuer to sell its own securities when it incorporates or organizes.
- Investors must be incorporators or organizers of the Issuer.
- There must be no more than five investors (unless the incorporating or organizational statute requires more).
- Sales must be for nominal consideration and therefore an Issuer can't raise capital using this exemption.
- It is used to incorporate or organize an Issuer. Most people are unaware they are using this exemption when they are forming an Issuer.
- Policy reasons for this exemption: Investors are those who set up the Issuer. They should have sufficient information about the Issuer and the securities offered and not require the protection of the Act.

The Procedure

- No approval from the Commission is required before the exemption is used.
- No offering memorandum is required.
- No reports to the Commission are required after the exemption is used.
- No fees are payable.

Ongoing Requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 1

4.2 Promoters Exemption - 39(1)(w) and 81(1(q)

The Basics

- This exemption allows the sale of a security of an Issuer to a promoter of the Issuer from the Issuer, another promoter of the Issuer or an incorporator or organizer of the Issuer.

- Investors must be promoters of the Issuer.

- It can be used by an Issuer to raise capital from its promoters. This is how promoters put their capital into an Issuer. It can also be used to restructure ownership of securities of an Issuer between promoters or between promoters and incorporators or organizers of an Issuer.

- Policy reasons for this exemption: Investors are the principals behind the Issuer. They should have sufficient information about the Issuer and the securities offered and not require the protection of the Act.

The Procedure

- No approval from the Commission is required before the exemption is used.

- No offering memorandum is required.

- No reports to the Commission are required after the exemption is used.

- No fees are payable.

Ongoing Requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 1

4.3 Control Persons Exemption - 39(1)(x) and 81(1)(r)

The Basics

- This exemption allows the sale of a security of an Issuer already issued where both parties to the sale are control persons of the Issuer.

- Investors must be control persons of the Issuer.

- Although this exemption doesn't allow an Issuer to raise capital, it can be used when one control person wants to sell their shares to another control person.

- Policy reasons for this exemption: Control persons already own more than 20% of the voting securities of the Issuer. They should have sufficient information about the Issuer and the securities and not require the protection of the Act.

The Procedure

- No approval from the Commission is required before the exemption is used.

- No offering memorandum is required.

- No reports to the Commission are required after the exemption is used.

- No fees are payable.

Ongoing requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 1

4.4 Isolated Trade Exemption - 39(1)(b) and 81(1)(b)

- In this case the registration and prospectus exemptions are different.

- The registration exemption under clause 39(1)(b) allows an Issuer to sell its own securities and anyone else to sell securities of an Issuer already issued.

- The prospectus exemption under 81(1)(b) only allows an Issuer to sell its own securities.
- In both cases the sale must be an isolated trade. It must not be made in the course of continued and successive transactions of a like nature, or by a person or company whose usual business is selling securities.

- This exemption allows the rare transaction. An Issuer can use it very rarely to raise capital by selling securities to a very small number of investors, usually just one or two. It is a sale that is likely to be a one-time or the very rare case, not likely to happen again or is a special situation or isolated transaction. Very few investors can be involved.

- Often the sale is part of a larger commercial transaction where the purchaser has had an independent adviser.

- Securities sales must be a very rare occurrence for Issuers using this exemption.

- The Commission interprets this exemption quite narrowly.

- Policy reasons for this exemption: Very few investors are involved and usually they have a special relationship to the Issuer. This relationship is assumed to provide investors sufficient information about the Issuer and the securities offered and the protection of the Act is not required.

The Procedure

- No approval from the Commission is required before the exemption is used.

- No offering memorandum is required. However, if you voluntarily choose to use an offering memorandum, you must to file it with the Commission before you use it. There are no content requirements for this type of offering memorandum except that it must contain Section 80.2 Disclosure. We don't review this offering memorandum except to look for the Section 80.2 Disclosure.

- You must file with the Commission a report in Form 19 within 10 business days after the sale is complete.

- Fees: $100 on filing a Form 19.

Ongoing requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.5 Private Issuer Exemption - 39(2)(k) and 82(1)(a)

The Basics

- This exemption allows a sale of securities of a private issuer where the securities are not offered for sale to the public. Some might argue that this exemption allows for a sale of securities to the public if there was no offer or invitation to the public, that is unsolicited, but this may be a rather liberal interpretation and contrary to the spirit of this exemption.

- The Issuer must be a private issuer (see the definition in clause 2(1)(jj)). To be a private issuer, its constating documents must:

    - Restrict the right to transfer its securities;
    - Limited the number of its security holders to 50 (other than employees and former employees who acquired their securities while employed by the Issuer); and
    - Prohibit any invitation to the public to subscribe for its securities.

- A private issuer can use this exemption to sell securities from its treasury to investors that are not members of the public in relation to itself. Security holders of a private issuer can also use this exemption to sell their securities in the private issuer to others that are not members of the public as determined in relation to the private issuer.

- Sales must be to investors that are not members of the public in relation to the Issuer. The Act does not define what is "the public". However, the courts have considered this issue in many cases. A list of some of those cases is in Section 8.3 of this publication. Get advice from your lawyer on this issue. Each fact situation is different and must be reviewed against the law in this area.

- There is no limit on the amount of capital raised under this exemption.

- You can't advertise the sale because the Issuer is prohibited in its constating documents and under the exemption from making an invitation or offer to the public.

- No investors can be members of the public in relation to the Issuer.

- After the offering the Issuer must not end up with more than 50 security holders (other than employees and former employees who acquired their shares while employed by the Issuer).

- Policy reason for this exemptions: Investors are non public in relation to the Issuer and should have sufficient information about the Issuer and the securities offered and not require the protection of the Act.

The Procedure

- No approval of the Commission is required before the exemption is used.

- No offering memorandum is required.

- No reports to the Commission are required after the exemption is used.

- No fees are payable.

Ongoing requirements

- The exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: None except the constating document of a private issuer must contain share transfer restrictions. A common restriction is that the board of directors of the Issuer must approve any transfer of securities of the Issuer. Type 3 if ceases to be a private issuer.

