

National Instrument 45-106
Prospectus and Registration Exemptions

Text boxes in this Instrument refer to National Instrument 45-102 Resale of Securities. These text boxes are located above sections 2.1 to 2.5, 2.7 to 2.21, 2.24, 2.26, 2.27, and 2.30 to 2.43. These text boxes do not form part of this Instrument.

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National Instrument 45-106
Prospectus and Registration Exemptions

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Instrument

“**accredited investor**” means

- (a) a Canadian financial institution, or a Schedule III bank,
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada),
- (c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer under one or both of the *Securities Act* (Ontario) or the *Securities Act* (Newfoundland and Labrador),
- (e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d),
- (f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada,
- (g) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’île de Montréal or an intermunicipal management board in Québec;
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada,
- (j) an individual who, either alone or 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,
- (k) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,

- (l) an individual who, either alone or with a spouse, has net assets of at least \$5 000 000,
- (m) a person, other than an individual or investment fund, that has net assets of at least \$5 000 000 as shown on its most recently prepared financial statements,
- (n) an investment fund that distributes or has distributed its securities only to
 - (i) a person that is or was an accredited investor at the time of the distribution,
 - (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 [*Minimum amount investment*], and 2.19 [*Additional investment in investment funds*], or
 - (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 [*Investment fund reinvestment*],
- (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt,
- (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be,
- (q) a person acting on behalf of a fully managed account managed by that person, if that person
 - (i) is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, and
 - (ii) in Ontario, is purchasing a security that is not a security of an investment fund;
- (r) a registered charity under the ITA that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded,
- (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function,
- (t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,
- (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser, or
- (v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as an accredited investor;

“AIF” means

- (a) for financial years starting before January 1, 2004, a current AIF as defined in Multilateral Instrument 45-102 *Resale of Securities* that came into force on November 30, 2001, and
- (b) for financial years starting on or after January 1, 2004,
 - (i) an AIF as defined in NI 51-102,
 - (ii) a prospectus filed in a jurisdiction, other than a prospectus filed under a CPC instrument, if the issuer has not filed or been required to file an AIF or annual financial statements under NI 51-102, or
 - (iii) a QT circular if the issuer has not filed or been required to file annual financial statements under NI 51-102 subsequent to filing its QT circular;

“approved credit rating” has the same meaning as in National Instrument 81-102 *Mutual Funds*;

“approved credit rating organization” has the same meaning as in National Instrument 81-102 *Mutual Funds*;

“bank” means a bank named in Schedule I or II of the *Bank Act* (Canada);

“Canadian financial institution” means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

“control person” has the same meaning as in securities legislation except in Manitoba, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Prince Edward Island where control person means any person that holds or is one of a combination of persons that holds

- (a) a sufficient number of any of the securities of an issuer so as to affect materially the control of the issuer, or
- (b) more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holding of those securities does not affect materially the control of the issuer;

“CPC instrument” means a rule or regulation of a jurisdiction of Canada or a rule, regulation or policy of an exchange in Canada that applies only to capital pool companies;

“debt security” means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;

“director” means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

“eligibility adviser” means

- (a) a person that is registered as an investment dealer or in an equivalent category of registration under the securities legislation of the jurisdiction of a purchaser and authorized to give advice with respect to the type of security being distributed, and
- (b) in Saskatchewan or Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not
 - (i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons, and
 - (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months;

“eligible investor” means

- (a) a person whose
 - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
 - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
 - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (b) a person 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 of which all of the partners are eligible investors,

- (d) a limited partnership of 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 or executors are eligible investors,
- (f) an accredited investor,
- (g) a person described in section 2.5 [*Family, friends and business associates*], or
- (h) a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser;

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer;

“financial assets” means

- (a) cash,
- (b) securities, or
- (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

“founder” means, in respect of an issuer, a person who,

- (a) acting alone, in conjunction, or in concert with one or more persons, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, and
- (b) at the time of the distribution or trade is actively involved in the business of the issuer;

“fully managed account” means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client’s express consent to a transaction;

“investment fund” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“marketplace” has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

“MD&A” has the same meaning as in NI 51-102;

“NI 43-101” means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

“**NI 45-102**” means National Instrument 45-102 *Resale of Securities*;

“**NI 51-102**” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“**non-redeemable investment fund**” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“**person**” includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person’s capacity as a trustee, executor, administrator or personal or other legal representative;

