Appendix B

Summary of Comments and CSA Responses

Proposed National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106)
and
Proposed National Instrument 45-102 *Resale of Securities* (NI 45-102)

Table of Contents

14. Section 2.32 - Distribution to lender by control person for collateral: Expansion of exemption
15. Section 2.34 - Specified debt: Addition of category of entities
16. Sections 2.36 & 3.36 - Mortgages: Exclusion of Alberta to trade syndicated mortgages
17. Subsection 6.1(2) - Report of exempt distribution: Inconsistencies with Form 45-106F1 (45-106F1) and request for policy reasons
18. Appendix A - Revisions to cross references

4. Companion Policy 45-106CP (45-106CP)

1. Subsection 4.2(3) - Business combination and reorganization - exchangeable shares: Clarification required

5. Form 45-106F2 Comments

1. Item 3.1 - Compensation and securities held: Addition of related party
2. Item 8 - Other Material Facts: Clarification required
3. Part B - Financial Statements - General: Audited financial statement requirement

6. NI 45-102 Comments

1. Subsections 2.5(2) & 2.5(3) - Restricted Period: Concern with the legend requirements
2. Subparagraph 2.5(2)(3)(i) - Restricted Period: Prescribed legend for non-reporting issuers
3. Subparagraph 2.5(2)5 & 2.5(2)6 - Restricted Period: Policy reason for requirements
4. Subsections 2.8(4) & 2.8(5) - Exemption for a Trade by a Control Person: Time frame for trades
5. Sections 2.10, 2.11 & 2.12 - Exemptions for Specific Transactions: Resale requirements
6. Section 2.14 - First Trades in Securities of a Non-Reporting Issuer Distributed Under a Prospectus: Test requirements

#	Theme	Comments	Responses
	1. <u>GENERAL COMMENTS</u>		
1.	General support for the amendments to NI 45-106 as published	Three commenters expressed general support for harmonizing the exemptions and improving the quality and transparency of securities distributed in the exempt markets.	We thank the commenters for their support.
2.	General concern for the amendments to NI 45-106 as published	Two commenters expressed concern that significant portions of securities regulation in Canada are not harmonized. A commenter stated that the amendments contain intricate legal drafting to accommodate the different philosophical views regarding registration reform adopted by certain jurisdictions, such as British Columbia and Manitoba.	We have harmonized our approach to the registration exemptions located in Part 3 of NI 45-106. For a discussion of any different philosophical views regarding registration reform, please refer to the responses in the summary of comments for National Instrument 31-103 – *Registration Requirements and Exemptions* (NI 31-103).
	2. <u>SPECIFIC COMMENTS FROM INDUSTRY</u>		
1.	Section 2.9 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501) and Status of the capital accumulation plan (CAP) exemption	One commenter asked why section 2.9 of OSC Rule 45-501 is an Ontario only rule and not a national instrument. Two commenters asked about the status of the CAP exemption, which was last published in October 2005 and was intended to become part of NI 45-106. Both commenters urged the CSA to finalize the CAP exemption and incorporate it into NI 45-106.	The proposed prospectus and registration CAP exemption was not incorporated into proposed NI 45-106 (nor was the corresponding registration CAP exemption incorporated into proposed NI 31-103). The CSA will proceed with the proposed CAP exemptions as a separate initiative.
2.	Accurate cross references to defined terms in other legislation	One commenter recommended that the CSA adopt procedures to ensure that the cross references to defined terms in other legislation remain up-to-date.	We regularly review and update cross references to defined terms in other legislation.