4.6 MI 45-103 Private issuer exemption - part 2 of MI 45-103

The Basics

- This exemption allows a sale of securities of a private issuer where the securities are sold to those person or companies enumerated in the part 2 of MI 45-103. The list includes:

    1. a director, officer, employee, founder or control person of the issuer;
    2. a spouse, parent, grandparent, brother, sister or child of a director, senior officer, founder or control person of the issuer;
    3. a parent, grandparent, brother, sister or child of the spouse of a director, senior officer, founder or control person of the issuer;
    4. a close personal friend of a director, senior officer, founder or control person of the issuer;
    5. a close business associate of a director, senior officer, founder or control person of the issuer;
    6. a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse;
    7. a current holder of designated securities of the issuer;
    8. an accredited investor;
    9. a person or company of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons or companies described in paragraphs 1. to 8.;
    10. a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs 1. to 8.; or
    11. a person or company that is not the public.

- This exemption removes any uncertainty there may have been in the Private Issuer Exemption in the Act about unsolicited sales of securities as it clearly states a sale under this exemption can only be to those listed in the exemption. The list has been provided to add some certainty to this exemption about who can purchase under this exemption as the meaning of public has always been somewhat uncertain. In order not to narrow this

exemption from the Private Issuer Exemption in the Act, non-public purchasers have been retained in the list of purchasers in part 2 of MI 45-102.

- Each investor must purchase as principal. This means that they must buy the securities for themselves, not as an agent for someone else.

- No commissions or finders fee can be paid to any director, officer, founder or control person of an Issuer for sales made under this exemption except for sales to an accredited investor (see definition in section 1.1 of MI 45-103).

- The Issuer must be a private issuer (see the definition in section 1.1 of MI 45-103). To be a private issuer, an Issuer:

    - Must not be a reporting issuer, a mutual fund, or an non-redeemable investment fund (see definitions in the Act and MI 45-103);
    - Restrict the right to transfer its designated securities (see definition is section 1.1 of MI 45-103);
    - Must limit the number of holders of its designated securities to 50 (counting joint owners as one and not counting employees and former employees of the Issuer or its affiliates – former employees do not have to have acquired the securities while employed with the Issuer or its affiliates in order to be excluded from the calculation); and
    - Must have sold designated securities on to only those listed in part 2 of MI 45-103. On the wording of the definition designated securities of the Issuer could be held by persons or companies other than those listed in part 2 of MI 45-103 if they were acquired from security holders of the Issuer under another exemption or by gift.
    - May sell securities other than designated securities to persons or companies not listed part 2 of MI 45-103 using other exemptions.

- A private issuer can use this exemption to sell securities from its treasury or security holders of a private issuer can use this exemption to sell their securities private issuer if the sales are to persons or companies listed in part 2 of MI 45-103.

- The Act does not define what is "the public". However, the courts have considered this issue in many cases. A list of some of those cases is in Section 8.3 of this publication. Get advice from your lawyer on this issue. Each fact situation is different and must be reviewed against the law in this area.

- There is no limit on the amount of capital raised under this exemption.

- Policy reason for this exemptions: Investors because of their relationship to the issuer should have sufficient information about the Issuer and the securities offered and not require the protection of the Act.

- There is more information about this exemption in the Companion Policy to MI 45-103. See the Companion Policy for a discussion of the use of advertising with this exemption and for a discussion of the meaning of close personal friend and close business associate.

The Procedure

- No approval of the Commission is required before the exemption is used.

- No offering memorandum is required.

- No reports to the Commission are required after the exemption is used.

- No fees are payable.

Ongoing requirements

- The exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 3.

4.7 Close Friends and Close Business Associates Exemption - 39(1)cc) and 81(1)(z)

The Basics

- This exemption allows an Issuer to sell its own securities to:

    1. A senior officer or director of the Issuer;
    2. A senior officer or director of an affiliate of the Issuer;
    3. A spouse, spousal equivalent, parent, brother, sister, child, mother-in-law, father-in-law, brother-in-law or sister-in-law of anyone mentioned in paragraph 1 or 2 above ;
    4. A close friend or close business associate of the promoter of the Issuer; and
    5. A company all of whose voting securities are beneficially owned by one or more of the persons mentioned in paragraphs 1, 2, 3 or 4 above;

- In relation to a sale to investors mentioned in paragraph 4. and paragraph 5. as applicable, above:

- The terms "close friend" and "close business associate" are not defined in the Act. However the operative word is "close". At the Commission we interpret this word restrictively. The relationship must be mutual, that is, both parties to the sale must consider themselves to be a close friend or close business associate of the other. The relationship must be to one of the promoters of the Issuer. An Issuer can have more than one promoter. A promoter's group of close friends or close business associates does not expand because the Issuer is selling securities and the promoter wants to allow for the sale of securities to more investors. Investors are those that the promoter would have, before the offering, considered to be his or her close friends or close business associates. Every case is different and depends on the facts of the case. We do random checks from the reports of sales filed. For example, a sale involving 15 promoters of an Issuer and 80 investors will cause substantially more concern than a sale involving two or three promoters of an Issuer and 10 or 15 investors;

- There must be no invitation to the public to purchase the securities. This means no advertising;

- No promoter of the Issuer (other than a registered dealer) can have acted as a promoter of another Issuer where the other Issuer used this exemption in the last 12 months; and

- There must be no selling or promotional expenses. This includes sales commissions.

- Policy reasons for this exemption: Investors, because of their relationship with a promoter of the Issuer, should have sufficient information about the Issuer and the securities offered and do not require the protection of the Act.

The Procedure

- In relation to paragraph 4. and paragraph 5. as applicable, above you must file with the Commission a notice of intention to trade in reliance on this exemption in Form 12.1 before you begin selling securities. The notice covers trades for the next six month period. Once you have filed it you don't require any approval from the Commission to sell securities;

- In relation to paragraph 4. and paragraph 5. above you may pre-clear the names of proposed purchasers under this exemption. Follow the procedure set out in Staff Notice 45-702 *Pre-clearance of Purchasers Under the Close Friends and Close Business Associates Exemption*.

