NOTICE

Proposed Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions* and Proposed Adoption in Additional Jurisdictions

and

Proposed Amendments to Saskatchewan Local Instrument 33-502 *Requirements for Sale of Certain Securities*

Publication for Comment
The Commission and the securities regulatory authorities in each of British Columbia, Alberta, Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, and Prince Edward Island (the "Participating Jurisdictions") are publishing for a 60 day comment period, the following documents:

- Multilateral Instrument 45-103 *Capital Raising Exemptions*;
- Form 45-103F1 *Offering Memorandum for Non-Qualifying Issuers* ("Non QI OM");
- Form 45-103F2 *Offering Memorandum for Qualifying Issuers* ("QI OM");
- Form 45-103F3 *Risk Acknowledgement* ("Risk Acknowledgement");
- Form 45-103F4 *Report of Exempt Distribution* ("Report of Exempt Distribution");
- Form 45-103F5 *Risk Acknowledgement - Saskatchewan Close Personal Friends and Close Business Associates* ("Saskatchewan Risk Acknowledgement"); and
- 45-103CP *Companion Policy* ("Companion Policy"),

collectively, "Proposed MI 45-103".

The Commission is also publishing for a 60 day comment period, the following documents:

- Saskatchewan Local Instrument 33-502 *Requirements for Sale of Certain Securities*; and
- 33-502 *Companion Policy* ("33-502 Companion Policy"),

collectively, "Proposed SLI 33-502".

Background
On March 30, 2002 Multilateral Instrument 45-103 *Capital Raising Exemptions* ("Current MI 45-103") was adopted in Alberta and on April 3, 2002 it was adopted in British Columbia. Subsequently, each of the other Participating Jurisdictions expressed an interest in the instrument. Accordingly, a committee comprised of staff from each of the Participating Jurisdictions was formed to draft Proposed MI 45-103.

Summary of Proposed MI 45-103
If adopted, Proposed MI 45-103 will provide three largely harmonized exemptions from the prospectus and dealer registration requirements in securities legislation. Those exemptions are as follows:

- private issuer exemption;
- family, friends and business associates exemption; and
- accredited investor exemption.

In addition, Proposed MI 45-103 will provide an offering memorandum exemption that we believe, while not completely uniform, nevertheless will be an improvement for industry. The forms of offering memorandum and risk acknowledgement will be the same in all jurisdictions and the variations between jurisdictions will be clearly evident in a single instrument. The differences in the offering memorandum exemption among the jurisdictions primarily relate to whether a purchaser must meet certain eligibility criteria before investing.

The terms of the proposed exemptions are summarized in **Appendix A**.

In **Appendix B** we have compared the proposed exemptions with the current equivalent exemptions under *The Securities Act, 1988.*

Summary of Proposed Changes to the Current MI 45-103
The Current MI 45-103 continues to be in force in Alberta and British Columbia. However, if the Proposed MI 45-103 is adopted, it will replace the Current MI 45-103. The most significant proposed amendments to the Current MI 45-103 are:

- the participation of the additional jurisdictions;
- the terms of the proposed offering memorandum exemption to be adopted in each of the Participating Jurisdictions;
- the proposed restrictions on commissions payable under the private issuer and family, friends and business associates exemptions;
- the addition of a new Report of Exempt Distribution that will replace the local form (eg. SSC Forms 19 and 20) when reporting distributions under exemptions in Proposed MI 45-103; and
- the addition of the Saskatchewan Risk Acknowledgement for use in Saskatchewan for distributions based on close personal friendship and close business association.

There are also various other minor amendments to the instrument to deal with issues that have been raised by the Participating Jurisdictions or the public since adoption of the Current MI 45-103. Generally, the effect in Alberta and British Columbia of these minor amendments is to provide slightly more liberal exemptions and to clarify issues. A summary of each of the proposed amendments to the Current MI 45-103 and the reasons for them is set out in **Appendix C**.

Consequential Local Statutory Amendments
Following adoption of Proposed MI 45-103, we will recommend certain amendments to *The Securities Act, 1988*. The proposed statutory amendments are described below.

(a) ***Repeal of Certain Statutory Prospectus and Registration Exemptions***

We will recommend that the statutory exemptions provided under the following sections *of The Securities Act, 1988* be repealed:

- section 39(2)(k) - private issuer exemption,
- sections 39(1)(c)(i)(ii)(iii)(iii.1)(v)(vi) and (vii) and 81(1)(a)(i)(ii)(iii)(iii.1)(v)(vi)- financial institutions and governments exemption (the exemption for Credit Union Central of Saskatchewan and it subsidiaries will not be repealed because, unlike the other listed entities, it is not included in the accredited investor exemption in Proposed MI 45-103 because it is not included in the definition of Canadian financial institution in National Instrument 14-101 *Definitions* used in Proposed MI 45-103 – we will consider if this exemption can be moved to the accredited investor exemption in Proposed MI 45-103),
- sections 39(1)(cc) and 81(1)(z) - directors, senior officers, family, close friends and close business associates exemption, and
- sections 39(1)(y) and 81(1)(s) - qualified investor exemption.

We will also recommend that the definition of "private issuer" in *The Securities Act, 1988* be repealed and that the definition of "offering memorandum" be amended to refer to an offering memorandum required to be delivered under Alberta securities law.

(b) $150,000 Exemption

We intend to retain the $150,000 exemption in sections 39(1)(e) and 81(1)(d) of *The Securities Act, 1988* until we have had an opportunity to assess who is continuing to use this exemption rather than the accredited investor exemption and why. However, we will recommend that the $150,000 exemption be repealed and prior to repeal of the statutory exemptions, intend to reintroduce the exemption by way of a local rule. Currently, each of the Participating Jurisdictions has an exemption similar to the $150,000 exemption, although in some jurisdictions the minimum aggregate acquisition cost is lower. If we determine that it is necessary to indefinitely retain the $150,000 exemption, staff of the Participating Jurisdictions will recommend that a uniform exemption be adopted.