“**QT circular**” means an information circular or filing statement in respect of a qualifying transaction for a capital pool company under a CPC instrument;

“**qualifying issuer**” means a reporting issuer in a jurisdiction of Canada that

- (a) is a SEDAR filer,
- (b) has filed all documents required to be filed under the securities legislation of that jurisdiction, and
- (c) if not required to file an AIF, has filed in the jurisdiction,
 - (i) an AIF for its most recently completed financial year for which annual statements are required to be filed, and
 - (ii) copies of all material incorporated by reference in the AIF not previously filed;

“**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;

“**reporting issuer**” means, in Northwest Territories, Nunavut and Prince Edward Island, an issuer that is a reporting issuer in a jurisdiction of Canada;

“**RRIF**” means a registered retirement income fund as defined in the ITA;

“**RRSP**” means a registered retirement savings plan as defined in the ITA;

“**Schedule III bank**” means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

“**SEDAR filer**” means an issuer that is an electronic filer under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“**self-directed RESP**” means an educational savings plan registered under the ITA

- (a) that is structured so that contributions by a subscriber to the plan are deposited directly into an account in the name of the subscriber, and
- (b) under which the subscriber maintains control and direction over the plan that enables the subscriber to direct how the assets of the plan are to be held, invested or reinvested subject to compliance with the ITA.

“**spouse**” means, an individual who,

- (a) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), from the other individual,
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or
- (c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

“**subsidiary**” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

Affiliate

1.2 For the purpose of this Instrument, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.3 Except in Part 2, Division 4, for the purpose of this Instrument, a person (first person) is considered to control another person (second person) if

- (a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or

- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Registration requirement

1.4 (1) An exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.

(2) An exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

Definition of distribution - Manitoba and Yukon

1.5 For the purpose of this Instrument, in Manitoba and Yukon, “**distribution**” means a primary distribution to the public.

Definition of trade – Québec

1.6 For the purpose of this Instrument, in Québec, “**trade**” includes any of the following activities:

- (a) any of the activities referred to in the definition of “dealer” in section 5 of the *Securities Act* (Québec), including distributing a security;
- (b) the sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise, but does not include,
 - (i) except as provided in paragraph (e), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith, or
 - (ii) the purchase of a security;
- (c) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
- (d) receipt by a registrant of an order to buy or sell a security;
- (e) a transfer, pledge or encumbrancing of securities of an issuer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith;
- (f) entering into a derivative;
- (g) any activity, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities referred to in paragraphs (a) to (f).

PART 2: PROSPECTUS EXEMPTIONS

Division 1: Capital Raising Exemptions

Rights offering

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1 The prospectus requirement does not apply to a distribution by an issuer of a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

- (a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the distribution, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up,
- (b) the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the distribution within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the distribution, the issuer has delivered to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority, and
- (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.

Reinvestment plan

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.2 (1) Subject to subsections (3), (4) and (5), the prospectus requirement does not apply to the following distributions by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the distributions are permitted by a plan of the issuer:

- (a) a distribution of a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security, and
- (b) subject to subsection (2), a distribution of a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the distributions described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section does not apply to a distribution of a security of an investment fund.

(5) Subject to section 8.4.1, if the security distributed under a plan described in subsection (1) is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security distributed under the plan or notice of a source from which the participant can obtain the information without charge.

Accredited investor

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.3 (1) The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor.

(2) Subject to subsection (3), for the purpose of this section, a trust company or trust corporation described in paragraph (p) of the definition of “accredited investor” in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(3) Subsection (2) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(4) For the purpose of this section, a person described in paragraph (q) of the definition of “accredited investor” in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(5) This section does not apply to a distribution of a security to a person if that person is created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of “accredited investor” in section 1.1 [*Definitions*].

Private issuer

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.4 (1) In this section,

“**private issuer**” means an issuer

(a) that is not a reporting issuer or an investment fund,

- (b) whose securities, other than non-convertible debt 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, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and
- (c) that
 - (i) has distributed its securities only to persons described in subsection (2), or
 - (ii) has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned, directly or indirectly, only by persons described in subsection (2) and since the completion of the transaction has distributed its securities only to persons described in subsection (2).

