

## NOTICE

### Republishing for Comment

#### Proposed Multilateral Instrument 45-103 *Capital Raising Exemptions*

#### Republication for Comment

The Commission is republishing 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”. These documents show changes to the versions published for comment on September 23, 2002.

#### Background

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”) published Proposed MI 45-103 for comment on September 23, 2002. The comment period ended November 22, 2002.

Twenty-five written comments were received nine of which were from Saskatchewan residents. The Commission also held a stakeholder meeting. 25 persons attended the meeting and provided their views and comments on Proposed MI 45-103. The Commission would like to thank all those who provided comments.

As a result of the comments received the Commission has made a number of changes to Proposed MI 45-103 and we are republishing it for comment. Proposed MI 45-103 is not being republished for comment in any of the other Participating Jurisdictions because they have different rule-making procedures.

#### Summary of Changes to Proposed MI 45-103

Proposed MI 45-103 was developed by a committee of the Canadian Securities Authorities (“CSA”). It was based on a version of Proposed MI 45-103 already in effect in British Columbia and Alberta. It sets out four exemptions that allow persons and companies to raise capital without complying with the registration and prospectus requirements of securities legislation. In summary the exemptions are:

1. the private issuer exemption,
2. the family, friends and business associates exemption,

3. the offering memorandum exemption, and
4. the accredited investor exemption.

When Proposed MI 45-103 was first published for comment it contained several provisions which were unique to Saskatchewan. They were:

1. in the private issuer exemption:
  - (a) restrictions on commissions in subsection 2.2(2), and
  - (b) a requirement for purchaser to sign a risk acknowledgement in section 2.3;
2. in the family, friends and business associates exemption,
  - (a) restrictions on commissions in subsection 3.2(2),
  - (b) a requirement for purchasers to sign a risk acknowledgement in section 3.3, and
  - (c) a requirement to provide detailed relationship information in the report of trade in Form 45-103F4, and
3. in the offering memorandum exemption:
  - (a) a requirement in subclause 4.1(3)(c)(i) that all purchasers must be an eligible investor. Eligible investors must meet certain asset or income tests, or obtain advice from dealer, lawyer or accountant;
  - (b) a restriction in subsection 4.1(5) that the amount raised in Saskatchewan be no more than \$1 million; and
  - (c) restrictions on commissions in subsection 4.1(6).

As a result of comments received the Commission made the following changes to Proposed MI 45-103:

1. to the private issuer exemption:
  - (a) restriction on commissions was relaxed to harmonize with all other jurisdictions; and
  - (b) the requirement for the purchaser to sign a risk acknowledgement was removed to harmonize with all other jurisdictions,
2. to the family, friends and business associates exemption,
  - (a) the requirement to provide detailed relationship information in the report of trade was removed to harmonize with all other jurisdictions,
3. to the offering memorandum exemption:
  - (a) a purchaser must be an eligible investor only if the purchase is over \$10,000 to harmonize with Alberta and Manitoba (Newfoundland and Labrador, Northwest Territories, Nunavut and Prince Edward Island also made this change), and
  - (b) the restriction that no more than \$1 million can be raised in Saskatchewan under the exemption was removed to harmonize with all jurisdictions (Northwest Territories and Nunavut also made this change), and
4. to the accredited investor exemption:
  - (a) charities were added to the definition of accredited investor if they receive advise on the purchase (this change was made in all jurisdictions), and

- (b) foreign trust companies and foreign portfolio managers purchasing for accounts they fully manage were added to the definition of accredited investor, (this change was made in all jurisdictions).

### **Authority for Proposed Instruments**

The Commission has authority to make regulations adopting the instruments pursuant to the following provisions of *The Securities Act, 1988* (the “Act”):

Under section 154(1)(c) of the Act 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 Act 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 Act 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)(u.2) of the Act the Commission has the authority to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Under section 154(1)(oo) of the Act 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 **March 17, 2003**.

### **Submissions**

Comment letters received on or before March 17, 2003 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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Saskatchewan Securities Commission  
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We will be sharing comment letters with the other Participating Jurisdictions and therefore cannot maintain confidentiality of submissions.

**January 16, 2003**