(c) Proposed Amendment to Statutory Rights of Action

Section 138 of *The Securities Act, 1988* provides a statutory right of action to a purchaser under an offering memorandum for misrepresentation. This statutory right applies to any offering material provided under certain statutory exemptions. This right of action will not be available with respect to trades made using the exemptions in Proposed MI 45-103. However, we will recommend that the current statutory rights of action be extended to the offering memorandum exemption in Proposed MI 45-103.

Consequential Amendment to Saskatchewan Local Instrument 33-502 *Requirements for Sale of Certain Securities*

SLI 33-502 places restrictions on the use of certain exemptions by registrants. Since many of the exemptions in Proposed MI 45-103 are similar to or may replace the exemptions listed in SLI 33-502, we proposed to amend SLI 33-502 to add certain of the exemptions in Proposed MI 45-103. This will ensure consistency in regulation. The only amendment to SLI 33-502 is to expand the definition of 'exempt security' in SLI 33-502 to include some of the exemptions in Proposed MI 45-103.

Authority for Proposed Instruments
The Commission has authority to make regulations adopting the instruments pursuant to the following provisions of *The Securities Act, 1988*:

Under section 154(1)(c) of *The Securities Act, 1988* the Commission has the authority to make regulations describing the conditions of registration or other requirements for registrants or any category or sub-category, including:

(i) standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients; and
(ii) requirements that are advisable for the prevention of conflicts of interest.

Under section 154(1)(f) of *The Securities Act, 1988* the Commission has the authority to make regulations prescribing requirements respecting the disclosure or furnishing of information to the public or the Commission by registrants.

Under section 154(1)(l) of *The Securities Act, 1988* the Commission has the authority to make regulations regulating trading or advising in securities or exchange contracts to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

Under section 154(1)(oo) of *The Securities Act, 1988* the Commission has the authority to make regulations exempting any person, company, trade or security from all or any provisions of the Act or the regulations, including prescribing any terms or limitations on an exemption and requiring compliance with those terms or limitations.

Request for Comment
Interested parties are encouraged to make comments on Proposed MI 45-103. Please submit your comments in writing on or before November 22, 2002.

Although we are seeking comment on all proposed amendments to Proposed MI 45-103, we also invite you to comment specifically on the following three issues:

1. In the Current MI 45-103 and in Ontario Securities Commission Rule 45-501 *Exempt Distributions*, registered charities are included in the list of accredited investors. However, some concern has been expressed regarding whether being a registered charity necessarily indicates investment acumen or the ability to withstand the loss of an investment.
   - Is it appropriate for registered charities to be included in the list of accredited investors?
   - Are there additional conditions that should be imposed, e.g., a size threshold, to help ensure that a registered charity has the ability to withstand the loss of an investment?

2. Many of the prospectus exemptions in Alberta securities law, for example, the accredited investor and $150,000 exemption require that a purchaser be purchasing as principal. When portfolio managers and trust corporations purchase securities for accounts that are fully managed by them, they may not technically be purchasing as principal. Currently, sections 39(3) and 81(2) of *The Securities Act, 1988* address this by deeming portfolio managers and trust corporations to be purchasing as principal when purchasing for accounts fully managed

by them. Unfortunately, the definitions of portfolio manager and trust corporation vary from jurisdiction to jurisdiction and in some jurisdictions one or both definitions refer only to those registered or incorporated in the jurisdiction. The amendments in the Proposed MI 45-103 will have the effect of deeming portfolio managers and trust corporations registered or incorporated elsewhere in Canada to also be deemed to be purchasing as principal when purchasing for accounts fully managed by them.

In British Columbia, under BCI 45-504 *Trades to Trust Companies, Insurers and Portfolio Managers Outside British Columbia* foreign portfolio managers may also be considered to be purchasing as principal if they manage investment portfolios on behalf of clients having a total asset value of not less than $20,000,000 and file an additional undertaking and certification.

- Should the instrument be expanded to permit portfolio managers and trust companies registered or incorporated outside of Canada to be deemed to be purchasing as principal when purchasing for accounts fully managed by them?
- If so, given that these foreign entities may not be subject to comparable regulatory regimes, what additional restrictions should be imposed on these foreign entities? Should we adopt the restrictions under BCI 45-504?

3. In British Columbia, section 74(1) of the *Securities Act* (British Columbia) deems not only portfolio managers and trust companies but also insurers to be purchasing as principal when purchasing for accounts fully managed by them.
    - Should Proposed MI 45-103 deem insurers (insurance companies) to be purchasing as principal when purchasing for accounts fully managed by them?
    - Why or why not?

4. Form 45-103F4 is the required report of trade for the family, friends and business associate exemption in Proposed MI 45-103. This form requires that for sales to investors in Saskatchewan an additional column be added to the form disclosing details of the close personal friendship or the close business association. It is the Commission's current practice to require this information to be filed with the Commission. We are aware that no other jurisdictions require this level of detail in this report, and that it is sometimes onerous to produce the information. We feel the practice provides additional public protection in that it requires the issuer to turn its mind to the terms of the exemption, and ensures it only sells to those persons eligible under the exemption.

    We are soliciting comments on whether this practice should be continued. In any comments please address why you think this practice should or should not be continued, and why it would be in the public interest to take this action.

5. The offering memorandum exemption in Proposed MI 45-103 retains, for purchases in Saskatchewan, the $1,000,000 cap contained in the qualified investor exemption found in sections 39(1)(y) and 81(1)(s) of *The Securities Act, 1988*. This cap works to prevent an issuer from raising more than $1,000,000 in Saskatchewan under this exemption. This cap is cumulative no matter how often this exemption is used. Only two other jurisdictions, the Northwest Territories and Nunavut, will have this restriction.

We are soliciting comments on whether this restriction should be maintained. In any comments please address why it is in the public interest to retain or eliminate this restriction. Please ensure you address in your comment the relationship of this exemption to the exemption in Saskatchewan Policy Statement 45-601 Community Ventures - Section 83 Rulings which also contains a similar restriction. Currently these two exemption can be used together to increase the cap to $2,000,000. Also, since the majority of local prospectus offerings in Saskatchewan are in the range of $1,500,000 to $3,000,000, please address in any comment suggesting the elimination of this restriction what effect the elimination would have on local prospectus offerings in Saskatchewan. Please relate to why it would be in the public interest to retain or eliminate this restriction as it relates to the public protection provided by the prospectus requirements for local offerings.