- No offering memorandum is required. However, if you voluntarily choose to use an offering memorandum, you must to file it with the Commission before you use it. There are no content requirements for this type of offering memorandum except that it must contain Section 80.2 Disclosure. We don't review this offering memorandum except to look for the Section 80.2 Disclosure.

- You must file with the Commission a report in Form 19 within 10 business days after the sale is complete. In Form 19 you must give the names, addresses and telephone numbers of each promoter of the Issuer and each investor. You must also disclose the total number of securities purchased and the total purchase price paid by each investor. Also attach a schedule to the Form 19 describing the relationship of each investor to one of the promoters of the Issuer. This information must be in sufficient detail so that when we review the filing we can determine whether you have used the exemption properly. We also do checks to ensure that the information given is truthful. It is not sufficient to simply say an investor is a close friend or close business associate of a promoter of the Issuer. Details of the relationship must be provided.

- In relation to paragraph 4. and paragraph 5. as applicable, above you must also file along with a Form 19 a statutory declaration of each purchaser in Form 12.2.

- Fees: $30 on filing a Form 12.1
  $30 on filing an offering memorandum.
  $100 on filing a Form 19.

Ongoing requirements

- The exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.8 MI 45-103 Family, friends and business associates exemption - section 3 of MI 45-103

The Basics

- This exemption allows a sale of securities of an Issuer where the securities are sold to those person or companies enumerated in the part 3 of MI 45-103. The list includes:

    1. a director, senior officer or control person of the issuer, or of an affiliate of the issuer;

2. a spouse, parent, grandparent, brother, sister or child of a director, senior officer or control person of the issuer, or of an affiliate of the issuer;
3. a parent, grandparent, brother, sister or child of the spouse of a director, senior officer or control person of the issuer, or of an affiliate of the issuer;
4. a close personal friend of a director, senior officer or control person of the issuer, or of an affiliate of the issuer;
5. a close business associate of a director, senior officer or control person of the issuer, or of an affiliate of the issuer;
6. a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, close personal friend or close business associate of a founder of the issuer;
7. a parent, grandparent, brother, sister or child of the spouse of a founder of the issuer;
8. a person or company of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons or companies described in paragraphs 1. to 7.; or
9. a trust or estate of which all of the beneficiaries or a majority of the trustees are persons or companies described in paragraphs 1. to 7.;

- Note that the definition of "founder" in section 1.1 of MI 45-103 is different than the definition of "promoter" in the Act and used in the Close Friends and Close Business Associates Exemption in the Act.

- Each investor must purchase as principal. This means that they must buy the securities for themselves, not as an agent for someone else.

- No commissions or finders fee can be paid to any person or company for sales made under this exemption.

- An Issuer can use this exemption to sell securities from its treasury or security holders of an Issuer can use this exemption to sell their securities of an Issuer if the sales are to persons or companies listed in part 3 of MI 45-103.

- There is no limit on the amount of capital raised under this exemption or the number of investors involved.

- Policy reason for this exemptions: Investors because of their relationship to the issuer should have sufficient information about the Issuer and the securities offered and not require the protection of the Act.

- There is more information about this exemption in the Companion Policy to MI 45-103. See the Companion Policy for a discussion of the use of advertising with this exemption and for a discussion of the meaning of close personal friend and close business associate.

The Procedure

- No approval of the Commission is required before the exemption is used.

- No offering memorandum is required. Use of any documentation does not trigger Section 80.2 Disclosure as this exemption is not included in the definition of offering memorandum in the Act.

- You must obtain from each purchaser, where the purchase is based on a close person friendship or close business association basis, a signed Risk Acknowledgement Form 45-103F5. You must retain these forms for eight years and provide each purchaser with a copy of their signed form.

- You must file with the Commission a report of sales in Form 45-103F4 within 10 business days after the sale is complete.

- No fees are payable.

Ongoing requirements

- The exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.9 Rights Offering Exemption - 39(1)(o) and 81(1)(h)

The Basics

- This exemption allows an Issuer to sell its own securities to existing security holders of the Issuer.

- An Issuer must sell investors securities in proportion to their current holdings in the Issuer. For example, each security holder could receive one right to purchase additional securities of the Issuer for each security of the Issuer they already own. Then, four rights to purchase additional securities of the Issuer and payment of a purchase price could allow the security holder to purchase one new security of the Issuer.

- There is usually an additional subscription privilege whereby an investor can subscribe for additional securities out of those securities offered but not taken up by other investors if the investor purchased all those securities available to him or her in the first stage of the offering.

- This exemption can be seen as involving the selling of two securities, the rights to purchase additional securities of the Issuer and the securities issued on the exercise of these rights.

- An Issuer can sell only to existing security holders.

- This exemption allows an Issuer to raise capital from its existing security holders.

- There is no limit to the amount of capital raised under this exemption.

- You have to provide investors with a rights offering circular (see below). A rights offering circular updates investors about the Issuer from the last information the Issuer sent to them.

- You must comply with NI 45-101.

- Policy reasons for the exemption: Because investors are already security holders of the Issuer, they are presumed to know about the Issuer and the securities offered and not require the protection of the Act.

The Procedure

- You must follow NI 45-101. You must prepare a rights offering circular and file it, along with the other information required by MI 45-101 and subclauses 39(1)(o)(iii) and 81(1)(h)(iii) with the Commission. It is the rights offering circular that is sent to security holders of the Issuer after it is accepted by the Commission. Contact us for a precedent. The rights offering circular will be an offering memorandum within the meaning of clause 2(1)(ff) of the Act. It must contain Section 80.2 Disclosure.

- We will review the rights offering circular within 10 days of your filing it, and give you comments. If we do not give you comments within the 10 day period we are deemed to have accepted the circular. If we do give you comments, you must resolve them. After we approve the final document, you can proceed with the rights offering and sell the securities.

- There are two less onerous exemptions for Issuers with a small percentage of their security holders in Saskatchewan. See subclauses 39(1)(o)(i) and (ii) and 81(1)(h)(i) and (ii) for details.

- No reports to Commission are required after the exemption is used.

