Appendix B

Summary of Differences between Original MI 45-103 and Revised MI 45-103

1. MI 45-103, the rule

Change	Reason for Change
s.1.1 - accredited investor definition, (c) - we added central cooperative credit societies for which an order has been made under the Cooperative Credit Associations Act (Canada).	Two commentators requested this addition because these associations are not included under the definition of "Canadian financial institution" in NI 14-101 due to a technicality in the wording under the Cooperative Credit Associations Act (Canada).
s.1.1 - accredited investor definition, (k) - we removed "jointly" from financial asset test for individual accredited investors.	Concern was expressed that the word "jointly" suggested that the financial assets had to be held by the spouses as "joint tenants". This was not the intended meaning so the word was removed.
s.1.1 - accredited investor definition, (m) - the category has been expanded to permit any person or company (other than a mutual fund or non-redeemable investment fund) with $5 million in net assets to qualify as an accredited investor.	The provision in Original MI 45-103 did not allow individuals or general partnerships with $5 million in net assets to qualify as accredited investors. It was considered appropriate to extend this category to include those persons as the asset test in 1.1(k) only includes financial assets (cash and securities) and is therefore quite narrow. We concluded that an individual or general partnership with $5 million in net assets should be considered sufficiently wealthy to withstand the loss of an investment.
s.1.1 - accredited investor definition, (o) - the section has been clarified to indicate that a mutual fund or non-redeemable investment fund is an accredited investor if it has ever filed a prospectus.	We understand that the provision in Original MI 45-103 may have been interpreted to mean that a mutual fund must be currently in distribution under a prospectus to qualify as an accredited investor. We amended the language to clarify that this was not our intent. Other rules may restrict the ability of mutual funds and non-redeemable investment funds to invest unless they are currently in distribution; however, we did not consider it necessary to repeat the restrictions in the definition of accredited investor. To do so

Change	Reason for Change
	would be redundant and may create conflict and confusion, if and when those other rules are changed.
s.1.1 - accredited investor definition, (p) & (q) - we added trust companies and portfolio managers trading for fully managed accounts to the list of accredited investors and added a new s.1.2 deeming these entities to be purchasing as principal.	Not all of the Participating Jurisdictions have a provision (equivalent to s.132(1) of the Securities Act (Alberta) and s.74(1) of the Securities Act (British Columbia)) which deems trust companies and portfolio managers to be purchasing as principal therefore s.1.2 was necessary. Furthermore, the current statutory wording only deems trust companies incorporated in the local jurisdiction and portfolio managers registered in the local jurisdiction to be purchasing as principal. The new sections 1.1(p) and (q) accommodate trust companies and portfolio managers across Canada. However, PEI trust company legislation may not be comparable to that which exists in other jurisdictions and therefore trust companies incorporated only in PEI were not be deemed to be purchasing as principal.
s.1.1 - accredited investor definition, (p) and (q) - we extended these categories to include trust companies and portfolio managers registered or authorized to carry on business in foreign jurisdictions.	We had expressly asked industry to comment on whether we should extend this definition to include foreign trust companies and portfolio managers and received support to do so.
s.1.1 - accredited investor definition, (r) - we re-inserted registered charities into the list of accredited investors but added a condition requiring that they obtain advice from an eligibility adviser or registered adviser.	We requested comment on whether registered charities should be included as accredited investors. A number of commentators recommended that they be included. Many charities may meet another category in the definition, for example, persons or companies having $5 million in net assets. However, we are concerned that not all charities are sufficiently sophisticated. We believe that the change will allow registered charities to make investments while ensuring that they have the necessary advice.