6. The offering memorandum exemption in Proposed MI 45-103 prescribes offering memorandum forms that will be harmonized all jurisdictions. The prescribed form of offering memorandum for the qualified investor exemption found in sections 39(1)(y) and 81(1)(s) of *The Securities Act, 1988* is in a fill in the blank format as opposed to the narrative format in MI 45-103. Please comment on whether the fill in the blank format should be retained for offerings made solely in Saskatchewan by Saskatchewan issuers.

Submissions
Comment letters received on or before November 22, 2002 will be considered. Comment letters can be delivered in hard copy, by fax or by e-mail. Please address your submission to:

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We will be sharing comment letters with the other Participating Jurisdictions and therefore cannot maintain confidentiality of submissions.

September 20, 2002

Appendix A

to the Notice
Proposed Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions*
and Proposed Adoption in Additional Jurisdictions

- Summary of Prospectus and Dealer Registration Exemptions under Proposed MI 45-103 -

Private Issuer Exemption
If an issuer meets the definition of private issuer under Proposed MI 45-103, trades in the securities of the issuer can be made by the issuer, or others, to certain specified persons. In general terms, trades can be made to:

a) the directors, senior officers, founders and control persons of the issuer,
b) spouses, parents, grandparents, siblings and children of the individuals referred to in (a) or of the individual's spouse,
c) close personal friends and close business associates of individuals referred to in (a),
d) spouses, parents, grandparents, siblings and children of the selling security holder or the selling security holder's spouse,
e) current holders of the issuer's designated securities,
f) accredited investors,
g) certain companies and trusts if one or more of the above individuals makes the investment decisions for the company or trust, and
h) a person or company that is not the public.

One aspect of the definition of private issuer in Proposed MI 45-103 is a requirement that the issuer have less than 50 "designated" security holders (excluding employees). Since the term "designated securities" excludes (non-convertible) debt securities, in calculating the number of designated security holders, holders of debt securities would generally be excluded.

The issuer can sell non-designated securities, such as debt, to purchasers who are not described in the list of permitted placees without losing its private issuer status. However, the private issuer exemption does not provide an exemption to permit trades of non-designated securities to these purchasers. The issuer would need to rely on another exemption, such as the accredited investor exemption or the offering memorandum exemption, in order to effect the distribution of non-designated securities.

The private issuer exemption in Proposed MI 45-103 does not require that an offering memorandum or other disclosure document be provided to a potential investor. If an offering document is provided, it is not required to be in a prescribed form nor is it intended to trigger statutory rights of action for purchasers.

Under the Proposed MI 45-103, commissions and finder's fees cannot be paid to a director, officer, founder or control person of an issuer in connection with a trade under the private issuer exemption except an accredited investor. In Saskatchewan, the proposed prohibition on commissions and finder's fees is broader and would prevent the payment of commissions or finder's fees to any person in connection with a trade to a Saskatchewan purchaser other than an accredited investor.

In Saskatchewan, if trades are made under this exemption to Saskatchewan purchasers based on close personal friendship or close business association, the issuer would also be required to have the purchaser complete a Saskatchewan Risk Acknowledgement.

Family, Friends and Business Associates Exemption

This proposed exemption will permit trades in the securities of an issuer by the issuer, or others, to directors, officers, founders and control persons of the issuer as well as certain family members (including in-laws), close personal friends, and close business associates of the directors, senior officers, founders and control persons. There is no prescribed limit on the number of purchasers under this exemption. However, the issuer must still ensure that the purchaser, in fact, has the necessary relationship with a director, senior officer, founder or control person.

The exemption does not require that an offering memorandum or other disclosure document be provided to an investor. If an offering document is provided, it is not required to be in a prescribed form nor is it intended to trigger statutory rights of action for purchasers.

Commissions and finder's fees cannot be paid to a director, officer, founder or control person of an issuer in connection with a trade under the family, friends and business associates exemption. In Saskatchewan, commissions and finder's fees cannot be paid to any person under this exemption in connection with a trade to a Saskatchewan purchaser.

In addition, in Saskatchewan, if trades are made under this proposed exemption to Saskatchewan purchasers based on close personal friendship or close business association, the purchaser must complete a Saskatchewan Risk Acknowledgement.

Accredited Investor Exemption

This exemption will permit trades in the securities of an issuer by the issuer, or others, to any person or company that qualifies as an "accredited investor". There is no required minimum or maximum dollar subscription. The term "accredited investor" exemption is a defined term and refers to a list of persons and companies, including a variety of institutions, registered investment dealers, persons or companies with $5 million in net assets and certain wealthy individuals (e.g., $1 million in net realizable financial assets or $200,000 pre-tax net income).

The exemption does not require that an offering memorandum or other disclosure document be provided to an investor. If an offering document is provided, it is not required to be in a prescribed form nor is it intended to trigger statutory rights of action for purchasers.

The definition of accredited investor in MI 45-103 was drafted to generally harmonize with the definition in Ontario Securities Commission ("OSC") Rule 45-501 *Exempt Distributions*. Certain differences in terminology were necessary because the OSC used terms defined in Ontario securities legislation and interpretation statutes. Because MI 45-103 is to be effective in more than one jurisdiction, it cannot use definitions in local securities legislation. Instead, MI 45-103 relies on definitions provided by National Instrument 14-101 *Definitions*. Certain other minor differences also exist.

Offering Memorandum Exemption

(a) General

Under the offering memorandum exemption, the issuer is required to deliver to a purchaser an offering memorandum (prepared in the required form) disclosing information about the issuer and to obtain from the purchaser a completed Risk Acknowledgement which bluntly reminds the purchasers of some of the risks of investing, including that the purchaser may lose the entire investment and may not be able to resell the securities.

(b) Eligibility Criteria

In British Columbia and Nova Scotia there are no additional purchaser eligibility criteria for use of the offering memorandum exemption. Any purchaser can invest as much as they want.

