

**STAFF NOTICE 45-702**  
**PRE-CLEARANCE OF PURCHASERS UNDER THE CLOSE FRIENDS AND CLOSE**  
**BUSINESS ASSOCIATES EXEMPTION**

**INTRODUCTION**

This Staff Notice sets out a procedure by which staff of the Saskatchewan Securities Commission ("the Commission") will pre-clear names of purchasers to whom issuers propose to sell their securities under the exemption from the registration requirements of *The Securities Act, 1988* ("the Act") in clause 39(1)(cc) and the exemption from the prospectus requirements of the Act in Clause 81(1)(z). This is commonly referred "close friends and close business associates exemption", and is referred to in this Staff Notice as the "exemption".

The exemption allows an issuer to sell its own securities to, among others:

- A close friend or close business associate of a promoter of the issuer; and
- A company all of whose voting securities are owned by one or more close friends or close business associates of a promoter of the issuer.

The exemption requires issuers to file a report in Form 19 after the trades have taken place. Staff reviews the purchasers, and if we feel that they are not close friends or close business associates, the problem is difficult to remedy for the issuer and for the purchasers. To allow for greater certainty as to use of the exemption, we will, upon request, review the persons an issuer wishes to approach in advance. We will then advise the issuer whether or not we agree that the proposed purchasers are qualified under the exemption.

**IMPORTANT TERMS**

**Promoters**

The term "promoter" is defined in the Act as someone who takes the initiative in founding, organizing or substantially reorganizing an issuer. This is generally a founder of the 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 founder of the issuer as well.

**Close friends and close business associate**

The terms "close friend" and "close business associate" are not defined in the Act. Staff of the Commission interpret this word restrictively. The operative word is "close". The relationship must be mutual. Both parties to the sale must consider themselves to be a close friend or close business associate of the other. The relationship must be current and ongoing.

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 sell securities to more purchasers. Proposed

purchasers 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.

The following are examples of factors that may lead to a relationship of a close friend or close business associate. The list is not exhaustive. One or more factors may be involved. The promoter and proposed purchaser may:

- have gone to high school together and maintained a relationship,
- play old-timer hockey,
- go on family vacations together,
- play cards together,
- serve on a board together,
- have been involved in past business enterprises together and maintained a relationship,
- be involved community activities together,
- socialize together,
- have family relationships,
- be neighbours, or
- farm together.

### **THE PRE-CLEARING PROCESS**

This process is not mandatory. If you have pre-cleared the names of certain purchasers, you are not precluded from selling securities under the exemption to other purchasers that qualify but have not been pre-cleared. You may also file more than one form to pre-clear proposed purchasers.

#### **File Form SN45-702**

To use this process complete and file the attached Form SN45-702 or another document which is substantially similar. No fees are required to file Form SN45-702.

When you complete Form SN3 you must give details of the relationship of each proposed purchaser to one of the promoters of the issuer. Give as much detail as possible. Include details about the length of time the relationship has existed and how often they interact with each other. It is not sufficient to simply say an proposed purchaser is a close friend or close business associate of a promoter of the issuer.

#### **What we will do**

We will review the form you have filed. We will use our best efforts to send you a letter within five business days after we receive your form as to whether the proposed purchasers fit within the exemption based on the information you have provided.

Provided that the information included on the form is correct, you can rely on our letter and sell securities under the exemption to the purchasers listed.

### **OTHER FILING MATTERS**

**File Notice of Intention to Trade Form**

The Act requires that you must file a Notice of Intention to Trade in Form 12.1 before you use the exemption. Don't file Form SN45-702 before you file the Notice in Form 12.1 But you can file Form SN45-702 with Form 12.1 or any time after.

**File Offering Memorandum**

You are not required to use an offering memorandum. However, if you choose to use an offering memorandum, you must file it with the Commission before you use it. The filing fee is \$30.

**File Form 19 after trades are complete**

Within 10 business days after sales are complete, you must also file with the Commission a report in Form 19. In Form 19 you must give the names, addresses and telephone numbers of each promoter of the issuer and each purchaser. Don't repeat information about details about the relationship between purchaser and a promoter when you have included that information on Form SN45-702. Just refer to that fact that you have already filed a Form SN45-702. However, you must give full details about any other purchasers not included on a prior Form SN45-702.

When you file a Form 19 you must file the statutory declaration of each purchaser listed. This statutory declaration is in Form 12.2

You must pay \$100 when you file a Form 19.

July 3, 1996

**Contact:**

Deputy Director, Legal  
(306) 787-5879

**Form SN45-702**  
**List of Proposed Purchasers**  
**Under the Close Friends and Close Business Associates Exemption**

**Instructions:**

1. Complete this form when you want to pre-clear names of proposed purchasers under the close friends and close business associates exemption using the process set out in Staff Notice 45-702.
2. File this form before you plan to sell securities under the close friends and close business associates exemption.
3. Send this form to:  
Deputy Director, Legal  
Saskatchewan Securities Commission  
800 - 1920 Broad Street  
Regina, Saskatchewan  
S4P 3V7  
(306) 787-5879
4. No fees are required with this form.
5. The staff of the Commission will reply within five business days of receiving this form.

**ISSUER**

Name of Issuer:

Address:

Phone:

Fax:

Type of business:

Name of person filing this form:

Relationship to Issuer:

Address:

Phone:

Fax:

## **PROMOTERS**

*[A promoter is anyone who takes the initiative in founding, organizing or substantially reorganizing an Issuer].*

The promoters are of the Issuer are:

Name:

Address:

Phone:

Fax:

Details of how this person is a promoter of the issuer:

Name:

Address:

Phone:

Fax:

Details of how this person is a promoter of the issuer:

Name:

Address:

Phone:

Fax:

Details of how this person is a promoter of the issuer:

Name:

Address:

Phone:

Fax:

Details of how this person is a promoter of the issuer:

*[If there are more than four promoters, attach additional sheets with the same information about those promoters.]*

**PROPOSED PURCHASERS**

*[Complete the following for to each proposed purchaser. If the proposed purchaser is a company, provide the same information about each of the owners of that company.]*

Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

Details of the how that promoter is a close friend or close business associate of this proposed purchaser:

Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

Details of the how that promoter is a close friend or close business associate of this proposed purchaser:

Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

Details of the how that promoter is a close friend or close business associate of this proposed purchaser:

Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

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Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

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Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

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Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

Details of the how that promoter is a close friend or close business associate of this proposed purchaser:

Name:

Address:

Phone:

Fax:

Name of promoter who the purposed purchaser has a relationship with:

Details of the how that promoter is a close friend or close business associate of this proposed purchaser:

*[If there are more than eight proposed purchasers, attach additional sheets with the same information about those proposed purchasers.]*

Dated at \_\_\_\_\_, Saskatchewan this \_\_\_\_\_ day of \_\_\_\_\_, 19 .



*(Signature of applicant)*

We authorize the filing of this form, and confirm the truth of the facts contained herein.

*(Name of Issuer)*

*(Signature)*

*(Name)*

*(Official capacity of authorized officer)*