Change	Reason for Change
s.1.1 - accredited investor definition, (t) - this section has been broadened to include corporations that would be wholly-owned by accredited investors, except that corporate legislation requires a certain number of shares to be held by the directors of the corporation.	We made this change to address concerns that the section was too restrictive because some corporate law requires that shares be held by directors.
s.1.1- definitions of control person and reporting issuer were added with the September 2002 publication but have since been slightly amended to clarify which jurisdictions require the definitions.	Not all jurisdictions have these definitions in their legislation. A further minor amendment was made to clarify which jurisdictions needed the definitions.
Definition of "eligibility adviser" was added and in SK and MB, lawyers and accountants can provide the advice.	The concept of eligibility adviser exists in the Original MI 45-103 as part of the Alberta offering memorandum exemption (i.e., investors who do not meet the financial tests in the eligible investor definition can invest more than $10,000 if they obtain advice from a registered investment dealer). In the Revised MI 45-103, the concept has been turned into a defined term. In addition, we understand that there may be very few investment dealers operating in SK & MB and consequently, lawyers and accountants are currently permitted to give advice under certain of the exemptions in SK & MB. The definition of eligibility adviser has been expanded to accommodate this. However, lawyers and accountants will not be considered to be acceptable advisers under the laws of any other jurisdictions.
Definition of "eligible investor" expanded to include persons referred to in the family, friends and business associates.	This was done to give family, friends and business associates the option of investing under an offering memorandum if they choose. Under Original MI 45-103, a family member, friend or business associate can only invest under an offering memorandum if they meet the financial tests for an eligible investor. It seemed incongruous to the Committee that these persons are permitted to invest without any disclosure but only have a

Change	Reason for Change
	right to invest with the additional protections of an offering memorandum (and therefore statutory rights of action) if they meet certain financial tests or get advice. We do not want to mandate that these persons must get an offering memorandum but we do want to permit them that option, if they so choose.
Definition of "founder" added.	The definition of founder is similar to the statutory definition of promoter that currently exists in most securities legislation; however, the definition of founder requires that the individual must still be involved with the issuer. Promoters were not included in the family, friends and business associates exemption in the Original MI 45-03 because we thought that persons who would be promoters likely would also be directors or senior officers so reference to them was likely redundant. Furthermore, the definition of promoter has no clear time limit. We wanted to ensure that only promoters currently involved with the issuer were included. Some of the Participating Jurisdictions have indicated that they require the concept of promoter to be included, as they see offerings in which individuals are promoters but not directors, senior officers or control persons. To accommodate this request but to ensure that the promoter is still involved with the issuer, we have adopted the new term, founder. The term founder requires that the individual be currently involved with the issuer.
s.1.1 - definition of founder amended to add the words "acting in concert with" and to change "continues to be" to "is".	Concern was expressed that the B.C. Securities Act uses the term "acting in concert" instead of "in conjunction with" and that the change in terminology might affect the meaning in the B.C. Securities Act. The wording "continues to be" also caused a temporal defect that could be corrected by using "is".

Change	Reason for Change
Definitions of “fully managed account”, “MI 45-102” and “qualifying issuer” added.	The definition of fully managed account was added to help clarify when portfolio managers and trust companies acting on behalf of clients can be considered to be acting as principal under the accredited investor exemption. The definitions of MI 45-102 and qualifying issuer were added for drafting convenience and for better direction to readers of the instrument.
Section 1.2 - The heading of the section was changed from “Interpretation” to “Persons or companies deemed to be purchasing as principal”.	The heading was not informative.
Section 2.1(c) & 3.1(c) - we expanded the exemptions to permit in-laws of directors, senior officers, founders and control persons to be included as permitted placees.	In SK, in-laws are permitted to invest under the SK statutory family, close friends and business associates exemption. Proposed MI 45-103 has been expanded to also permit this because the relationship appeared to be sufficiently close.
Sections 2.1(i) & (j) and 3.1(h) &(i) - expands the exemption to permit companies and trusts controlled by permitted placees to invest.	The wording in Current MI 45-103 requires that the issuer be wholly owned by any combination of permitted placees listed in the exemption. The requirement to be wholly owned can prevent investment by family trusts or holding companies in which various family members participate but not all family members are permitted placees. This was thought to be unnecessarily restrictive. We thought it sufficient if the company or trust was controlled by one of the permitted placees because the individual controlling the company or trust would have the necessary connection to the issuer to make the investment decision.
Section 2.2 & 3.2 - we added a restriction on the payment of commissions and finder’s fees to directors, officers, founder and control persons in the private issuer and family, friends and business associates exemptions. In the September publication SK proposed to restrict the payment of any commissions and finder’s fees under these	Concern was expressed that it was not appropriate to allow directors, officers, founders and control persons of an issuer to get commissions for selling securities to their family, friends and business associates. Accordingly, a restriction has been added to preclude this. However, commissions may be paid for trades to