In Alberta and Manitoba any purchaser can invest up to $10,000; however, to invest more than $10,000 the purchaser must be an "eligible investor". In each of Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island and Saskatchewan, every purchaser under an offering memorandum must be an "eligible investor" regardless of the amount invested.

The term "eligible investor" is defined in Proposed MI 45-103 to generally refer to a purchaser who

1. meets certain financial tests (eg. $75,000 pre-tax net income or $400,000 net assets), or
2. has obtained advice regarding the suitability of the investment from a registered investment dealer or, in Saskatchewan or Manitoba, a specified lawyer or accountant.

(c) Additional Restrictions in Saskatchewan, Northwest Territories and Nunavut

In each of Saskatchewan, Northwest Territories and Nunavut, it has been proposed that the total amount that can be raised from trades to purchasers in those jurisdictions under the offering memorandum exemption will be limited to $1 million. This $1 million limitation would be calculated by including all prior offerings under the new offering memorandum exemption. In addition, in those three jurisdictions, commissions and finder's fees relating to purchasers in those jurisdictions will be permitted only if they are paid to registered dealers.

(d) Required form of offering memorandum

If an issuer is relying on the offering memorandum exemption in MI 45-103, it must prepare an offering memorandum in accordance with the Non-QI OM form unless the issuer is a "qualifying issuer" as defined under Multilateral Instrument 45-103 *Resale of Securities.* A qualifying issuer can use either the Non-QI OM form or the QI OM form.

A Non-QI OM is required to contain specified disclosure about the issuer, its business and management. It is also required to contain specified financial statements for the issuer and, in some cases, must also contain financial statements for businesses acquired or to be acquired by the issuer.

A QI OM contains minimal information about the issuer's business and management and is not required to have financial statements attached. However, an issuer preparing an offering memorandum in accordance with the QI OM form must incorporate by reference specified documents from the issuer's continuous disclosure base. For example, the issuer is required to

incorporate by reference into its offering memorandum, the financials statements it has filed via SEDAR

(e) Updating an Offering Memorandum

There is no limit on the number of purchasers that may purchase under the MI 45-103 offering memorandum exemption. Once created, an offering memorandum may be used repeatedly for various offerings. However, the offering memorandum must be updated to incorporate annual financial statements and, in the case of a qualifying issuer, the current AIF (annual information form). The offering memorandum must also be updated if circumstances change such that the information in the offering memorandum contains a misrepresentation. This could occur, for example, if there was a material change in the issuer's business or affairs. An issuer cannot accept a subscription from a potential purchaser who was provided an earlier version of an offering memorandum until the update is provided.

An issuer must file a signed copy of each offering memorandum and each update with the ASC.

(f) Rights of action for purchasers under the Proposed MI 45-103 offering memorandum exemption

A purchaser who purchases securities under a Non-QI OM or QI OM has certain rights of action.

1. An issuer will be required to provide a two day right of withdrawal to a purchaser who is sold securities under the Proposed MI 45-103 offering memorandum exemption. If securities legislation in the purchaser's jurisdiction does not statutorily provide this right, it must be given to the purchaser contractually.
2. An issuer must disclose in its offering memorandum any statutory rights of action available to a purchaser in the event that the offering memorandum contains a misrepresentation.
3. If a purchaser under the MI 45-103 offering memorandum exemption is in a jurisdiction that does not provide statutory rights of action, the issuer must provide the purchaser with the specified contractual rights of action to sue for damages or rescission.

(g) Exclusion of Mutual Funds

Proposed MI 45-103 will provide that, except in British Columbia and Nova Scotia, certain mutual fund issuers cannot rely on the offering memorandum exemption. The mutual fund issuers that are precluded from using the MI 45-103 offering memorandum exemption are those issuers that, if they were conducting a prospectus offering, would be subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. MI 45-103 was conceived of as an initiative to assist small to medium-sized enterprises and consequently, the forms of offering memoranda are not well suited for mutual funds. We are considering whether it is appropriate to design a form of offering memorandum more suitable for mutual fund issuers and whether other exemptions for mutual fund issuers would be appropriate.

There is no prohibition on mutual funds using an offering memorandum under other exemptions and, in fact, certain other exemptions such as the $150,000 exemption may require a mutual fund to provide an offering memorandum in certain circumstances.

Appendix B
Comparison of Proposed MI 45-103 Exemptions to Current Equivalent Exemptions in *The Securities Act, 1988* for Trades in Saskatchewan

Proposed Private issuer exemption (2.1 of MI 45-103)	Current Private Issuer Exemption (39(2)(k) and 82(1)(a) of the Act)
A private issuer is an issuer who is not a reporting issuer or a mutual fund or non-redeemable investment fund and whose designated securities are subject share transfer restrictions, held by less than 50 persons or companies and held by only persons or companies listed below. The concept of **designated securities** is new and is the voting and equity securities of the issuer	**A private issuer is an issuer whose securities is subject to share transfer restrictions, held by less than 50 persons or companies and held by only non-public persons or companies.**
This is a registration and prospectus exemption.	**No change** This is a registration and prospectus exemption.
This exemption allows primary trades from the treasury of the issuer and secondary trades by security holders of the issuer.	**No change** This exemption allows primary trades from the treasury of the issuer and secondary trades by security holders of the issuer.
Trades can be made to a director, officer, employee, founder or control person of the issuer, certain family members, close personal friends and close business associates of these persons, certain family members of the selling security holder, current holders of designated securities of the issuer, accredited investors, corporate and trust entities controlled by these persons and non-public persons or companies. **The concept of** founder **is new and is a person or company involved in founding, organizing or reorganizing an issuer and is still involved in this activity at the time of the trade. It is roughly equivalent to the current concept of promoter in the Act.** The additional categories to eligible investors (other than accredited investors) would likely fall into the common law definition of non-public and this is an attempt to add certainty to this exemption. Who is public and non public has been the subject of a number of court cases and it has always been a criticism of this exemption that it is very difficult and costly to determine who fits into the exemption. The definition of "private issuer" in MI 45-103 and the operation of this exemption and MI 45-103 means that the designated securities of a private issuer can be traded to and only held by the persons and companies listed above. A private issuer may use any other exemption to trade its non-designated securities to anyone that would be eligible to purchase securities under the particular exemption.	**Trades can be made to non-public persons or companies.**
There is no requirement to use written offering materials with this exemption and if material is used it does not fall into the definition of "offering memorandum" in the Act, does not need to be filed and does not trigger rights of	**No change** There is no requirement to use written offering materials with this exemption and if material is used