#	Theme	Comments	Responses
3.	Exemptions for traditional life insurance contracts	One commenter indicated that sections 2.39 and 3.39 provide exemptions for "variable insurance contracts". The commenter advised, however, that deferred annuity individual variable insurance contracts with at least a 75 per cent guarantee and insurance company issued annuity contracts are excluded from the definition of "security" in various provincial securities legislation. The commenter strongly recommended that, going forward, the traditional exemptions for life insurance contracts continue to be set out in the definition of a "security".	Amendments to the definition of "security" are beyond the scope of this project.
	3. <u>NI 45-106 COMMENTS</u>		
1.	General comments regarding the application of proposed NI 31-103 to NI 45-106	Once commenter made the following statements regarding the application of proposed NI 31-103 to NI 45-106: i. NI 31-103 gives persons 6 months from the date when NI 31-103 comes into force to apply for the appropriate category of registration. In certain circumstances, the registration requirements under NI 31-103 will not apply to persons who apply within the 6-month period until their registration is either accepted or rejected. If NI 45-106 comes into force 6 months from the date when NI 31-103 comes into force, there may be a gap in the timeframe between the removal of the registration exemptions in NI 45-106 and the registration of certain persons under NI 31-103, which may leave them with no exemptions to rely upon until their registration is accepted or rejected. ii. Given that the restrictions on the availability of Part 3 of NI 45-106 will not take effect until 6 months from the date when NI 31-103 comes into force, section 6.6 should also take effect 6 months from the date when NI 31-103 comes into force because a person in British Columbia relying on a registration exemption would still be operating under the current framework of NI 45-106 until such time.	i. We think that the 6 month transition period provides a sufficient amount of time for certain persons to apply for the appropriate category of registration. ii. We agree and have revised section 6.6 of NI 45-106 to address this comment. We have moved section 6.6 to NI 31-103. Please see NI 31-103.

#	Theme	Comments	Responses
		iii. The application of Part 3 is proposed to be restricted only to British Columbia and Manitoba after 6 months from the date when NI 31-103 comes into force, but it appears that section 3.03 will also continue to apply in New Brunswick. Query whether New Brunswick should be referred to in Part 1 - Introduction of Companion Policy 45-106CP.	iii. The last publication for comment included a notwithstanding clause that dealt with this issue. The notwithstanding clause stated that despite the application of the registration exemptions, the "business trigger" exemption applied in B.C. and New Brunswick. The registration exemptions in Part 3 never were proposed to apply in New Brunswick. We have relocated section 3.03 to NI 31-103.
		iv. Given the proposed registration trigger under NI 31-103, query whether the commentary in section 3.2 of Companion Policy 45-106CP (Soliciting purchasers – Newfoundland and Labrador and Ontario) should be retained. If it is retained, the wording should conform to the rules regarding the proposed registration trigger that will be contained in NI 31-103.	iv. We do not think that it is necessary to revise section 3.2 of the Companion Policy at this time. The commentary will continue to be relevant during the transition period when the registration exemptions in NI 45-106 continue to be available in Ontario and Newfoundland and Labrador.
2.	Section 1.1 - Definition of "accredited investor" in paragraph (q)	One commenter stated that the CSA should review paragraph (q) in the definition of "accredited investor" because of the proposed registration trigger and other amendments to the registration requirements under the proposed NI 31-103. The commenter noted that this paragraph should contemplate persons exempt from registration under the securities legislation of a foreign jurisdiction. Two commenters requested that the Ontario Securities Commission (OSC) to remove the carve-out for Ontario in the definition of "accredited investor" in subparagraph (q)(ii). This subparagraph provides that an accredited investor is defined as a person acting on behalf of a fully-managed account managed by that person if that person "in Ontario, is purchasing a security that is not a security of an investment fund."	We have reviewed paragraph (q) in the definition of "accredited investor". This paragraph already contemplates persons exempt from registration under the securities legislation of a foreign jurisdiction because it includes the words "authorized to carry on business". The OSC remains concerned with the potential indirect distribution of private hedge and pooled funds to retail investors under subparagraph (q)(ii) of the definition of "accredited investor" and, as a result, the OSC will maintain the Ontario carve-out for securities of investment funds.

