

**MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTIONS**

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**MULTILATERAL INSTRUMENT 45-103
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Part 1 Definitions

1.1 In this instrument

"accredited investor" means

- (a) a Canadian financial institution, or an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada),
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) an association under the *Cooperative Credit Associations Act* (Canada) located in Canada,
- (d) a subsidiary of any person or company referred to in paragraphs (a) to (c), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (e) a person or company registered under the securities legislation, or under the securities legislation of another jurisdiction of Canada, as an adviser or dealer, other than a limited market dealer registered under the *Securities Act* (Ontario),
- (f) an individual registered or formerly registered under the securities legislation, or under the securities legislation of another jurisdiction of Canada, as a representative of a person or company referred to in paragraph (e),
- (g) the government of Canada or a province, or any crown corporation or agency of the government of Canada or a province,
- (h) a municipality, public board or commission in Canada,
- (i) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (j) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or similar regulatory authority,
- (k) a registered charity under the *Income Tax Act* (Canada),
- (l) an individual who, either alone or jointly with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000,
- (m) an individual whose net income before taxes exceeded \$200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the two most recent years and who, in either case, reasonably expects to exceed that net income level in the current year,
- (n) a corporation, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least \$5,000,000 as shown on its most recently prepared financial statements,

- (o) a mutual fund or non-redeemable investment fund that, in the local jurisdiction, distributes its securities only to persons or companies that are accredited investors,
- (p) a mutual fund or non-redeemable investment fund that, in the local jurisdiction, distributes its securities under a prospectus for which the regulator has issued a receipt,
- (q) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) through (e) and paragraph (j) in form and function, or
- (r) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors;

"designated securities" means

- (a) voting securities,
- (b) securities that are not debt securities and that carry a residual right to participate in the earnings of the issuer or, on the liquidation or winding up of the issuer, in its assets, or
- (c) securities convertible, directly or indirectly, into securities described in paragraph (a) or (b);

"eligible investor" means

- (a) a person or company whose
 - (i) net assets, alone or with a spouse, exceed \$400,000,
 - (ii) net income before taxes exceeded \$75,000 in each of the two most recent years and who reasonably expects to exceed that income level in the current year, or
 - (iii) net income before taxes combined with that of a spouse exceeded \$125,000 in each of the two most recent years and who reasonably expects to exceed that income level in the current year,
- (b) a person or company of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,
- (c) a general partnership in which all of the partners are eligible investors,
- (d) a limited partnership in which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees are eligible investors,
- (f) an accredited investor, or
- (g) a person or company that has obtained advice regarding the suitability of the investment and if the person or company is in a jurisdiction of Canada that advice has been obtained from an investment dealer, securities dealer or their equivalent, registered under the securities legislation of the jurisdiction;

"financial assets" means cash and securities;

"private issuer" means an issuer

- (a) that is not a reporting issuer, a mutual fund or a non-redeemable investment fund,
- (b) whose designated securities:
 - (i) are subject to restrictions on transfer that are contained in the issuer's constating documents or security holders agreements; and
 - (ii) are beneficially owned, directly or indirectly, by not more than 50 persons or companies, counting any 2 or more joint registered owners as one beneficial owner, and not counting employees and former employees of the issuer or its affiliates, and
- (c) that has distributed designated securities only to persons or companies described in section 2.1(1); and

"related liabilities" means

- (a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or
- (b) liabilities that are secured by financial assets.

Part 2 Private issuer exemption

2.1 Private issuer exemption

- (1) The dealer registration requirement does not apply to a person or company with respect to a trade in a security of a private issuer if the purchaser purchases the security as principal and is
 - (a) a director, officer, employee or control person of the issuer,
 - (b) a spouse, parent, grandparent, brother, sister or child of a director, senior officer or control person of the issuer,
 - (c) a close personal friend of a director, senior officer or control person of the issuer,
 - (d) a close business associate of a director, senior officer or control person of the issuer,
 - (e) a spouse, parent, grandparent, brother, sister or child of the selling security holder,
 - (f) a current holder of designated securities of the issuer,
 - (g) an accredited investor,
 - (h) a person or company that is wholly-owned by any combination of persons or companies described in paragraphs (a) to (g), or
 - (i) a person or company that is not the public.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Part 3 Family, friends and business associates exemption

3.1 Family, friends and business associates exemption

- (1) The dealer registration requirement does not apply to a person or company with respect to a trade in a security of an issuer if the purchaser purchases the security as principal and is
 - (a) a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
 - (b) a spouse, parent, grandparent, brother, sister or child of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
 - (c) a close personal friend of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
 - (d) a close business associate of a director, senior officer or control person of the issuer, or of an affiliate of the issuer, or
 - (e) a person or company that is wholly-owned by any combination of persons or companies described in paragraphs (a) to (d).
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Part 4 Offering memorandum exemption