action for misrepresentation in the Act (where there is deemed reliance on the misrepresentation). This does not preclude a common law action based on misrepresentation (where reliance on the misrepresentation must be proven).	it does not fall into the definition of "offering memorandum" in the Act, does not need to be filed and does not trigger rights of action for misrepresentation in the Act (where there is deemed reliance on the misrepresentation). This does not preclude a common law action based on misrepresentation (where reliance on the misrepresentation must be proven).
Plain language risk acknowledgement form must be signed by investor – a copy retained by the issuer 8 years and a copy given to the investor – it is not filed.	**No equivalent requirement.**
No report of trade required to be filed.	**No change** No report of trade required to be filed.
Subject to a seasoning period (that the issuer be a reporting issuer for 12 or 4 months) under MI 45-102 *Resale of Securities* ("MI 45-102").	**Not subject to any seasoning or hold period except that the securities can only be sold to non-public persons or companies. Subject to seasoning period if issuer ceases to be a private issuer.**
No commissions or finders fees can be paid to anyone except with respect to trades to an accredited investor.	**The Act is silent on this matter.**
The companion policy to MI 45-103 indicates if you advertise we will question whether the investor meets the criteria for the exemption.	**No invitation to the public is allowed.**
No financial reporting is filed or sent to security holders except as required by corporate law or the organizational documents of the issuer.	**No change** No financial reporting is filed or sent to security holders except as required by corporate law or organizational documents of the issuer.

Proposed Family, friends and business associates exemption (3.1 of MI 45-103)	**Current Close Friends and Close Business Associates Exemption (39(1)(cc) and 81(1)(z) of the Act)**
This is a registration and prospectus exemption.	No change This is a registration and prospectus exemption.
This exemption allows primary trades from the treasury of the issuer or secondary trades by security holders of the issuer.	This exemption allows primary trades from the treasury of the issuer only.
Trades can be made to a director, officer or control person of the issuer or an affiliate of the issuer, a founder of the issuer, certain family members, close personal friends and close business associates of these persons and corporate and trust entities controlled by of these persons.	Trades can be made to a director or officer of the issuer or an affiliate of the issuer, certain family members of these persons, close friends and close business associates of a promoter of the issuer and other entities wholly owned by these persons. There are additional exemptions in the Act that allow for trades to control persons and promoters of the issuer.
There is no requirement to use written offering materials with this exemption and if material is used it does not fall into the definition of "offering memorandum" in the Act, does not need to be filed and does not trigger rights of action for misrepresentation in the Act (where there is deemed reliance on the misrepresentation). This does not preclude a common law action based on misrepresentation (where reliance on the misrepresentation must be proven).	There is no requirement to use written offering materials with this exemption and if material is used it does fall into the definition of "offering memorandum" in the Act, does need to be filed (10 days before the trade) and does trigger rights of action for misrepresentation in the Act (where there is deemed reliance on the misrepresentation). This does not preclude a common law action based on

	misrepresentation (where reliance on the misrepresentation must be proven).
Plain language risk acknowledgement form must be signed by investor – a copy retained by the issuer 8 years and a copy given to the investor – it is not filed.	No equivalent requirement.
Report of trade required disclosing name and purchase of each investor (no notice of intention to trade or statutory declarations of investors). We ask for details of any close friendship or close business association on which a trade was based.	Report of trade required disclosing name and purchase of each investor. We ask for details of any close friendship or close business association on which a trade was based. The issuer must also file a notice of intention to trade under this exemption (Form 12.1) before trading begins. The notice is valid for 6 months. Sworn statutory declarations (Form 12.2) must be obtained from each investor where the trade is based on a close friendship or close business association and filed. No promoter of the issuer can have been involved with another issuer using this exemption in the last 12 months.
Subject to hold period (indefinite, 12 months or 4 months) under MI 45-102.	No change Subject to hold period (indefinite, 12 months or 4 months) under MI 45-102.
No commissions or finders fees can be paid to anyone.	No change No selling or promotional expenses connected with the offer or sale can be paid or incurred.
The companion policy indicates if you advertise we will question whether the investor meets the criteria for the exemption.	No invitation to the public is allowed.
No financial reporting is filed or sent to security holders except as required by corporate law or the organizational documents of the issuer.	No change No financial reporting is filed or sent to security holders except as required by corporate law or the organizational documents of the issuer.

Proposed Offering memorandum exemption (4.1 of MI 45-103)	**Current Qualified Investor Exemption (39(1)(y) and 81(1)(s) of the Act)**
This is a registration and prospectus exemption.	No change This is a registration and prospectus exemption.
This exemption allows primary trades from the treasury of the issuer only.	No change This exemption allows primary trades from the treasury of the issuer only There is an additional exemption in the Act that allows for trades between purchasers of securities of the issuer who purchased under this exemption.
Trades can be made to persons or companies with $400,000 net assets alone or with spouse and $75,000 net income before taxes or with spouse $125,000 in last 2 years and reasonably	Trades can be made to persons or companies with net worth of $300,000 exclusive of house, furnishings and automobile, an annual income of $75,000 in last 2 years