- Fees: $350 on initial filing of a notice under subclauses 39(1)(o)(iii) and 81(1)(h)(iii) and a rights offering circular.
  - $100 under subclauses 39(1)(o)(ii) and 81(1)(h)(ii).
  - None under subclauses 39(1)(o)(i) and 81(1)(h)(i).

Ongoing requirements

- The exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 3

4.10 Qualified Investor Exemption - 39(1)(y) and 81(1)(s)

The Basics

- This exemption allows an Issuer to sell its own securities to an unlimited number of investors in Saskatchewan.

- Each investor must purchase as principal. This means that they must buy the securities for themselves, not as an agent for someone else.

- You must complete the offering within 6 months of the date of the approval of the offering memorandum by the Director, or any other date that the Director may approve.

- Each investor must either:

    - Have a specified net worth and income and investment experience;
    - Get independent advice from a recognized advisor;
    - Be a senior officer or director of the Issuer or an affiliate of the Issuer; or
    - Be a spouse, spousal equivalent, parent, brother, sister, child, mother-in-law, father-in-law, brother-in-law or sister-in-law of a senior officer or director of the Issuer or an affiliate of the Issuer.

    See Saskatchewan Local Policy Statement 45-602 *Qualified Investor Exemption in Clauses 39(1)(y) and 81(1)(s)* for details.

- In most cases if the investor is not an individual but some other legal entity then all owners of the investor must meet the qualification criteria.

- Although this exemption specifies that no advertising is allowed General Ruling/Order 45-908 *Offering Memorandum Exemption in Clauses 39(1)(y) and 81(1)(s)* allows an Issuer to advertise.

- There must be no selling or promotional expenses paid except for professional services or services performed by a registered dealer. This means there can be no payment of commission either directly or indirectly.

- You must use an offering memorandum in the form required by the Commission.

- No promoter of the Issuer, other than a registered dealer, can have acted within the previous 12 months as a promoter of any other Issuer that has sold its securities under this exemption.

- An Issuer can use this exemption repeatedly. General Ruling/Order 45-908 *Offering Memorandum Exemption in Clauses 39(1)(y) and 81(1)(s)* allows an Issuer to raise more than the $1 million threshold specified by this exemption.

- Policy reasons for the exemption: Each investor because of their net worth and income and investment experience, the advice they receive, or their relationship to the Issuer is able to evaluate the investment and does not require the protection of the Act.

The Procedure

- You must prepare an offering memorandum and give it to investors. We have prepared a fill-in-the-blanks form of the offering memorandum which is available on the Commission's web site to make it easier for you. Before you distribute the offering memorandum to investors you must file it with the Commission. We will not review the offering memorandum but require that it be in the form provided by the Commission or if filed in a number of jurisdiction contain all of the information required in the form. Filing of the required offering memorandum with the Commission is deemed to be approval of the offering memorandum for use unless you receive comments to the contrary. See Saskatchewan Local Policy Statement 45-602 *Qualified Investor Exemption in Clauses 39(1)(y) and 81(1)(s)* for more details on this process.

- You must file with the Commission a report in Form 20 within 10 business days after the sale is complete. You must attach a statutory declaration of each investor to the Form 20. You must also attach a certificate of independent advice for each investor who has received independent advice.

- Fees: $500 on initial filing of an offering memorandum.
  $100 on filing a Form 20.

Ongoing requirements

- The Issuer will be subject to new Continuous Disclosure Requirements. This is because the Issuer will have undertaken in the offering memorandum to comply with these requirements. See Saskatchewan Local Policy Statement 45-602 *Qualified Investor Exemption in Clauses 39(1)(y) and 81(1)(s)* for details.

- Resale Restrictions: Type 2

4.11 MI 45-103 Offering memorandum exemption - section 4 of MI 45-103

The Basics

- This exemption allows an Issuer to sell its own securities to an unlimited number of investors in Saskatchewan.

- Each investor must receive a copy of an offering memorandum prepared in accordance with MI 45-103.

- Each investor must purchase as principal. This means that they must buy the securities for themselves, not as an agent for someone else.

- If an investor is purchasing over $10,000.00 in securities the investor must be an eligible investor (see definition in section 1.1 of MI 45-103) and either:

    - Be an individual with a specified net worth
    - Be an individual with a specified net income;
    - Receive independent advice from a recognized advisor;
    - Be a person or company who could purchase under part 3 of MI 45-103
    - Be an accredited investor, or
    - If not an individual meet certain special criteria set out in the definition of eligible investor in section 1.1 of MI 45-103.

- There must be no commissions or finders fees paid except to a registered dealer. This means there can be no payment of commission or finders fees either directly or indirectly to anyone other than a registered dealer.

- There is no limit on the amount of capital raised under this exemption.

- Policy reasons for the exemption: Investor should be able to make smaller investments based on information in the offering memorandum but when the investment gets to a certain size investors should meet some criteria to ensure they are able to assume the larger risk. Because of their net worth or income or the advice they receive they should be able to evaluate the investment and not require the protection of the Act.

- There is more information about this exemption in the Companion Policy to MI 45-103. See the Companion Policy for a discussion of the use of advertising with this exemption.

The Procedure

- No approval of the Commission is required before the exemption is used.

- Each investor must receive a copy of an offering memorandum prepared in accordance with MI 45-103. The offering memorandum and any amendments to the offering memorandum must be filed with the report of trade.

- You must hold the funds raised in trust and provide the right of withdrawal set out in part 4 of MI 45-13.

- As this exemption is not included in the definition of offering memorandum in the Act the offering memorandum required for this exemption does not trigger Section 80.2 Disclosure. Part 4 of MI 45-103 does require contractual rights of action be provided in the offering memorandum.

- You must obtain from each purchaser a signed Risk Acknowledgement in Form 45-103F3. You must retain these forms for eight years and provide each purchaser with a copy of their signed form.

- You must file with the Commission a report of sales in Form 45-103F4 within 10 business days after the sale is complete.

- No fees are payable.

Ongoing requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.12 Certain Investors Trading Amongst Themselves Exemption – 39(1)(ee) and 81(1)(bb)

The Basics

- This exemption allows investors under the Qualified Investor Exemption and the Close Friends and Close Business Associates Exemption to sell the securities they purchased under those exemptions to each other.