#	Theme	Comments	Responses
3.	Section 1.1 - Definition of "accredited investor" in paragraph (t)	One commenter believes that paragraph (t) in the definition of "accredited investor" contains a drafting error. The commenter asked if the phrase immediately after "all of the owners of interests" reading "direct, indirect or beneficial" should read "direct, indirect and beneficial". Another commenter expressed concern that the words "direct, indirect or beneficial" are unintentionally over-broad and may result in confusion or unintended results. The commenter believes that the exemption should allow any person, which itself qualifies as an accredited investor, to establish a wholly-owned subsidiary through which it may make an investment in reliance on this exemption. The wholly-owned subsidiary currently does not qualify under any other paragraph in the definition of "accredited investor", or, as a result of the restriction in section 2.3(5), it cannot rely upon paragraph (m) of this definition. This commenter suggested that the paragraph be redrafted as follows: "*a person in which all of the equity owners, except the voting securities required by law to be owned by directors, are accredited investors*" because this wording is consistent with Rule 501(a)(8) of Regulation D under the United States *Securities Act* of 1933.	We do not agree that it is necessary to revise this paragraph and do not think that the words "direct, indirect or beneficial" are unintentionally overbroad. All of the owners contemplated in this exemption are required to be accredited investors regardless of their ownership interest.
4.	Section 1.1 - Addition of master trust to the definition of "accredited investor"	Two commenters believe that master trusts should be entitled to the same exemptive relief as the pension plans themselves. Both commenters urged the CSA to recognize that master trusts, which are vehicles established pursuant to income tax legislation to allow registered pension funds to manage their assets more efficiently, be added to the definition of "accredited investor".	We do not think that any changes to the definition of "accredited investor" are needed at this time. We note that other paragraphs of the definition of "accredited investor", or other prospectus and registration exemptions in NI 45-106, may apply to a master trust depending on the circumstances.
5.	Section 1.1 - Definition of "approved credit rating"	One commenter stated that the definition of "approved credit rating", which refers to National Instrument 81-102 *Mutual Funds* (NI 81-102), has caused difficulties for the distribution of commercial paper because the definition of an "approved credit rating" in NI 81-102 requires, among other things, that (a) the rating assigned must be "at or above" certain ratings, and (b) the security must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating". The commenter further stated that the requisite thresholds in NI 45-106 are not equivalent among the rating agencies	CSA Consultation Paper 11-405 *Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada* was published for comment on October 6, 2008. The comment period ended on February 16, 2009. As part of a separate project, we are considering the comments received for any possible amendments to the definition of "approved credit rating" or to certain

#	Theme	Comments	Responses
		and correlation among ratings are imperfect; as a result, issuers have had to obtain exemptive relief in order to distribute commercial paper that has been assigned the requisite approved credit rating by at least one approved credit rating agency. The commenter urged the CSA to amend the definition to make the exemption available where a rating at or above the designated approved credit rating is issued by one of the approved credit rating agencies or any of their successors.	exemptions.
6.	Section 1.1 - Definition of "founder"	One commenter believes that the definition of "founder" is problematic in that at the time of incorporation, the founder is not actively involved in the issuer's business because the issuer is not carrying on a business. The commenter recommended that the CSA change the definition as follows: "…founding, organizing or substantially reorganizing the business of the issuer *at the time of the trade*".	We do not agree that it is necessary to revise the definition of "founder". We refer the commenter to section 2.4 of 45-106CP (Founder) which provides further guidance.
7.	Section 2.4 - Private issuer: Addition of category of persons	One commenter appreciated the addition of "an employee of the issuer or an affiliate of the issuer" to paragraph 2.4(2)(b). However, the commenter asked that the CSA expand this new category by adding "*a director and officer of an affiliate of the issuer*" to this paragraph.	We agree with the recommendation and have revised paragraph 2.4(2)(b) of NI 45-106 to address this comment.
8.	Section 2.4 - Private issuer: Correction of cross-references	One commenter indicated that paragraphs 2.4(2)(j) and 2.4(2)(k) should refer to paragraph (i) instead of paragraph (h).	We have revised the applicable paragraphs in subsection 2.4(2) of NI 45-106 to address this comment.
9.	Sections 2.4 & 3.4 Private issuer: Addition of transactions	One commenter suggested that the CSA expand the private issuer exemption by adding a paragraph to include not only going private transactions but also any type of transaction, including takeover bids or reorganizations, resulting in the securities of the issuer, other than non-convertible debt securities, being owned solely by the persons listed in subsections 2.4(2) or 3.4(2). The commenter also stated that the guidance in Companion Policy 45-106CP should be sufficiently broad so as not to preclude such an interpretation of this proposed amendment.	The word "transaction" in this proposed amendment is not limited to going private transactions. The text is sufficiently broad to capture the types of transactions contemplated in this comment.