expects to have the same income this year **OR** who obtain independent dealer, lawyer or accountant advise. An issuer cannot raise more than $1,000,000 cumulative under this exemption but can used the exemption a number of times to get to this threshold amount.	and investor experience in securities of the type being purchased or in the industry the issuer is involved in **OR** who obtain independent dealer, lawyer or accountant advise An issuer cannot raise more than $1,000,000 cumulative under this exemption but can used the exemption a number of times to get to this threshold amount.
The form of offering memorandum is prescribed – one for qualifying issuers (a defined in MI 45-102 *Resale of Securities* - like a short form prospectus) and one for non-qualifying issuers (we will likely provide local relief that will allow Saskatchewan issuers to make Saskatchewan only offerings using our current fill in the blanks format if they want to) - FOFI policies apply. The offering memorandum must be filed within 10 days after the trade. There is no review of the offering memorandum. There would be contractual rights of action for misrepresentation (where there is deemed reliance on the misrepresentation). These would be against the issuer only. This does not preclude a common law action based on misrepresentation (where reliance on the misrepresentation must be proven).	The form of offering memorandum is prescribed - format is fill in the blanks – FOFI policies apply. The offering memorandum must be filed 10 days before the trade. There is no review of the offering memorandum. There would be rights of action for misrepresentation in the Act (where there is deemed reliance on the misrepresentation). This does not preclude a common law action based on misrepresentation (where reliance on the misrepresentation must be proven).
Plain language risk acknowledgement form must be signed by investor – a copy retained by the issuer 8 years and a copy given to the investor – it is not filed.	No equivalent requirement.
Report of trade required disclosing name and purchase of each investor (no statutory declaration of investors or certificates of advisors)	Report of trade required disclosing name and purchase of each investor. Sworn statutory declarations must be obtained from each investor and, where the trade is based on independent advice, a certificate of the advisor must also be obtained and both are filed. No promoter of the issuer can have been involved with another issuer using this exemption in the last 12 months.
Subject to hold period (indefinite, 12 months or 4 months) under MI 45-102.	No change Subject to hold period (indefinite, 12 months or 4 months) under MI 45-102.
Commissions or finders fees can be paid only to registered dealer.	No change No selling or promotional expenses connected with the offer or sale can be paid or incurred except for professional services or for services of a registered dealer.
Advertising is allowed.	No advertising allowed.
No financial reporting is filed or sent to security holders except as required by corporate law or the organizational documents of the issuer.	Second quarter interim and annual financial statements are filed and sent to security holders of the issuer. Annual financial statements require an audit if the issuer raised more than $500,000, otherwise only a review

	engagement report required.

Accredited investor exemption (5.1 of MI 45-103)	**Financial Institution and Government Purchaser Exemption (39(1)(c) and 81(1)(a) of the Act)**
This is a registration and prospectus exemption.	No change This is a registration and prospectus exemption.
This exemption allows primary trades from the treasury of the issuer or secondary trades by security holders of the issuer.	No change This exemption allows primary trades from the treasury of the issuer or secondary trades by security holders of the issuer.
Trades can be made to a person or company listed in the definition of accredited investor in MI 45-103 (please see definition in MI 45-103).	Trades can be made to certain financial institutions and government bodies. This exemption does not include the exemption for certain high net worth or high income entities or most other entities that are included in the accredited investor exemption. This exemption does not include the exemption for registered charities included in the accredited investor exemption. There is an additional exemption for these types of entities in the Act but it is not as broad as in the accredited investor exemption (staff of all jurisdictions will ask for public comment on removing this category of accredited investor or limiting its application to high net worth or high income entities).
There is no requirement to use written offering materials with this exemption and if material is used it does not fall into the definition of "offering memorandum" in the Act, does not need to be filed and does not trigger rights of action for misrepresentation in the Act (where there is deemed reliance on the misrepresentation). This does not preclude a common law action based on misrepresentation (where reliance on the misrepresentation must be proven).	No change There is no requirement to use written offering materials with this exemption and if material is used it does not fall into the definition of "offering memorandum" in the Act, does not need to be filed and does not trigger rights of action for misrepresentation in the Act (where there is deemed reliance on the misrepresentation). This does not preclude a common law action based on misrepresentation (where reliance on the misrepresentation must be proven).
Report of trade required disclosing name and purchase of each investor.	No change Report of trade required disclosing name and purchase of each investor.
Subject to hold period (indefinite, 12 months or 4 months) under MI 45-102.	No change Subject to hold period (indefinite, 12 months or 4 months) under MI 45-102.
Commissions or finders fees can be paid to anyone.	No change Commissions or finders fees can be paid to anyone.
Advertising is allowed.	No change Advertising is allowed.
No financial reporting is filed or sent to security holders except as required by corporate law or the organizational documents of the issuer.	No change No financial reporting is filed or sent to security holders

	except as required by corporate law or the organizational documents of the issuer.

Appendix C

to the Notice
Proposed Amendments to Multilateral Instrument 45-103 *Capital Raising Exemptions* and Proposed Adoption in Additional Jurisdictions

- Summary of Proposed Amendments to Current MI 45-103-

Proposed Change	**Reason for Change**
s.1.1 - accredited investor definition, old (k)- removed registered charities from the definition of accredited investor.	Concern was expressed that some registered charities may be unsophisticated and should perhaps not be considered accredited investors. The Committee decided to seek public comment on whether it is appropriate to include registered charities in the list of accredited investors.
s.1.1 - accredited investor definition, (k)- removed "jointly" from financial asset test for individual accredited investors.	Concern was expressed that the word "jointly" suggested that the financial assets had to be held by the spouses as "joint tenants". The Committee did not intend this interpretation so the word jointly has been removed.
s.1.1 - accredited investor definition, (m)-the category has been expanded to permit any person or company (other than a mutual fund or non-redeemable investment fund) with $5 million in net assets to qualify as an accredited investor.	The provision in Current MI 45-103 does not allow individuals or general partnerships with $5 million in net assets to qualify as accredited investors. The Committee felt there was no reason to exclude these persons from the definition of accredited investor. The asset test in 1.1(k) only includes financial assets (cash and securities) and is therefore quite narrow. The Committee felt that an individual with $5 million in net assets should be considered sufficiently wealthy to withstand the loss of an investment.
s.1.1 - accredited investor definition, (o)-the section has been clarified to indicate that a mutual fund or non-redeemable investment fund is an accredited investor if it has ever filed a prospectus.	We understand that the provision in Current MI 45-103 may have been interpreted to mean that a mutual fund must be currently in distribution under a prospectus to qualify as an accredited investor. We amended the language to clarify that this was not our intention. Other rules may restrict the ability of mutual funds and non-redeemable investment funds to invest unless they are currently in distribution; however, it is not necessary for us to repeat the restrictions in the definition of accredited investor. To do so would be redundant and may create conflict and confusion if and when those other rules are changed.
s.1.1 - accredited investor definition, (p) & (q)-addition of trust companies and portfolio managers trading for fully managed accounts to the list of accredited investors and s.1.2 deeming these entities to be purchasing as principal.	Not all jurisdictions have a provision (equivalent to s.132(1) of the *Securities Act* (Alberta) and s.74(1) of the *Securities Act* (British Columbia)) which deems trust corporations and portfolio managers to be purchasing as principal so s.1.2 was necessary. Furthermore, the current statutory wording only deems trust companies incorporated in the local jurisdiction and portfolio managers registered in the local jurisdiction to be purchasing as principal. The new sections 1.1(p) and (q) accommodate trust companies and portfolio managers across Canada. However, PEI trust company legislation may not be comparable to that which exists in other jurisdictions and therefore trust companies incorporated only in PEI are not deemed to be purchasing as principal. In BC, insurers are also deemed to be acting as principal for accounts fully-managed by them. In addition, in BC under BCI 45-504 *Trades to Trust Companies, Insurers and Portfolio Managers Outside British Columbia*, portfolio managers outside of Canada can purchase as principal if they manage investment portfolios on behalf