- An Issuer will not use this exemption to raise capital. It allows a certain defined group of investors to sell to each other without being affected by the Resale Restrictions. It can be used to avoid the Resale Restrictions in limited circumstances.

- Policy reasons for the exemption: If it not a concern for these investors to buy securities under an exemption in first place, it should not be a concern for them to buy and sell to each other. They should not require the protection of the Act.

The Procedure

- No approval from the Commission is required before the exemption is used.

- No offering memorandum is required.

- You must file with the Commission the report in Form 19 within 10 business days after the sale is complete.

- Fees: $100 on filing a Form 19.

Ongoing Requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.13 $150,000 Exemption - 39(1)(e) and 81(1)(d)

The Basics

- This exemption allows sales of securities of an Issuer to investors who buy securities worth $150,000 or more.

- Saskatchewan Local Policy Statement 45-603 "$150,000 Exemption" requires that this amount be payable in full in cash or cheque at the time of the sale. This does not allow for promissory notes, assumption of debt (except in the case of the reorganization of the Issuer), installment payments or post-dated cheques.

- This exemption can be used by an Issuer to raise capital by selling new securities from its treasury or by anyone selling their already issued securities provided the threshold amount of $150,000 is met.

- There is no limit on the number of investors, the total amount of capital raised or the number of times the exemption is used.

- Saskatchewan Local Policy Statement 45-603 also indicates no syndication is allowed unless the sale is to a pension fund or other similar type pooled fund that has been organized as a vehicle for investors pool their investments to make investments in securities of a number of Issuers. For example, this exemption is not available where 100 investors get together to each invest $1,500 in an Issuer so that the Issuer will have sufficient funds to meet the threshold amount of $150,000 to use this exemption to purchase securities of another Issuer.

- Each investor must purchase as principal. This means that they must buy the securities for themselves, not as an agent for someone else.

- The minimum purchase amount for each investor is $150,000.

- Policy reasons for exemption: Because of the minimum purchase price, investors are presumed to have the resources to protect themselves and not require the protection of the Act.

The Procedure

- No approval of the Commission is required before the exemption is used.

- No offering memorandum is required, unless you plan to advertise the offering. In that case you must use an offering memorandum. (See section 102 of the Regulations).

- If you must use an offering memorandum because you plan to advertise or you voluntarily choose to use an offering memorandum, you must to file it with the Commission before you use it. There are no content requirements for the offering memorandum except that it must contain Section 80.2 Disclosure. We don't review the offering memorandum except to look for the Section 80.2 Disclosure.

- You must file with the Commission a report in Form 19 within 10 business days after the sale is complete.

- Fees: $30 on filing an offering memorandum.
  $100 or $50 per Saskatchewan investor, whichever is greater, on filing a Form 19.

Ongoing Requirements

- The exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.14 MI 45-103 Accredited investor exemption - section 5 of MI 45-103

The Basics

- This exemption allows sales of securities of an Issuer to investors who are accredited investors (see definition in section 1.1 of MI 45-103).

- This exemption can be used by an Issuer to raise capital by selling new securities from its treasury or by anyone selling their already issued securities provided the purchaser in an accredited investor.

- There is no limit on the number of investors, the amount of capital raised or the number of times the exemption is used.

- Each investor must purchase as principal. This means that they must buy the securities for themselves, not as an agent for someone else.

- Policy reasons for exemption: Because investors are presumed to have the resources to protect themselves and not require the protection of the Act.

- There is more information about this exemption in the Companion Policy to MI 45-103.

The Procedure

- No approval of the Commission is required before the exemption is used.

- No offering memorandum is required. Use of any documentation does not trigger section 80.2 Disclosure as this exemption is not included in the definition of offering memorandum in the Act.

- You must file with the Commission a report of sales in Form 45-103F4 within 10 business days after the sale is complete.

- No fees are payable.

Ongoing Requirements

- The exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.15 Exchange of Securities for Assets Worth $150,000 Exemption - 39(1)(t) and 81(1)(m)

The Basics

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- This exemption allows an Issuer to sell its own securities in consideration for assets of the investor. The fair value of the assets so purchased must not be less than $150,000.

- This exemption allows an Issuer to issue securities in exchange for property, not to raise capital. It is often used to roll property into an Issuer.

- There must only be one investor for each time the exemption is used. There must be no syndication.

- There is no limit to number of times an Issuer can use the exemption.

- Policy reasons for the exemption: Securities are issued as part of a commercial transaction. Investors are presumed to have the resources to protect themselves and not require the protection of the Act.

The Procedure

- No approval from the Commission required before the exemption is used.

- No offering memorandum is required. However, if you voluntarily choose to use an offering memorandum, you must file it with the Commission before you use it. There are no content requirements for the offering memorandum except that it must include Section 80.2 Disclosure. We don't review the offering memorandum except to look for the Section 80.2 Disclosure.

- You must file with the Commission a report in Form 19 within 10 business days after the sale is complete.

- Fees: $30 on filing a offering memorandum.
- $100 on filing a Form 19.

Ongoing requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.16 Exchange of Securities for Resource Properties Exemption - 39(1)(z) and 81(1)(n)

The Basics

- This exemption allows an Issuer to sell its securities in consideration for mining or oil and gas properties or an interest in them.

- An Issuer can't raise capital using this exemption, but can use it to acquire resource properties by issuing securities. The exemption is used to roll resource properties into an Issuer.

- There must only be one investor for each time the exemption is used. There must be no syndication.

- There is no limit to the number of times an Issuer can use the exemption.

- The investor must enter into an escrow or pooling agreement acceptable to the Director. Under such an agreement, the investor agrees to restrictions on reselling the securities that are acquired. The form of escrow agreement is in the Regulations. See section 58 of the Regulations and Form 17 to the Regulations.

- You can apply to have this escrow or pooling requirement waived. Follow the procedures in Saskatchewan Local Policy Statement 12-601 *Applications to the Saskatchewan Securities Commission*. The Commission will waive the escrow or pooling requirements where they are not necessary or where there are other similar provisions in place. For example the securities may already be subject to similar escrow or pooling requirements because of the requirements of a stock exchange or another securities commission.