#	Theme	Comments	Responses
10.	Section 2.7 - Founder, control person and family - Ontario: Addition of category of persons	Two commenters asked the CSA to expand subsection 2.7(c) by adding grandchildren.	We agree with the recommendation and have revised subsection 2.7(c) to address this comment.
11.	Section 2.8 - Affiliates: Addition of affiliates of the issuer	One commenter asked the CSA to expand the exemption in section 2.8 to facilitate transfers among affiliates by adding wording as follows: "The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue *or of an affiliate of the issuer to another* affiliate of the issuer that is purchasing as principal."	We do not propose to expand the scope of the exemption in section 2.8 to include securities of affiliates at this time.
12.	Section 2.14 - Securities for debt: Addition of non-reporting issuers	One commenter stated that the securities for debt exemption should not be restricted to reporting issuers and recommended that the CSA expand the exemption to include non-reporting issuers. The commenter added that non-reporting issuers must find another exemption for the purposes of making a distribution to creditors. Another exemption may not be available or may involve the filing of a report of exempt distribution and the payment of fees, which may place an undue financial burden on non-reporting issuers.	We do not propose to expand the securities for debt exemption to include non-reporting issuers. We have restricted this exemption to reporting issuers because we are able to review the use of this exemption in light of the financial statements that reporting issuers are required to file through SEDAR.
13.	Section 2.22 - Definition of "consultant": Addition of category of persons	One commenter suggested that the CSA expand paragraph (e) of the definition of "consultant" by adding "*an executive officer or director* of the consultant" in order to be consistent with the introductory wording of the definition of "consultant".	We agree with the comment and have revised paragraph (e) of section 2.22 of NI 45-106 to address this comment.
14.	Section 2.32 - Distribution to lender by control person for collateral: Expansion of exemption	One commenter recommended that the CSA expand section 2.32 to allow for the distribution of securities from the holdings of a control person for a bona fide debt of the control person *or of the issuer*. This change would provide greater flexibility and is consistent with most personal property security legislation in Canada, which provides that a debtor includes a person who pledges collateral to secure a debt of another person.	We do not propose to expand the exemption in section 2.32 of NI 45-106. The intent and substance of personal property security legislation is significantly different from that of securities legislation.

#	Theme	Comments	Responses
15.	Section 2.34 - Specified debt: Addition of category of entities	One commenter acknowledged that section 2.34 allows certain permitted supranational agencies and foreign government guaranteed debt securities with approved credit ratings to benefit from the prospectus exemption. However, the commenter asked that the CSA expand the category of entities by adding foreign government-*owned* institutions.	We do not propose to expand section 2.34 of NI 45-106 to permit distributions of debt securities of, or guaranteed by, foreign government-owned institutions. We do not think that foreign government ownership of an institution is itself a sufficient factor warranting exempt treatment. We note that debt securities guaranteed by a foreign government with an approved credit rating may be distributed under this exemption.
16.	Sections 2.36 & 3.36 - Mortgages: Exclusion of Alberta to trade syndicated mortgages	One commenter asked why registered or licensed mortgage brokers/dealers in Alberta will no longer benefit from the prospectus and registration exemptions to trade in syndicated mortgages as stipulated in subsections 2.36(3) and 3.36(3).	Alberta Securities Commission (ASC) staff became aware that the use of the mortgages exemption had expanded beyond the scope of the original policy rationale underlying this exemption. As a result, ASC staff were concerned that the distribution of securities in connection with syndicated mortgages was, essentially, unregulated. Please note that mortgage brokers/dealers who deal in syndicated mortgages currently have, and will continue to have, access to a variety of other exemptions under which they may distribute debt obligations that are associated with syndicated mortgages (e.g. accredited investor, offering memorandum, minimum amount, etc
17.	Subsection 6.1(2) - Report of exempt distribution: Inconsistencies with Form 45-106F1 and request for policy reasons	One commenter believes that there are inconsistencies between subsection 6.1(2) and Form 45-106F1. Inconsistencies cited include: • subsection 6.1(2) requires a report of exempt distribution to be filed where the distribution takes place; • instruction #1 in Form 45-106F1 states that if a distribution is made in more than one jurisdiction, the issuer or underwriter must complete a single report identifying all purchasers and file that report in each of the jurisdictions where the distribution is made; and • item 7 of Form 45-106F1 states the table must be completed for each	We do not agree that the language in subsection 6.1(2) and Form 45-106F1 results in inconsistencies. A report of exempt distribution is not required to be filed in a Canadian jurisdiction if no distribution has taken place in that jurisdiction. Therefore, we have not revised either NI 45-106 or Form 45-106F1.