4.1 Offering memorandum exemption

- (1) In British Columbia, the dealer registration requirement does not apply to a person or company with respect to a trade by an issuer in a security of its own issue if the purchaser purchases the security as principal and, at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (a) delivers an offering memorandum to the purchaser in compliance with sections 4.2 to 4.4, and
 - (b) obtains a signed risk acknowledgement from the purchaser in compliance with section 4.5(1).
- (2) In British Columbia, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).
- (3) In Alberta, the dealer registration requirement does not apply to a person or company with respect to a trade by an issuer in a security of its own issue if
 - (a) the purchaser purchases the security as principal,
 - (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
 - (i) delivers an offering memorandum to the purchaser in compliance with sections 4.2 to 4.4, and
 - (ii) obtains a signed risk acknowledgement form from the purchaser in compliance with section 4.5(1),

- (c) either
 - (i) the purchaser is an eligible investor, or
 - (ii) the purchaser's aggregate acquisition cost does not exceed \$10,000, and
 - (d) in the case of an issuer that is a mutual fund, it is one referred to in section 1.3 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.
- (4) In Alberta, the prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (3).

4.2 Required form of offering memorandum

An offering memorandum delivered under section 4.1 must be in the required form.

4.3 Purchasers' Rights

- (1) An offering memorandum delivered under section 4.1 must provide that the purchaser may cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.
- (2) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum, an offering memorandum delivered under section 4.1 must contain a contractual right of action against the issuer for rescission or damages that
 - (a) is available to the purchaser if the offering memorandum, or any record incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
 - (b) is enforceable by the purchaser delivering a notice to the issuer
 - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
 - (ii) in the case of an action for damages, before the earlier of:
 - A. 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
 - B. 3 years after the date the purchaser signs the agreement to purchase the security,
 - (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
 - (d) in the case of an action for damages, provides that the amount recoverable
 - (i) must not exceed the price at which the security was offered, and

- (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to and does not detract from any other right of the purchaser.

4.4 Certificate

- (1) An offering memorandum delivered under section 4.1 must contain a certificate that states the following:
"This offering memorandum does not contain a misrepresentation."
- (2) A certificate under subsection (1) must be signed
 - (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or a chief financial officer, a person acting in that capacity,
 - (b) on behalf of the directors of the issuer,
 - (i) by any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
 - (ii) by all the directors of the issuer, and
 - (c) by each promoter of the issuer.
- (3) A certificate under subsection (1) must be true
 - (a) at the date the certificate is signed, and
 - (b) at the date the offering memorandum is delivered to the purchaser.
- (4) If a certificate under subsection (1) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless
 - (a) the purchaser receives an update of the offering memorandum,
 - (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (2), and
 - (c) the purchaser re-signs the agreement to purchase the security.

4.5 Risk acknowledgement

- (1) A risk acknowledgement under section 4.1 must be in the required form.
- (2) An issuer relying on section 4.1 must retain the signed risk acknowledgement for 6 years after the distribution.

4.6 Consideration to be held in trust

- (1) The issuer must hold in trust all consideration received from the purchaser in connection with a trade in a security under section 4.1 until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.
- (2) The issuer must return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under section 4.3(1).

4.7 Filing of offering memorandum

The issuer must file a copy of an offering memorandum delivered under section 4.1 and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10th day after each distribution under the offering memorandum or update of the offering memorandum.

4.8 Exemption for filing of technical reports for mineral projects

If a qualifying issuer as defined in Multilateral Instrument 45-102 *Resale of Securities* uses a form of offering memorandum that allows the qualifying issuer to incorporate previously filed information into the offering memorandum by reference, the qualifying issuer is exempt from the requirement under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* to file a technical report to support scientific or technical information about the qualifying issuer's mineral project in the offering memorandum or incorporated by reference into the offering memorandum if the information about the mineral project is contained in:

- (a) an annual information form, prospectus, material change report or annual financial statement filed under securities legislation with a securities regulatory authority before February 1, 2001;
- (b) a previously filed technical report under NI 43-101; or
- (c) a report prepared in accordance with former National Policy 2-A, *Guide for Mining Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators* and filed with a securities regulatory authority before February 1, 2001.

Part 5 Accredited investor exemption

5.1 Accredited investor exemption

- (1) The dealer registration requirement does not apply to a person or company with respect to a trade in a security of an issuer if the purchaser purchases the security as principal and is an accredited investor.
- (2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Part 6 Resale of securities

6.1 Private issuer exemption

The first trade of a security distributed under the exemption in section 2.1(2) is subject to section 2.6 of Multilateral Instrument 45-102 *Resale of Securities*.

6.2 Other exemptions

The first trade of a security distributed under an exemption in section 3.1(2), 4.1(2), 4.1(4) or 5.1(2) is subject to section 2.5 of Multilateral Instrument 45-102 *Resale of Securities*.

Part 7 Filing Requirements

7.1 Report on Distribution

- (1) Subject to subsection (2) and (3), if a person or company distributes a security under an exemption in section 3.1(2), 4.1(2), 4.1(4) or 5.1(2), the person or company must file a report in the required form in the jurisdiction in which the distribution takes place on or before the 10th day after the distribution.
- (2) A person or company is not required to file the report under subsection (1) for a distribution under section 5.1(2) of an evidence of indebtedness to a Canadian financial institution as security for a loan made by the Canadian financial institution to the person or company.
- (3) In British Columbia, only an issuer distributing a security of its own issue is required to file the report under subsection (1).