(2) The prospectus requirement does not apply to a distribution of a security of a private issuer to a person who purchases the security as principal and is

- (a) a director, officer, founder or control person of the issuer,
- (b) an employee of the issuer or an affiliate of the issuer,
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
- (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,
- (e) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (f) a close business associate of a director, executive officer, founder or control person of the issuer,
- (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
- (h) a security holder of the issuer,
- (i) an accredited investor,
- (j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),

- (k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (l) a person that is not the public.

(3) Except for a distribution to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a distribution under subsection (2).

Family, friends and business associates

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.5 (1) Except in Ontario and subject to section 2.6 [*Family, friends and business associates -- Saskatchewan*], the prospectus requirement does not apply to a distribution of a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a distribution under subsection (1).

Family, friends and business associates - Saskatchewan

2.6 (1) In Saskatchewan, section 2.5 [*Family, friends and business associates*] does not apply unless the person making the distribution obtains a signed risk acknowledgement from the purchaser in the required form for a distribution to

- (a) a person described in section 2.5(1) (d) or (e) [*Family, friends and business associates*],
- (b) a close personal friend or close business associate of a founder of the issuer, or
- (c) a person described in section 2.5(1)(h) or (i) [*Family, friends and business associates*] if the distribution is based in whole or in part on a close personal friendship or close business association.

(2) The person making the distribution must retain the required form referred to in subsection (1) for 8 years after the distribution.

Founder, control person and family - Ontario

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.7 In Ontario, the prospectus requirement does not apply to a distribution to a person who purchases the security as principal and is

- (a) a founder of the issuer,
- (b) an affiliate of a founder of the issuer,
- (c) a spouse, parent, brother, sister, grandparent or child of an executive officer, director or founder of the issuer, or
- (d) a person that is a control person of the issuer.

Affiliates

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.8 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to an affiliate of the issuer that is purchasing as principal.

Offering memorandum

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.9 (1) In British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (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 subsections (5) to (11), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12).

(2) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) 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 subsections (5) to (11), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12),

and

- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

(3) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person described in paragraph

(a) of the definition of "eligible investor" in section 1.1 [Definitions] if that person is created or used solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2).

(4) No commission or finder's fee may be paid to any person, other than a registered dealer, in connection with a distribution to a purchaser in the Northwest Territories, Nunavut and Saskatchewan under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to 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.

(7) 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 delivered under this section, the offering memorandum 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 information or documents 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.

(8) An offering memorandum delivered under this section must contain a certificate that states the following:

“This offering memorandum does not contain a misrepresentation.”

(9) A certificate under subsection (8) 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 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.

(10) A certificate under subsection (8) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

(11) If a certificate under subsection (8) 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 (9), and
- (c) the purchaser re-signs the agreement to purchase the security.

(12) A risk acknowledgement under subsection (1) or (2) must be in the required form and an issuer relying on either of those subsections must retain the signed risk acknowledgment for 8 years after the distribution.

(13) The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a distribution of a security under subsection (1) or (2) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
- (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

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

(15) If a qualifying issuer 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 NI 43-101 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 previously filed technical report under NI 43-101.

Minimum amount investment

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.10 (1) The prospectus requirement does not apply to a distribution of a security to a person if

- (a) that person purchases as principal,
- (b) the security has an acquisition cost to the purchaser of not less than \$150 000 paid in cash at the time of the distribution, and
- (c) the distribution is of a security of a single issuer.

(2) This section does not apply to a distribution of a security to a person if that person is created or used solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (1).

Division 2: Transaction Exemptions

Business combination and reorganization

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.11 The prospectus requirement does not apply to a distribution of a security in connection with

- (a) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,
- (b) an amalgamation, merger, reorganization or arrangement that
 - (i) is described in an information circular made pursuant to NI 51-102 or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and
 - (ii) is approved by the security holders referred to in subparagraph (i),

or

- (c) a dissolution or winding-up of the issuer.

Asset acquisition

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.12 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a person as consideration for the acquisition, directly or indirectly, of the assets of the person, if those assets have a fair value of not less than \$150 000.

Petroleum, natural gas and mining properties

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.13 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue as consideration for the acquisition, directly or indirectly, of petroleum, natural gas or mining properties or any interest in them.

Securities for debt

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.14 The prospectus requirement does not apply to a distribution by a reporting issuer of a security of its own issue to a creditor to settle a bona fide debt of that reporting issuer.

Issuer acquisition or redemption

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*.

2.15 The prospectus requirement does not apply to a distribution of a security to the issuer of the security.

Take-over bid and issuer bid

Refer to section 2.11 or Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale unless the requirements of section 2.11 of NI 45-102 are met.