#	Theme	Comments	Responses
		Canadian and each foreign jurisdiction where purchasers of securities reside.	
		Two commenters considered the requirements of subsection 6.1(2) of NI 45-106 and Form 45-106F1 and questioned whether it is appropriate to require disclosure of purchasers outside of the local jurisdiction in which the Form 45-106F1 is filed. In particular: • One commenter considered the example of a foreign issuer carrying out a private placement in various foreign jurisdictions, including Canada. By virtue of Instruction #1 and Item 7 of Form 45-106F1, the foreign issuer would be required to disclose information regarding each foreign purchaser to each applicable Canadian regulator in the jurisdictions where a distribution took place. The commenter asked the CSA to explain the policy reason for requiring disclosure about purchasers who do not have any connection to the exempt distribution that takes place in a Canadian jurisdiction.	We require information about distributions that occur in Canadian jurisdictions for compliance purposes regardless of where the purchasers are resident. To determine whether it needs to file a report, an issuer must determine if a distribution has occurred in the local jurisdiction; it may make this determination by referring to the securities legislation of the local jurisdiction. The issuer must also determine if the exemption it is using is one that requires a report be filed.
		• One commenter expressed concern that, although Schedule 1 to Form 45-106F1 (which contains the list of purchasers) is not made public, freedom of information legislation in certain jurisdictions may require that such information be made available to the public if requested. As a result, submitting a common Form 45-106F1 report across jurisdictions may increase the likelihood of a purchaser's identity being divulged to the public. The commenter recommended that the CSA retain the permissive wording currently in Instruction #1 to 45-106F1 and not adopt the proposed wording.	We acknowledge the comment; however, it is important that the securities regulator or regulatory authority in each Canadian jurisdiction involved in an exempt distribution for which a Form 45-106F1 is required have information regarding related distributions in other Canadian jurisdictions.

#	Theme	Comments	Responses
18.	Appendix A - Revisions to cross references	One commenter advised that in British Columbia the definition of "life insurance" is currently contained in the *Financial Institutions Act* (British Columbia) and not the *Insurance Act* (British Columbia). The same commenter advised that in Ontario the definition of "life insurance" is now made by way of Superintendant Order and is not contained in section 1 of the *Insurance Act* (Ontario).	We have revised Appendix A to address this comment.
	4. <u>COMPANION POLICY 45-106CP (45-106CP)</u>		
1.	Subsection 4.2(3) - Business combination and reorganization - exchangeable shares: Clarification required	One commenter recommended that the CSA change the last sentence of this subsection to read as follow: "Accordingly, additional exemptive relief is not warranted in circumstances where *the original transaction was completed in reliance on these* exemptions." The commenter believes that this change will prevent confusion as to whether the exemption is available for an exchange of exchangeable shares that occurs after the original transaction.	We agree with the recommendation and have revised subsection 4.2(3) of 45-106CP to address this comment.
	5. <u>FORM 45-106F2 COMMENTS</u>		
1.	Item 3.1 - Compensation and Securities Held: Addition of related party	One commenter disagrees with the addition of compensation paid by a related party to certain named persons in the table of Item 3.1. The commenter stated that such disclosure may not be relevant information needed by a potential investor to make an informed investment decision unless the issuer is indirectly paying the compensation. The commenter further stated that the current wording suggests the issuer will now have to disclose compensation paid by a grandparent to certain named persons in an unrelated family venture, or by a company controlled by a director of the issuer that is unrelated to the issuer and its business. The commenter recommended that the CSA limit the wording by requiring disclosure of compensation paid directly or indirectly by the issuer or by a related party if the issuer receives a direct benefit from such compensation.	We have added guidance in the instructions to the form to address this comment.