Proposed Change	Reason for Change
	of clients having a total asset value of not less than $20,000,000 and file a certificate with the BCSC. We are seeking public comment on whether insurers should also be deemed to be acting as principal for accounts fully managed by them. In addition, we are seeking public comment on whether foreign trust companies and portfolio managers should also be deemed to be purchasing as principal when purchasing for accounts fully managed by them.
s.1.1 Definitions of "control person", "reporting issuer" and "non-redeemable investment fund" have been added.	Not all jurisdictions have these definitions in their legislation. The definition of "control person" does not override the statutory definition in those jurisdictions that do have a definition. The definition of reporting issuer contemplates a reporting issuer in any jurisdiction. Consequently, an issuer that otherwise met the definition of private issuer would not be considered to be a private issuer if it was a reporting issuer in some jurisdiction. The concept of "non-redeemable investment fund" comes from the civil liability proposal and proposed National Instrument 51-102 *Continuous Disclosure Obligations.*
Definitions of "fully managed account", "MI 45-102" and "qualifying issuer" added.	The definition of fully managed account was added to help clarify when portfolio managers and trust companies acting on behalf of clients can be considered to be acting as principal under the accredited investor exemption. The definitions of MI 45-102 and qualifying issuer were added for drafting convenience and for better direction to readers of the instrument.
Definition of "eligibility adviser" has been added and in SK and MB, lawyers and accountants can provide the advice.	The concept of eligibility adviser exists in the Current MI 45-103 as part of the Alberta offering memorandum exemption (ie. investors who do not meet the financial tests in the eligible investor definition can invest more than $10,000 if they obtain advice from a registered investment dealer). In the Proposed MI 45-103, the concept has been turned into a defined term. In addition, we understand that there may be fewer investment dealers in rural SK & MB and consequently, lawyers and accountants are currently permitted to give advice under certain of the exemptions in SK & MB. The definition of eligibility adviser has been expanded to accommodate this. However, lawyers and accountants will not be considered to be acceptable advisers under the laws of any other jurisdiction.
Definition of "eligible investor" now includes persons included in the family, friends and business associates.	This was done to give family, friends and business associates the option of investing under an offering memorandum if they choose. Currently, a family member, friend or business associate can only invest under an offering memorandum if they meet the financial tests for an eligible investor. It seemed incongruous to the Committee that these persons are permitted to invest without any disclosure but only have a right to invest with the additional protections of an offering memorandum (and therefore statutory rights of action) if they meet certain financial tests or get advice. We do not want to mandate that these persons must get an offering memorandum but we do want to permit them that option, if they so choose.
Definition of "founder" added.	The definition of founder is similar to the statutory definition of promoter which currently exists in most securities legislation but clarifies that the individual must still be involved with the issuer. Promoters are not included in the family, friends and business associates exemption in the Current MI 45-03 because we thought that persons who would be promoters likely would also be directors or senior officers so reference to them was likely redundant. Furthermore, the definition of promoter has no clear time limit. We

Proposed Change	Reason for Change
	wanted to ensure that only promoters currently involved with the issuer were included. Some of the Participating Jurisdictions have indicated that they require the concept of promoter to be included, as they see offerings in which individuals are promoters but not directors, senior officers or control persons. To accommodate this request but to ensure that the promoter is still involved with the issuer, we have adopted a new term, founder. The term founder requires that the individual be currently involved with the issuer.
Section 2.2 & 3.2 - restrictions on commissions in the private issuer and family, friends and business associates exemptions.	Concern was expressed that it was not appropriate to allow directors, officers and control persons of an issuer to get commissions for selling securities to their family, friends and business associates. Accordingly, a restriction has been added to preclude this. However, commissions may be paid for trades to accredited investors.
Section 2.2 & 3.2 - all commissions prohibited in SK except for trades to accredited investors.	This is a restriction that currently exists in SK. The provision will only apply in SK and in regard to sales to SK purchasers.
Sections 2.3 & 3.3 - new requirement to file a modified risk acknowledgement when selling securities (under the private issuer or family, friends and business associates exemption) to Saskatchewan purchasers if the purchaser is investing on the basis of friendship or business association.	Currently, in SK, investors who invest based on a relationship of friendship or business association must be advised of the risks of investing and file a statutory declaration describing the relationship. A new form Form 45-103F5 has been developed to address this issue in the context of Proposed MI 45-103. The form will only be required in SK with regard to sales to SK purchasers.
Section 2.1(c) & 3.1(c) - expanded the exemptions to permit in-laws of directors, senior officers, founders and control persons to be included as permitted placees.	In SK in-laws are currently permitted to invest under the SK statutory family, close friends and business associates exemption. Proposed MI 45-103 has been expanded to also permit this. The Committee agreed to recommend expanding the group in our jurisdictions because the relationship appeared to be sufficiently close.
Sections 2.1(i) & (j) and 3.1(h) &(i) - expands the exemption to permit companies and trusts controlled by permitted placees to invest.	The wording in Current MI 45-103 requires that the issuer be wholly owned by any combination of permitted placees listed in the exemption. This can prevent investment by family trusts or holding companies in which various family members participate unless all family members are permitted placees. This was thought to be unnecessarily restrictive. We thought it sufficient if the company or trust was controlled by one of the permitted placees because the individual controlling the company or trust would have the necessary connection to the issuer to make the investment decision.
Section 4.1(5) - $1 million restriction in Saskatchewan, Northwest Territories and Nunavut.	The statutory offering memorandum exemption that currently exists in SK restricts the total amount that can be raised to $1 million. Under Proposed MI 45-103 this restriction will continue to exist in SK. Northwest Territories and Nunavut have indicated that they also propose to adopt this restriction.
Section 4.1(6) - added a restriction in Saskatchewan, Northwest Territories and Nunavut on the payment of commissions and finder's fees. They can only be paid to registered dealers.	This restriction currently exists in SK and will continue to apply in SK under Proposed MI 45-103.
Section 4.3(1) - added clarification that the 2 day right of withdrawal need only be provided by contract if it is not provided by securities legislation.	BC expects that the statutory 2 day right of withdrawal will be in place shortly. AB hopes that the statutory right will be available by Spring 2003. This change was made to contemplate the various future legislative amendments.
Section 4.5 – number of years that issuer must retain risk acknowledgement increased from 6 to 8 years.	This change was made because the limitation period in certain jurisdictions is 8 years not 6.
Section 4.8 – deleted reference to MI 45-	The reference was no longer necessary because we have defined