2.16 The prospectus requirement does not apply to a distribution of a security in connection with a take-over bid in a jurisdiction of Canada or an issuer bid in a jurisdiction of Canada.

Offer to acquire to security holder outside local jurisdiction

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.17 The prospectus requirement does not apply to a distribution by a security holder outside the local jurisdiction to a person in the local jurisdiction if the distribution would have been in connection with a take-over bid or issuer bid made by that person were it not for the fact that the security holder is outside of the local jurisdiction.

Division 3: Investment Fund Exemptions

Investment fund reinvestment

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.18 (1) Subject to subsections (3), (4), (5) and (6), the prospectus requirement does not apply to the following distributions by an investment fund to a security holder of the investment fund if the distributions are permitted by a plan of the investment fund:

- (a) a distribution of a security of the investment fund's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the security that is of the same class or series as the securities to which the dividend or distribution out of earnings, surplus, capital or other sources is attributable, and
- (b) subject to subsection (2), a distribution of a security of the investment fund's own issue if the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund during which the distribution takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the distributions described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) No sales charge is payable on a distribution described in subsection (1).

(5) An investment fund that is a reporting issuer and in continuous distribution must set out in its current prospectus:

- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,

- (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund and instructions on how the right can be exercised.

(6) An investment fund that is a reporting issuer and is not in continuous distribution must provide the information required by subsection (5) in its prospectus, annual information form or a material change report.

Additional investment in investment funds

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.19 The prospectus requirement does not apply to a distribution by an investment fund of a security of its own issue to a security holder of the issuer if

- (a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than \$150 000 paid in cash at the time of the distribution,
- (b) the subsequent distribution is for a security of the same class or series as the initial distribution, and
- (c) the security holder, as at the date of the subsequent distribution, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than \$150 000, or
 - (ii) a net asset value of not less than \$150 000.

Private investment club

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.20 The prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not and has never distributed its securities to the public,
- (d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires security

holders to make contributions in proportion to the value of the securities held by them.

Private investment fund - loan and trust pools

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.21 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an investment fund if the investment fund

- (a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,
- (b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of subsection (1)(a).

Division 4: Employee, Executive Officer, Director and Consultant Exemptions

Definitions

2.22 In this Division and in Division 4 of Part 3 of this Instrument

“associate”, when used to indicate a relationship with a person, means

- (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to outstanding voting securities of the issuer,
- (b) any partner of the person,
- (c) any trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or executor or in a similar capacity, or
- (d) in the case of an individual, a relative of that individual, including
 - (i) a spouse of that individual, or
 - (ii) a relative of that individual’s spouse

if the relative has the same home as that individual;

“associated consultant” means, for an issuer, a consultant of the issuer or of a related entity of the issuer if

- (a) the consultant is an associate of the issuer or of a related entity of the issuer, or
- (b) the issuer or a related entity of the issuer is an associate of the consultant;

“compensation” means an issuance of securities in exchange for services provided or to be provided and includes an issuance of securities for the purpose of providing an incentive;

“consultant” means, for an issuer, a person, other than an employee, executive officer, or director of the issuer or of a related entity of the issuer, that

- (a) is engaged to provide services to the issuer or a related entity of the issuer, other than services provided in relation to a distribution,
- (b) provides the services under a written contract with the issuer or a related entity of the issuer, and
- (c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer

and includes

- (d) for an individual consultant, a corporation of which the individual consultant is an employee or shareholder, and a partnership of which the individual consultant is an employee or partner; and
- (e) for a consultant that is not an individual, an employee of the consultant, provided that the individual employee spends or will spend a significant amount of time and attention on the affairs and business of the issuer or a related entity of the issuer.

“holding entity” means a person that is controlled by an individual;

“investor relations activities” means activities or communications, by or on behalf of an issuer or a security holder of the issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
 - (i) to promote the sale of products or services of the issuer, or
 - (ii) to raise public awareness of the issuer

that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,

- (b) activities or communications necessary to comply with the requirements of

- (i) securities legislation of any jurisdiction of Canada,
 - (ii) the securities laws of any foreign jurisdiction governing the issuer, or
 - (iii) any exchange or market on which the issuer's securities trade, or
- (c) activities or communications necessary to follow securities directions of any jurisdiction of Canada;

“investor relations person” means a person that is a registrant or that provides services that include investor relations activities;