- Policy reasons for the exemption: Securities are issued as part of a commercial transaction. Investors are presumed to have the resources to protect themselves and not require the protection of the Act.

The Procedure

- You will need to ensure the escrow or pooling agreement is acceptable to the Director before the exemption is used, unless you have received a waiver of those requirements.

- No offering memorandum is required. However, if you voluntarily choose to use an offering memorandum, you must to file it with the Commission before you use it. There are no content requirements for this type of offering memorandum except that it must contain Section 80.2 Disclosure. We don't review this offering memorandum except to look for the Section 80.2 Disclosure.

- You must file with the Commission a report in Form 19 within 10 business days after the sale is complete.

- Fees: $30 on filing a offering memorandum.
- $100 on filing a Form 19.

Ongoing Requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.17 Non-profit Issuer Exemption- 39(2)(h) and 82(1)(a)

The Basics

- This exemption allows sales in securities of an Issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit.

- To use this exemption, the Issuer must be organized exclusively for one or more of the listed purposes and use the funds raised under this exemption for these purposes. An issuer organized for one of the listed purposes using this exemption cannot, for example, lend funds to another organization, even if the other organization is organized exclusively for one of the listed purposes. In this example, the Issuer is not organized exclusively for the listed purposes because it is providing financing to other organizations, which is not one of the listed purposes. The same would also be true if one of the Issuer's mandates was to provide an investment vehicle for its members.

- Under the exemption, an Issuer can raise capital by selling securities and security holders can sell their securities of the Issuer to anyone else.

- No part of the Issuer's profits can go to any security holder. This means that the securities can't pay dividends. However, if the securities are debt securities and the Issuer agrees to repay the principal amount with or without interest, the Commission takes the position that the security holders are not receiving part of the profits of the Issuer. The debt securities may be secured or unsecured.

- If investors could receive any special treatment as a result of purchasing securities such as a reduced rate for the Issuer's services or the like, the Commission takes the position that the security holders are not receiving part of the profits of the Issuer and the sale will fit within this exemption.

- If on liquidation any part of the Issuer's assets after payment of its debts could go to the investors, then they would be getting part of the profits of the Issuer, and the sale will not fit within this exemption.

- There can be no commission or other remuneration paid in connection with the sale of securities.

- The exemption does not require that security holders' voting rights be restricted.

- Anyone can buy. An investor does not have to be a member of the Issuer, live in a certain geographical area or meet any special qualifications.

- There is no limit of the number of investors or the amount of capital raised.

- Policy reasons for the exemption: Investors are not really investing, because they are usually buying for non-investment reasons.

The Procedure

- No approval from the Commission is required before the exemption is used.

- No offering memorandum is required.

- No reports to the Commission are required after the exemption is used.

- No fees are payable.

Ongoing Requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: None

4.18 Exempt Purchaser Exemption - 39(1)(d) and 81(1)(c)

The Basics

- This exemption allows a sale of securities to someone who has been recognized by the Commission as an exempt purchaser.

- This exemption is rarely used.

- Exempt purchasers are usually thought of as being sophisticated or large institution investors who can protect themselves.

- Theoretically an Issuer could raise unlimited amounts of capital by the sale of its securities to an exempt purchaser.

- You can sell only to exempt purchasers.

- There is no limit to the amount of capital raised or the number of times the exemption can be used.

- Application for exempt purchaser status can be made on Form 12 to the Regulations and the application filing fee is $350.00 per exempt purchaser per year.

- Policy reasons for the exemptions: The Commission will have satisfied itself that the investor does not need the protection of the Act when granting the recognition.

The Procedure

- No approval from the Commission is required before the exemption is used.

- No offering memorandum is required. However, if you voluntarily choose to use an offering memorandum, you must file it with the Commission before you use it. There are no content requirements for the offering memorandum except that it must contain Section 80.2 Disclosure. We don't review the offering memorandum except to look for the Section 80.2 Disclosure.

- You must file with the Commission a report in Form 19 report within 10 business days after the sale is complete.

- Fees: $30 on filing an offering memorandum.
- $100 on filing a Form 19.

Ongoing Requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 2

4.19 Employees Exemption - 39(1)(u) and 81(1)(o)

The Basics

- This exemption allows an Issuer to sell its own securities to:
    - Its own employees;
    - The employees of its affiliates; or

- A trustee on behalf of its employees or employees of its affiliates (including the transfer from the trustee to the employee under the terms of the trust).

- Issuers can raise capital under this exemption by selling securities to their employees or the employees of their affiliates.

- Trades must be to employees of the Issuer or its affiliates or a trustee on behalf of the employees. The trustee could be for example the trustee of the employee's Registered Retirement Savings Plan.

- An employee cannot be induced to purchase by expectation of employment or continued employment.

- Policy reasons for the exemption: Employees are presumed to know about the Issuer they work for and not require the protection of the Act.

- MI 45-015 provides even broader exemptions in the employee context and should be reviewed when considering using this exemption. We have not included details of MI 45-105 in this publication as MI 45-103 generally deals with employees purchase plans by larger Issuers. This is generally not regarded as capital raising but as employees retention.

The Procedure

- No approval of the Commission is required before the exemption is used.

- No offering memorandum is required. However, if you voluntarily choose to use an offering memorandum, you must to file it with the Commission before you use it. There are no content requirements for this type of offering memorandum except that it must contain Section 80.2 Disclosure. We don't review this offering memorandum except to look for the Section 80.2 Disclosure.

- No reports to the Commission are required after the exemption is used.

- Fees: No fees are payable.

Ongoing Requirements

- This exemption triggers no new Continuous Disclosure Requirements.

- Resale Restrictions: Type 3

PART 5 THE DISCRETIONARY EXEMPTION

5.1 General Principles

If you do not fit into a statutory exemption from the registration and prospectus requirements of the Act, then you can apply to the Commission under section 83 of the Act for a discretionary exemption waiving the registration and prospectus requirements of the Act.

