

National Instrument 45-106
Summary of Comments Received on Proposed Repeals,
Consequential Amendments and Adoptions of Various National, Multilateral and
Local Instruments
and
Response of the Canadian Securities Administrators

A. Introductions

On December 17, 2004, the CSA concurrently published NI 45-106 and related repeals, consequential amendments and adoptions of various national, multilateral and local instruments for comment.

The CSA received 30 submissions on NI 45-106 and related repeals, consequential amendments and adoptions. We have considered the comments received and thank all of the commenters for providing their comments. The following is a summary of the comments relating to the proposed repeals, consequential amendments and adoptions to various national, multilateral and local instruments, together with the CSA's responses.

Instrument and Section	Summary of Issues	CSA Responses
Private Issuer - section 2.4(1)	One commenter indicates a preference for the private issuer definition for Ontario to “return to its roots” and refer to registered, rather than beneficial, holders. The same commenter questions why joint registered holders are deemed to be a single beneficial owner, as they may be jointly held (as in a trust situation) for a number of beneficial owners.	<p>The Ontario-prong of the definition of <i>private issuer</i> in New NI 45-102 mirrors the definition of <i>private issuer</i> as it existed in 1998 OSC Rule 45-501 (as that term is defined in the Ontario transitional provisions of Appendix D to New NI 45-102) prior to its repeal in November, 2001. The Ontario-prong of the definition is a necessary transitional provision to facilitate the resale of securities acquired under the “old” private issuer exemption in 1998 OSC Rule 45-501.</p> <p>Accordingly, the CSA do not intend to revise the Ontario-prong of the definition of private issuer in the manner suggested by the commenter.</p> <p>We have added wording to the Ontario-prong of the definition of <i>private issuer</i> to clarify the limited</p>

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<p>“Ordinary Course” Resale Restrictions - sections 2.5(2) and 2.5(3) of New NI 45-102 <i>Resale of Securities</i> (NI 45-102)</p>	<p>One commenter thinks it is inappropriate from a policy perspective for public security holders following a merger transaction (such as the amalgamation of two issuers) to be subject to “ordinary course” resale restrictions such as those contained in items 5 and 6 of section 2.5(2) of New NI 45-102.</p>	<p>circumstances in which this prong will apply.</p> <p>The CSA acknowledge the comment but note that the “ordinary course” resale restrictions found in items 5. and 6. of section 2.5(2) and items 3. and 4. of section 2.6(3) are not new to New NI 45-102. These resale restrictions have been part of Multilateral Instrument 45-102 <i>Resale of Securities</i> since its inception in November 2001 and were carried-over from statutory resale provisions in the securities legislation of most jurisdictions.</p> <p>We also note that securities exchanged in connection with a merger transaction in reliance on the exemption in section 2.11 of NI 45-106 would be subject to the resale restrictions in section 2.6 of New NI 45-102.</p>
<p>Pledges - section 2.8(2) of New NI 45-102</p>	<p>One commenter suggests that a clarification be added to item 5. of section 2.8(2) of New NI 45-102 that the reference to selling security holder does not apply to pledgees as the term selling security holder can sometimes be used to describe pledgees.</p>	<p>We do not believe that item 5 of section 2.8(2) is confusing as currently worded or that it requires clarification. Item 5 is intended only to apply to a selling securityholder. If item 5 was intended to apply to lenders, pledgees, mortgagees or other encumbrancers, pledgees would have been specifically included as is the case in item 2 of section 2.8(2).</p>
<p>Underwriters Transitional provisions - Appendices D & F of New NI 45-102</p>	<p>One commenter questions what will happen to the resale restrictions that apply to underwriters who took options or other securities under the accredited investor exemption in effect today.</p>	<p>Underwriters who acquired options or other securities under the accredited investor exemption in section 5.1 of Multilateral Instrument 45-103 Capital Raising Exemptions (MI 45-103) will look to the transitional provisions listed</p>

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		in Appendix D of New NI 45-102 for applicable resale restrictions. These securities will continue to be subject to a 4 month restricted and seasoning period under section 2.5 of NI 45-102.
Resale by Promoters in Ontario - section 2.15 of New NI 45-102	One commenter questions the need to maintain the status quo for promoters who may have previously acquired securities with the expectation that they would be subject to control block type restrictions (under s. 6.1 of current OSC Rule 45-501) in light of the decision not to impose these additional restrictions on promoters in the future.	We acknowledge the comment. We intend to remove the separate resale treatment for promoters that is contained in section 6.1 of current OSC Rule 45-501. This will mean proposed section 2.15 and Appendix G in the December 2004 publication draft of New NI 45-102 will be eliminated from the final version of New NI 45-102.
SKL 11-502	The Commentator was concerned that the removal of these exemptions went to far as they are referenced in other Saskatchewan securities legislation.	We have tried to ensure that all the references mentioned have been removed or replaced with relevant new references as appropriate.
SKL 11-502	The Commentator was concerned that the removal of these exemptions went to far as there may be exemptions that should retained to deal with unique Saskatchewan circumstances.	The only exemptions that are being retained as unique to Saskatchewan are exemptions for co-operative and credit union offerings as was noted when the instrument was published for comment. This will be done in a General Ruling/Order. Should any other similar circumstances arise we will proceed in the same matter. We do not expect this to happen as we believe NI 45-106 provides similar and better exemptions that those currently set out in Saskatchewan legislation. Any exemptions that are being removed are not currently used and will be removed in other jurisdictions as well.