#	Theme	Comments	Responses
2.	Item 8 - Other Material Facts: Clarification required	One commenter stated that the disclosure required by the other items in Form 45-106F2 is comprehensive and captures all that should be necessary to disclose in an offering memorandum, and that any information that would be stated in the new Item 8 would already be disclosed under one of the other items. The commenter added that Item 14 requires an issuer to include a certificate stating: "This offering memorandum does not contain a misrepresentation." The commenter asked the CSA to clarify what additional information is required by Item 8 and if it is a mandatory disclosure item.	We have addressed this comment by eliminating Item 8 from Form 45-106F2. We have, however, added guidance in the instructions indicating that particulars of any material facts, which have not been disclosed under any of the Item numbers and for which failure to disclose would constitute a misrepresentation in the offering memorandum must be included.
3.	Part B - Financial Statements - General: Audited financial statement requirement	One commenter disagrees with the CSA's proposed amendment to add an audit requirement as now stipulated in Part B.9 for those issuers that have not completed one financial year, or have a financial year end less than 120 days from the date of the offering memorandum as described in Part B.3. Reasons cited include: • If an issuer has not completed one financial year, the financial statements included in the offering memorandum should be unaudited interim financial statements. National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) allows reporting issuers to file unaudited interim financial statements on Sedar. The same requirement should apply to non-qualifying issuers. • The new audit requirement will only apply to non-qualifying issuers as this amendment has not been made to Form 45-106F3 *Offering Memorandum for Qualifying Issuers*. Non-qualifying and qualifying issuers should be subject to the same financial statement requirements and the proposed amendment is unfairly prejudicial to non-qualifying issuers. • Audited interim financial statements will greatly increase the cost of preparing an offering memorandum for non-qualifying issuers and will	We acknowledge the comment, but do not agree. An issuer has to file audited financial statements in conjunction with its going public transaction, even if it has not completed one financial year. When the issuer becomes a reporting issuer, it then becomes subject to continuous disclosure obligations under NI 51-102. Although NI 51-102 allows this issuer to file unaudited interim financial statements, NI 51-102 requires it to file audited annual financial statements. Similar to the above response, an issuer is required to file audited financial statements to become a qualifying issuer and is subsequently required to file audited financial statements on a yearly basis. We acknowledge that there are costs associated with conducting an audit. However, an issuer that has

#	Theme	Comments	Responses
		limit their ability to access the market in a timely manner because of the increased cost and time required to involve an auditor.	completed a financial year is currently required to provide audited financial statements in an offering memorandum. Therefore, issuers that have not completed a financial year should be treated the same as those that have completed a financial year. We think that this is the most equitable treatment.
		• Many issuers using this Form are single purpose entities, such as limited partnerships, incorporated or organized immediately prior to the distribution and have no operational history or assets at the distribution date. The financial statements included in the offering memorandum for those issuers are nil financial statements and do not convey any material information to a prospective purchaser. The commenter requested the CSA to exempt such nil financial statements from the audit requirement.	We maintain that it would be relatively inexpensive for a single purpose entity with no operation history or assets to obtain an audit.
		• The CSA Notice stated that the changes to the financial statement requirements were clarifying changes to make the requirements more consistent with NI 51-102. The commenter stated that the new audit requirement is more than just a "clarifying change".	We think that the changes to the financial statement requirements are more consistent with NI 51-102. As stated, an issuer that carries out a transaction to become a reporting issuer must file audited financial statements and is subsequently required to produce audited annual financial statements.
	6. <u>NI-45-102 COMMENTS</u>		
1.	Subsections 2.5(2) & 2.5(3) - Restricted Period: Concern with the legend requirements	One commenter expressed concern with the CSA's approach to legending requirements which is to make them a condition of resale rather than a condition of the exempt distribution. The commenter believes that an issuer has no incentive to ensure compliance with the legend requirements or the resale restrictions other than in response to pressure from prospective investors; as a result, the investor will bear the risk of the issuer's failure to incorporate a legend.	We acknowledge the comment but we do not propose to change the model for legending requirements. A legend may not be appropriate when securities sold under a prospectus exemption are never intended to leave the closed system.
		Two commenters recommended eliminating the legend requirement because it is difficult to comply with practically and operationally. Both commenters	We continue to maintain that a legend is the most practical manner for providing certainty as to the