The Commission has the power to grant discretionary exemptions from both the prospectus and registration requirements of the Act under section 83 of the Act.

To apply for discretionary exemptions follow the procedure set out in Saskatchewan Local Policy Statement 12-601 *Applications to the Saskatchewan Securities Commission*.

Before granting a discretionary exemption under section 83 of the Act, the Commission must first be satisfied that it is not prejudicial to the public interest to do so. There is never a guarantee the Commission will grant a discretionary exemption when applied for.

The Commission will consider whether there are other factors in place for public protection making the prospectus and registration requirements of the Act unnecessary.

Discretionary exemptions are often granted where a trade almost meets the requirements of a statutory exemption and the policy considerations behind that statutory exemption are met but, for a technicality, the trade does not fall within the statutory exemption.

The Commission may grant discretionary exemptions where there is a special relationship between the Issuer and the investors and through this special relationship, the investors have special knowledge both about the Issuer and its promoters. In this case the investors may not require the protection afforded by registration or the disclosure normally made in a prospectus.

Discretionary exemptions may be granted where the Commission is satisfied investors are knowledgeable, sophisticated, can protect themselves and don't require the protection of the Act.

In general terms, the Commission is open-minded as to when it will grant a discretionary exemption. It must be satisfied that the results will be that the same level of public protection is provided, albeit in a different manner, as would be present if the registration and prospectus requirements of the Act had been complied with. Discretionary exemptions usually have terms and conditions attached to them and may or may not require the use of an offering memorandum.

The sale of securities by an Issuer pursuant to a discretionary exemption does not in and of itself trigger any Continuous Disclosure Requirements or Resale Restrictions unless such requirements are built into the terms and conditions of the discretionary exemption received from the

Commission. Therefore an Issuer will only become subject to those Continuous Disclosure Requirements and Resale Restrictions that are imposed as a term of the discretionary exemption. An Issuer should look to the terms of the discretionary exemption for its requirements in this regard. It is usual for the Commission to build in these types of requirements. This is the same with respect to the reports of sales that must be filed with the Commission after use of the discretionary exemption. The terms of the discretionary exemption received must be reviewed to find the Issuer's requirements in this regard.

In the following two situations, the Commission has already provided some guidance on how it will exercise its discretion under section 83 of the Act.

5.2 Community Ventures – Saskatchewan Local Policy Statement 45-601 *Community Ventures – Section 83 Ruling*

The Basics

- Under Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling* the Commission will grant a discretionary exemption where an Issuer is raising capital for a project in a specific community.

- Usually you cannot raise more than $1,000,000.

- Investors must live within a certain geographic area around a small community. See Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling* for details. This area has been expanded in many of the discretionary exemptions granted under this exemption if it can be shown the area suggested can still be considered a community within the spirit of this exemption.

- All promoters and salespersons must live in the community.

- The project must be located in the community.

- There is no limit on the number of investors.

- Policy reasons for the exemption: The Commission recognizes that special relationships exist between residents of small communities and not all the protections of the Act are required.

The Procedure

- You must apply for a discretionary exemption from the Commission. See Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling* for details of the process and the form of application.

- You must prepare an offering memorandum to give to investors. We have prepared a fill-in-the-blanks form of the offering memorandum which is also available on the Commission's web site to make it easier for you. Before you distribute the offering memorandum to investors you must file it with the Commission. We will review the offering memorandum and approve it. See Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling* for more details on this process.

- You must file a report with the Commission after the sale is complete. Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling* sets out the process and the form of report.

- Fees: $400 application filing fee.

Ongoing Requirements

- There will be new Continuous Disclosure Requirements. See Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling* for details.

- There will be Resale Restrictions. See Saskatchewan Local Policy Statement 45-601 *Community Ventures - Section 83 Ruling* for details.

5.3 Labour-sponsored Venture Capital Corporations - General/Ruling Order 45-902 Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations

The Basics

- *The Labour-sponsored Venture Capital Corporations Act* (Saskatchewan) provides for a tax credit for investors who invest in a labour-sponsored venture capital corporation within the meaning of that legislation. One of the conditions of that program is that any securities issued as the result of the program comply with the requirements of the Act.

- General/Ruling Order 45- 902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* is a discretionary exemption that allows sales by Type B labour-sponsored venture capital corporations. General Ruling/Order 45-902 *Exemptions for*

Certain Trades by and to Labour-sponsored Venture Capital Corporations is designed to simplify the procedures to complete this type of offering.

- General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* is necessary because the Employee Exemption is usually not available for these types of offerings. This is because the labour-sponsored venture capital corporation makes the offering, but the investors are employed by the operating company, not the labour-sponsored venture capital corporation. In very rare cases the Private Issuer Exemption and the Close Friends and Close Business Associates Exemption have been used.

- Under General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* you can sell only to employees of the operating company.

- There is no limit on the number of investors.

- There is no limit on the amount of capital raised.

- *The Labour-sponsored Venture Capital Corporations Act* (Saskatchewan) has other requirements besides those of the Act to access this program. For details contact the Department of Industry and Resources at 2103 11th Avenue, Regina, Saskatchewan, S4P 3V7, (306) 787-2252.

The Procedure

- You must apply to use General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations*. See General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* for details of the process and the form of application.

- The Director will specify the form of disclosure that must be given to investors. General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* sets out the details. If the Director requires that you prepare an offering memorandum, we have prepared a fill-in-the blanks form of the offering memorandum which is also available on the Commission's web site to make it easier for you.

- You must file a report with the Commission after the sale is complete. General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* sets out the process and the form of report.

- Fees: $400 application filing fee.

Ongoing Requirements

- There will be new Continuous Disclosure Requirements. See General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* for details.

- There will be Resale Restrictions. See General Ruling/Order 45-902 *Exemptions for Certain Trades by and to Labour-sponsored Venture Capital Corporations* for details.