Change	Reason for Change
exemptions; however, SK removed this provision with respect to the private issuer exemption.	accredited investors. As a result of comments received, SK reconsidered its prohibitions against all commissions being paid under the private issuer exemption.
Sections 2.3 & 3.3 - In the September publication we added a new requirement to file a modified Saskatchewan risk acknowledgement when selling securities (under the private issuer or family, friends and business associates exemption) to Saskatchewan purchasers where the purchaser was investing on the basis of friendship or business association. SK determined to remove the requirement under the private issuer exemption.	Prior to adoption of Revised MI 45-103 in SK, investors who invest based on a relationship of friendship or business association must be advised of the risks of investing and file a statement describing the relationship. A new form, Form 45-103F5 has been developed to address this issue. The form will only be required in SK with regard to sales to SK purchasers.
Section 4.3(1) - added clarification that the 2 day right of withdrawal need only be provided by contract if it is not provided by securities legislation.	This change was made to contemplate the various future legislative amendments.
Section 4.5 – the number of years that issuer must retain risk acknowledgement increased from 6 to 8 years.	This change was made because the limitation period in certain jurisdictions is 8 years not 6.
Section 6.3 - we added resale restrictions to deal with underlying securities acquired on exercise of convertible securities.	MI 45-102 does not address the resale restrictions applicable to underlying securities acquired on exercise or conversion of convertible securities. This issue is dealt with in separate BC & AB local instruments that amend Multilateral Instrument 45-102 Resale of Securities. This new provision will allow the other jurisdictions to adopt MI 45-103 without amending MI 45-102 and will supercede the separate local BC & AB instruments.
Section 6.4 - we added Manitoba resale restrictions.	MI 45-102 only applies in part in MB because MB is an 'open jurisdiction.' Accordingly, we thought it appropriate to include in the rule, the resale restrictions that apply in Manitoba rather than requiring readers to refer to a separate MB instrument. Subsequent to the September publication we slightly amended the wording to reflect the MB requirements.

Change	Reason for Change
Section 7.1 - we removed the requirement for an investor to file a report of exempt distribution when selling securities under an exemption.	BC has historically only required the issuer to file a report when relying on a prospectus exemption. Many of the other jurisdictions have required anyone relying on a specified exemption to file a report. We eliminated the requirement for a selling security holder to file a report. The issuer's reporting requirement remains.
Section 7.1(3) - we have added a provision allowing a mutual fund or non-redeemable investment fund to file their report of exempt distribution under the accredited investor exemption use within 30 days of their financial year end rather than 10 days after the distribution.	We generally give exemptive relief in these circumstances. By providing it in MI 45-103, it will reduce the regulatory burden for these types of issuers.
Part 8 - we have added a section indicating that in BC the required forms are designated by the BC regulator.	All jurisdictions will require the same forms. In the September publication, BC was not referenced in Part 8 because the BCSC did not want to prescribe the forms as rules but would instead have the Executive Director prescribe the forms. The section now indicates this.
Part 9 - we have added an exemption provision so that either the securities regulatory authority or regulator can grant an exemption from the instrument.	Certain of the jurisdictions were concerned that their existing exemptive relief provisions were not broad enough to grant relief from all of the requirements of MI 45-103.

2. Form 45-103F1 Offering Memorandum for Non-Qualifying Issuers

- In the September 20, 2002 publication:
  - We amended Part 1 of the Form to change the various references to "available funds" and "use of available funds" to refer to "net proceeds" and "use of net proceeds". The calculation of available funds required that working capital be added or a working capital deficiency be deducted from the net proceeds. In some circumstances, disclosure of available funds could be misleading, for example, if an issuer had a working capital deficiency but had no intention to use the net proceeds to reduce the working capital deficiency. Although working capital or a working deficiency will now be excluded from sections 1.1 and 1.2, disclosure of any working capital deficiency is still considered material. Accordingly, a new section has been added to Part 1 of the forms requiring disclosure of such deficiency.

- We added a requirement to item 6 to provide information regarding RRSP eligibility.
- We created a new item 12 referring to financial statements. Some issuers that have filed non-qualifying issuer offering memoranda have not attached financial statements to the offering memoranda. Although the instructions to the form already clearly indicate financial statements are required, the additional item is intended to act as a reminder of the requirement to include the financial statements and that the financial statement disclosure is being certified as part of the offering memorandum.

- Since the September 20, 2002 publication:
  - The form has been amended to reflect the change to Manitoba's resale restrictions referred to in the rule.
  - Instruction 6 to the form has been amended to clarify who signs the offering memorandum when the issuer is a limited partnership or trust.