Proposed Change	Reason for Change
102.	"qualifying issuer".
Section 6.3 - resale restrictions added to deal with underlying securities acquired on exercise of convertible securities.	MI 45-102 does not address the resale restrictions applicable to underlying securities acquired on exercise or conversion of convertible securities. This issue is dealt with in separate BC & AB local instruments that amend Multilateral Instrument 45-102 *Resale of Securities*. This new provision will allow the other jurisdictions to adopt MI 45-103 without amending MI 45-102 and will supercede the separate local BC & AB instruments.
Section 6.4 - added Manitoba resale restrictions.	MI 45-102 only applies in part in MB because MB is an open jurisdiction. Accordingly, we thought it appropriate to include in the rule the resale restrictions that apply in Manitoba rather than requiring readers to refer to a separate Manitoba instrument.
Section 7.1 - removal of requirement for an investor to file a report of exempt distribution when selling securities under an exemption.	BC only requires the issuer to file a report when relying on a prospectus exemption. Many of the other jurisdictions require anyone relying on a specified exemption to file a report. The Committee agreed to recommend eliminating the requirement for a selling security holder to file a report. The issuer's reporting requirement remains.
Part 8 - required forms.	All jurisdictions will require the same forms. However, BC is not referenced in Part 8 because BCSC does not want to prescribe the forms as rules. The Executive Director in BC is expected to prescribe the forms.
Offering memorandum forms - changes in Part 1 to refer to net proceeds and to add a new section dealing with working capital deficiencies.	The various references to available funds and use of available funds have been changed to refer to net proceeds and use of net proceeds. The calculation of available funds required that working capital be added or a working capital deficiency be deducted from the net proceeds. In some circumstances, disclosure of available funds may be misleading, for example, if an issuer has a working capital deficiency but has no intention to use the net proceeds to reduce the working capital deficiency. Although working capital or a working capital deficiency will now be excluded from sections 1.1 and 1.2, disclosure of any working capital deficiency is still considered material. Accordingly, a new section has been added to Part 1 of the forms requiring disclosure of such deficiency.
Offering memorandum forms - addition in item 6 of a requirement to provide information regarding RRSP eligibility.	The issuer is required to either warn investors that not all securities are RRSP eligible or to provide advice regarding RRSP eligibility. Some jurisdictions expressed concerns that investors often incorrectly assume that their investment is RRSP eligible. The statement is designed to warn investors without necessarily compelling issuers to provide an RRSP eligibility opinion.
Non-qualifying issuer offering memorandum form - addition of a new item 12.	Some issuers that have filed non-qualifying issuer offering memoranda have not attached financial statements to the offering memorandum. Although the instructions to the form indicate financial statements are required, the additional item is intended to act as a reminder and clarify that the financial statement disclosure is also being certified.
Form 45-103F3 - statement added regarding advice and changed reference to securities commission to securities regulatory authority.	A statement has been added to clarify that except in BC and NS, the investor may be required to seek advice regarding the investment. The reference to securities commission has been changed to securities regulatory authority because in some jurisdictions there is no commission, just a division of a government department.
New Form 45-103F4.	This is a proposed new report of exempt distribution. It is intended to replace the current report (eg. in AB, Form 20) in relation to exempt distributions made under MI 45-103. BCSC intends to publish information relating to investment by insiders and registrants but not others. Accordingly, two schedules to the form have been

Proposed Change	Reason for Change
	prepared, so that only schedule A with information regarding insiders and registrants will be made public. Schedule B will provide information on "public" investors and will be kept confidential. The ASC proposes to keep both schedules A and B private as do most other jurisdictions. The SSC has requested that an additional column be added to the Form when the trade is made to an SK purchaser based on a close personal friendship or close business association. This is a requirement that currently exists in SK. BCSC will not adopt the new Form 45-103F4 as a rule. The Executive Director in BC will prescribe a separate BC form intended to be identical except that when reporting trades to purchasers under the offering memorandum exemption, the BCSC will require the purchaser's e-mail address and telephone number to be provided. The BCSC is collecting this information for survey purposes so that they can contact investors under their monitoring program. The BCSC only intends to require this information for a temporary period so including it in Form 45-103F4 was not considered appropriate. However, the Form 45-103F4 published for comment will include a reference to the additional information to be required by the BCSC. In this way input from market participants in other jurisdictions can also be solicited.
New Form 45-103F5 (Saskatchewan only)	This is Saskatchewan's modified risk acknowledgement form - it is the form that will be required to be completed by investors investing on the basis of friendship or business association.