PART 6 GENERAL PROCEDURES

6.1 Filing Offering Memorandums

Some statutory exemptions require that you file an offering memorandum. In all cases, other an under the MI 45-103 Offering memorandum exemption, you must file the offering memorandum with the Commission prior to or contemporaneously with the trade. MI 45-103 Offering memorandum exemption offering memorandums are filed with the report of trade. Send offering memorandums with a covering letter setting out the following:

- A reference to the statutory exemption used or to be used; and

- A reference to the page number of the offering memorandum where the Section 80.2 Disclosure or MI 45-103 Offering memorandum exemption investor rights as applicable can be found.

6.2 Filing Reports of Trade

When filing a Form 19, Form 20 or MI 45-103F4 with the Commission ensure the statutory exemption used is clearly indicated. In the case of a Form 19 it should be circled at the top of the Form 19. In the case of a MI 45-103F4 it should clearly be indicated in the appropriate column of the Commissions and Finders Fees Table and on the Schedule to the form.

Part 8 of MI 45-103 allows you to use MI 45-103F4 in lieu of a Form 19 or 20 to report sales under any statutory exemption.

PART 7 CONCLUSION

Copies of any Commission Regulation, Saskatchewan Local Policy, General Ruling/Order or Staff Notice are available on the Commission's web site. This is also true of any National Instrument, Multilateral Instrument, Companion Policy, National Policy or CSA Staff Notice.

If you have any questions about the information in this publication contact the Deputy Director, Legal/Registration at (306) 787-5879.

This paper was prepared by Dean Murrison, Deputy Director, Legal/Registration, Securities Division, Saskatchewan Financial Services Commission.

PART 8 ATTACHMENTS

8.1 Section 80.2 Disclosure for Close Friends and Business Associates Exemption (Clause 39(1)(cc) and Clause 81(1)(z)), Qualified Investor Exemption (Clause 39(1)(y) and Clause 81(1)(s)) and Community Ventures (Section 83) Rulings

An investor is given certain statutory rights of action under the Act. These rights are:

1. Subsection 80.3(3) - the right to withdraw from an agreement to purchase securities by giving written notice to the seller within two business days after receipt of the offering memorandum or any amendment thereto.

2. Subsection 138(1) - a right of action for rescission or for damages where the offering memorandum and any amendment to the offering memorandum contains a misrepresentation.

3. Subsection 138.1(3) - a right of action for misrepresentation in advertising and sales literature.

4. Subsection 138.2(1) - a right of action for damages for verbal misrepresentation in the sale of securities.

5. Subsection 141(1) - a right to void the purchase agreement and recover the purchase price if the securities are sold in contravention of the Act or the regulations to the Act.

6. Subsection 141(2) - a right of action for rescission or for damages if the offering memorandum is not delivered to the investor before the agreement to purchase, as required by subsection 80.3(1) of the Act.

An investor should refer to the provisions of the Act for particulars of these rights or consult with a lawyer.

These rights given by the Act are in addition to and without derogation from any other right or remedy which an investor might have at law.

Time limitations

Pursuant to section 147 of the Act statutory rights of action must be exercised within certain time periods. These time periods are:

1. An action for rescission must be started within 180 days after the date of the transaction that gave rise to the action.

2. An action for damages must be started by the earlier of:

   a. One year after the investor first had knowledge of the facts giving rise to the action; or

   b. Six years after the date of the transaction that gave rise to the action.

8.2 Section 80.2 Disclosure for All Other Exemption Offering Memorandums Including $150,000 Exemption (Clause 39(1)(e) and Clause 81(1)(d)) Offering Memorandums

An investor is given certain statutory rights of action under the Act. These rights are:

1. Subsection 138(1) - a right of action for rescission or for damages where the offering memorandum and any amendment to the offering memorandum contains a misrepresentation.

2. Subsection 138.2(1) - a right of action for misrepresentation in advertising and sales literature.

3. Subsection 138.2(1) - a right of action for damages for verbal misrepresentation in the sale of securities.

4. Subsection 141(1) - a right to void the purchase agreement and recover the purchase price if the securities are sold in contravention of the Act or the regulations to the Act.

5. Subsection 141(2) - a right of action for rescission or for damages if the offering memorandum is not delivered to the investor before the agreement to purchase, as required by subsection 80.3(1) of the Act.

An investor should refer to the provisions of the Act for particulars of these rights or consult with a lawyer.

These rights given by the Act are in addition to and without derogation from any other right or remedy which an investor might have at law.

Time limitations

Pursuant to section 147 of the Act statutory rights of action must be exercised within certain time periods. These time periods are:

1. An action for rescission must be started within 180 days after the date of the transaction that gave rise to the action.

2. An action for damages must be started by the earlier of:

    a. One year after the investor first had knowledge of the facts giving rise to the action; or

    b. Six years after the date of the transaction that gave rise to the action.

8.3 List of Cases – Private Issuer Exemption

In the following cases the courts have dealt with the issue of whether or not a securities offering was made to the "public" and falls within the Private Issuer Exemption. This list may not be complete or up-to-date.

Alberta Cases

R. v. *Piepgrass* (1959) 29 W.W.R. 218 (Alta. C.A.) - leading Canadian case

R. v *Buck River Resources Ltd. Et al* (1984) 25 B.L.R. 209 (Alta. Prov. Ct.)

Ontario Cases

R. v. *McKillip* [1972] 1 O.R. 164 (Ont. Prov. Ct.)

In the Matter of Shelter Corporation of Canada Limited Ontario Securities Commission, January, 1977 O.S.C.B. 6

British Columbia Cases

R. v. *Empire Dock Ltd.* (194) 55 B.C.R. 34 (B.C. Co. Ct.)

R. v. *Slegg* [1974] 4 W.W.R. 402 (B.C. Prov. Ct.)

R. v. *Kiefer* [1976] 6 W.W.R. 541 (B.C. County Ct.)

Manitoba Cases

R. v. *Gyles* (1982) 145 D.L.R. (3rd) 61 (Man. C.A.)

English Cases

Nash v. *Lynde* [1929] A.C. 158 (H.L.)

United States Cases

The Securities and Exchange Commission v. *Ralston Purina Company* (1953) 346 U.S. 119
Duran v. Petroleum Management Corp. (1977) United States Court of Appeals 5th Circuit, 545F 2nd 893

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