#	Theme	Comments	Responses
		noted that it may be difficult or impossible for issuers to deliver written notification of resale restrictions to beneficial purchasers, such as in circumstances where securities are dematerialized, uncertificated or in global form only.	applicable hold periods and of providing more effective regulation of the exempt market. We have provided issuers with alternative methods for satisfying the legending requirements. For example, providing written notice of the legend restriction notation to the purchaser in a subscription agreement or offering memorandum, or including the legend restriction notation in an ownership statement issued under a direct registration system or other electronic book-entry system delivered directly to the purchaser are alternative methods of satisfying the written notice requirement. Please refer to section 1.6 of Companion Policy 45-102CP (45-102CP).
		Specific concerns cited by the commenters include: • how an issuer would deliver notice to a beneficial owner where an investment manager is purchasing the securities for a fully managed account since in these circumstances the beneficial owner will never see a disclosure document or trade confirmation;	We agree with the comment and have clarified that the manager of a fully managed account may be substituted for the beneficial owner (which now reads as purchaser) in Item 2.5(2)3.1.
		• if the beneficial owner does not receive notice from the issuer, then the beneficial owner's securities will effectively be subject to a permanent hold; and	The purchaser may request written notice from the issuer. The issuer may also provide written notice of the legend restriction or place a legend on a securities certificate subsequent to the sale of the securities. The issuer must do so before the purchaser can sell his securities.
		• that the proposed notification requirements will unduly hamper the efficient transfer, trading and settlement of securities and interests in securities through electronic settlement facilities.	We do not think that the written notification requirement will unduly hamper the efficient transfer, trading and settlement of securities because the notice requirement is a separate process from those transactions conducted through the electronic settlement facilities.

#	Theme	Comments	Responses
		These commenters proposed that changing the requirement to deliver the notice to the "purchaser" rather than the "beneficial owner" as a way to address delivery concerns. Both commenters supported approaches where the issuer could provide notice of applicable resale restrictions to "purchasers" through a subscription agreement, offering documentation or other disclosure.	We agree with the comment and have changed "beneficial owner" to "purchaser". We have also provided guidance as to what we mean by purchaser in 45-102CP. Specifically, we think that the purchaser is the person who makes the investment decision about the acquisition of a security. We have clarified that the notice requirement may be satisfied in a variety of ways. Please see section 1.6 of 45-102CP.
		One commenter stated that trading of securities before the expiry of the restricted period would be more appropriately addressed through the facilities of the electronic system where transfer and settlement takes place, as opposed to the proposed paper-based notification model in NI 45-102. The commenter cites technological options such as separate CUSIP number identification or specific designations or markers used by intermediaries in other jurisdictions.	As indicated in section 1.6 of 45-102CP, we encourage issuers to assist purchasers of restricted securities with compliance with the resale restrictions in Item 2 of subsection 2.5(2). This may include assigning a separate CUSIP or ISIN number to the security for the duration of the restricted period in the direct registration or electronic book-entry system in which that security is entered. We do not propose to mandate the assignment of a separate CUSIP or ISIN number to restricted securities because not all direct registration or book-entry systems are able to accommodate this request.
		Two commenters proposed that NI 45-102 be revised to clearly permit removal of a legend from a certificate, or the exchange of a legended certificate for a replacement certificate without a legend, upon expiry of the restricted period referred to in the legend.	We acknowledge the comment and added guidance in section 1.7 of 45-102CP. NI 45-102 does not preclude an issuer or its transfer agent from removing a legend after the expiry of the restricted period referred to in the legend, after the requirements in subsection 2.5(2)(3) are satisfied
		One commenter stated that the exemption from legending / notification requirements for trades of underlying securities in subsection 2.5(3) is vague does not adequately account for the various ways that securities may be issued	We have clarified subsection 2.5(2)(3). Please see subsection 2.5(2)(3).