3. Form 45-103F2 Offering Memorandum for Qualifying Issuers

- In the September 20, 2002 publication:
  - We amended Part 1 of the Form to change the various references to "available funds" and "use of available funds" to refer to "net proceeds" and "use of net proceeds". The calculation of available funds required that working capital be added or a working capital deficiency be deducted from the net proceeds. In some circumstances, disclosure of available funds could be misleading, for example, if an issuer had a working capital deficiency but had no intention to use the net proceeds to reduce the working capital deficiency. Although working capital or a working deficiency will now be excluded from sections 1.1 and 1.2, disclosure of any working capital deficiency is still considered material. Accordingly, a new section has been added to Part 1 of the forms requiring disclosure of such deficiency.
  - We added a requirement to item 6 to provide information regarding RRSP eligibility.

- Since the September 20, 2002 publication
  - Instruction 8 to the form has been amended to clarify who signs the offering memorandum when the issuer is a limited partnership or trust.

4. Form 45-103F3

In the September 20, 2002 publication we added a statement to clarify that except in BC and NS, the investor may be required to seek advice regarding the investment. The reference to securities commission has been changed to securities regulatory authority

because, in some jurisdictions, there is no commission, just a division of a government department.

The form previously told investors "you will not receive ongoing information". The form has been amended to indicate they "may not" receive the information.

5. Form 45-103F4 *Report of Exempt Distribution*

This was a new form that was published with the September 20, 2002 publication. It is a new report of exempt distribution. It is intended to replace the current report (Form 20).

Changes made since the September 20, 2002 publication are summarized below.

Change	**Reason for Change**
Section 5 and 6 - we have inverted the order of the new sections so that issuers first provide full details of the distribution on the schedule and then summarize the distribution in the main body of the form.	BC requested this change because they are proposing to make the form electronic. Under their electronic form, once the issuer completes the information on the schedule, the summary information will automatically be calculated for them. The reordering should make it easier for issuers to complete the form.
Section 6 (former s.5) - we amended the instructions to indicate that securities issued for payment of commissions and finder's fees should not be included in the table.	The change is for clarification and to avoid duplication. Securities issued for commissions and finder's fees are already required to be disclosed in the table under section 7.
Section 6 (former s.5) - we amended the table to clarify that in tabulating amounts per jurisdiction, the amounts raised from residents in the jurisdiction are added, not the amounts raised from distributions in the jurisdiction.	Some jurisdictions, such as BC and AB, consider distributions outside the jurisdiction by issuers within the jurisdiction to also be distributions in the jurisdiction. With the original language, this could make completing the form confusing for issuers. For example if a BC issuer conducted an offering in BC, AB and SK, they would have indicated in the BC category all purchasers in all jurisdictions and in the AB and SK categories, only the purchasers in those jurisdictions. The revised form clarifies that in the BC category, they would only list purchasers resident in BC.

Schedule A has been deleted.	Originally, BC wanted to publish information concerning purchases by insiders and registrants and required a separate schedule to do that. However, BC has determined not to do that and Schedule A is no longer necessary.
Schedule B has been amended to - indicate BC only requires non-reporting issuers using the offering memorandum exemption to identify the phone numbers and e-mail addresses of purchasers, - provide an instruction clarifying that securities issued as commissions and finder's fees need not be included in the schedule, - remove the reference to BC publishing Schedule A, - update the SK securities regulatory authority's name and address, - remove the reference to the SK requiring details of relationships based on close friendship or business association, and - update NWT's address.	- BC has determined that it is no longer necessary as part of their exempt market study to collect the phone numbers and e-mail addresses from purchasers of securities of reporting issuers. - Securities issued as commissions and finder's fees appear under section 7 so the instruction clarifies it is not necessary to duplicate the information. - As mentioned above, BC is no longer intending to publish the names of insiders and registrants purchasing securities. - The SK office moved and the Saskatchewan Securities Commission is now the Saskatchewan Financial Services Commission. - Based on public comment, the SK securities regulatory authority determined to remove the additional requirement. - The reference to the NWT office contained typographical errors.

6. Form 45-103F5 *Saskatchewan Risk Acknowledgement*

The Saskatchewan risk acknowledgement form was a new form first published for comment on September 20, 2002. It has been modified from the September 20, 2002 publication to require the purchaser to identify the director, senior officer, founder or control person with whom the purchaser has the necessary relationship. It was also amended to refer to the new name and website address of the Saskatchewan securities regulatory authority.