#	Theme	Comments	Responses
		in Canada (which may be dematerialized, uncertificated or certificated). The commenter proposed that the exemption from the legending / notification requirements in Items 3 and 3.1 of subsection 2.5(3) apply to a trade of an underlying security that is issued on a date at least four months after the distribution date, regardless of the date of issuance of a security certificate or delivery of written notification in respect of the underlying security.	
2.	Subparagraph 2.5(2)3(ii) - Restricted Period: Prescribed legend for non-reporting issuers	One commenter submitted that the prescribed legend for non-reporting issuers in subsection 2.5(2) is not an accurate statement of the restricted period that will apply in most cases and asked the CSA to review this subsection. The commenter cited as an example that if a private company files a prospectus in one of the jurisdictions listed in Appendix B of NI 45-102, and the shareholder of the securities has held the securities for at least 4 months and a day prior to the filing of the prospectus, the shareholder's securities will be freely tradeable immediately following the filing of the prospectus by virtue of section 2.7 of NI 45-102. Therefore, in this circumstance the statement in the legend that there will be an additional four month restricted period is incorrect.	We reviewed this subsection and we disagree with the commenter's interpretation. Section 2.7 provides an exemption from Item 1 of subsection 2.5(2) if the issuer becomes a reporting issuer after the distribution date by filing a prospectus in a jurisdiction listed in Appendix B and is a reporting issuer in a jurisdiction of Canada at the time of the trade. Therefore, when an issuer satisfies the requirements in section 2.7, the requirement to have been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade does not apply. The prescribed language for the legend in subparagraph 2.5(2)3(ii) addresses this situation in that the opening words state: "*Unless permitted under securities legislation…*".
3.	Paragraphs 2.5(2)5 & 2.5(2)6 - Restricted Period: Policy reason for requirements	One commenter questioned whether there remains a policy reason to retain the requirements in paragraphs 2.5(2)5 and 2.5(2)6. The commenter cited as an example that if a shareholder acquires 6% of an issuer's shares in the market and a further 2% by way of a private placement, the effect of these paragraphs is that the shareholder will be subject to different resale rules for its entire 8% position. The shareholder may only sell up to 6% in a block trade involving an extraordinary commission, and would be required to rely upon a different method to dispose of the remaining 2%.	We do not propose to remove conditions 5 and 6 from subsection 2.5(2). We continue to think that these conditions are appropriate. Please see section 1.8 of 45-102CP.

#	Theme	Comments	Responses
4.	Subsections 2.8(4) & 2.8(5) - Exemption for a Trade by Control Person: Time frame for trades	One commenter stated that, given the effect of the proposed amendments to section 2.8, the requirement that a control person must wait seven days from filing of a Form 45-102F1 before effecting a trade is unduly restrictive. The commenter proposed a wait period of two days instead.	We continue to think that a seven-day waiting period for trades by a control person is necessary to give the market sufficient time to absorb the information.
5.	Sections 2.10, 2.11 & 2.12 - Exemptions for Specific Transactions: Resale requirements	One commenter noted that, in certain circumstances, NI 45-102 prescribes a resale requirement that the issuer is "a reporting issuer in any jurisdiction of Canada", whereas in other instances (such as under section 2.10, 2.11 and 2.12) the resale requirement is that the issuer is a "reporting issuer". The commenter questioned the policy rationale for this discrepancy and recommended that the applicable resale conditions in sections s. 2.10, 2.11 and 2.12 be amended to add the words "in a jurisdiction of Canada" after the references to "reporting issuer".	We do not propose to broaden the provisions as requested at this time. We will continue to review discretionary relief applications on a case-by-case basis where these exemptions are not available.
6.	Section 2.14 - First Trades in Securities of a Non-Reporting Issuer Distributed Under a Prospectus Exemption: Test requirements	One commenter identified difficulties with the application of the resale exemption in subsection 2.14(1) given that foreign issuers and the Canadian purchasers of their securities in a private placement often do not know with certainty whether the percentage shareholdings and ownership tests that subsection are satisfied on the distribution date after giving effect to the completion of the distribution. The commenter asked the CSA to consider adding a new provision to NI 45-102 to facilitate resales by Canadian shareholders of non-Canadian non-reporting issuers outside of Canada. The commenter proposed that Canadian purchasers of securities of a foreign issuer with no connection to Canada, other than private placement sales to Canadian investors, should be allowed to resell the securities outside of Canada as long as there is "no substantial trading market" for them in Canada.	We believe that the percentage shareholdings and ownership tests in subsection 2.14(1) provide the necessary information for determining if a market for the securities exists in Canada. We think that section 1.15 of 45-102CP provides sufficient guidance to issuers for determining whether these tests are met.