“issuer bid requirements” means the requirements under securities legislation that apply to an issuer bid;

“listed issuer” means an issuer, any of the securities of which

- (a) are listed and not suspended, or the equivalent, from trading on
 - (i) the Toronto Stock Exchange,
 - (ii) TSX Venture Exchange Inc.,
 - (iii) the American Stock Exchange LLC,
 - (iv) The New York Stock Exchange, Inc.,
 - (v) the London Stock Exchange Limited, or
- (b) are quoted on the Nasdaq Stock Market;

“permitted assign” means, for a person that is an employee, executive officer, director or consultant of an issuer or of a related entity of the issuer,

- (a) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the person,
- (b) a holding entity of the person,
- (c) an RRSP or a RRIF of the person,
- (d) a spouse of the person,
- (e) a trustee, custodian, or administrator acting on behalf of, or for the benefit of the spouse of the person,
- (f) a holding entity of the spouse of the person, or
- (g) an RRSP or a RRIF of the spouse of the person;

“plan” means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by persons described in section 2.24(1) [*Employee, executive officer, director and consultant*] as compensation;

“related entity” means, for an issuer, a person that controls or is controlled by the issuer or that is controlled by the same person that controls the issuer;

“related person” means, for an issuer,

- (a) a director or executive officer of the issuer or of a related entity of the issuer,
- (b) an associate of a director or executive officer of the issuer or of a related entity of the issuer, or
- (c) a permitted assign of a director or executive officer of the issuer or of a related entity of the issuer;

“security holder approval” means an approval for the issuance of securities of an issuer as compensation or under a plan

- (a) given by a majority of the votes cast at a meeting of security holders of the issuer other than votes attaching to securities beneficially owned by related persons to whom securities may be issued as compensation or under that plan, or
- (b) evidenced by a resolution signed by all the security holders entitled to vote at a meeting, if the issuer is not required to hold a meeting;

“support agreement” includes an agreement to provide assistance in the maintenance or servicing of indebtedness of the borrower and an agreement to provide consideration for the purpose of maintaining or servicing indebtedness of the borrower.

Interpretation

2.23 (1) In this Division, a person (first person) is considered to control another person (second person) if the first person, directly or indirectly, has the power to direct the management and policies of the second person by virtue of

- (a) ownership of or direction over voting securities in the second person,
- (b) a written agreement or indenture,
- (c) being the general partner or controlling the general partner of the second person, or
- (d) being a trustee of the second person.

(2) In this Division, participation in a distribution is considered voluntary if

- (a) in the case of an employee or the employee’s permitted assign, the employee or the employee’s permitted assign is not induced to participate in the distribution by expectation of employment or continued employment of the employee with the issuer or a related entity of the issuer,

- (b) in the case of an executive officer or the executive officer's permitted assign, the executive officer or the executive officer's permitted assign is not induced to participate in the distribution by expectation of appointment, employment, continued appointment or continued employment of the executive officer with the issuer or a related entity of the issuer,
- (c) in the case of a consultant or the consultant's permitted assign, the consultant or the consultant's permitted assign is not induced to participate in the distribution by expectation of engagement of the consultant to provide services or continued engagement of the consultant to provide services to the issuer or a related entity of the issuer, and
- (d) in the case of an employee of a consultant, the individual is not induced by the issuer, a related entity of the issuer, or the consultant to participate in the distribution by expectation of employment or continued employment with the consultant.

Employee, executive officer, director and consultant

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.24 (1) Subject to section 2.25 [*Unlisted reporting issuer exception*], the prospectus requirement does not apply to a distribution

- (a) by an issuer in a security of its own issue, or
 - (b) by a control person of an issuer of a security of the issuer or of an option to acquire a security of the issuer,
- with
- (c) an employee, executive officer, director or consultant of the issuer,
 - (d) an employee, executive officer, director or consultant of a related entity of the issuer, or
 - (e) a permitted assign of a person referred to in paragraphs (c) or (d)

if participation in the distribution is voluntary.

(2) For the purposes of subsection (1), a person referred to in paragraph (c), (d) or (e) includes a trustee, custodian or administrator acting as agent for that person for the purpose of facilitating a trade.

Unlisted reporting issuer exception

2.25 (1) For the purpose of this section, “**unlisted reporting issuer**” means a reporting issuer in a jurisdiction of Canada that is not a listed issuer.

(2) Subject to subsection (3), section 2.24 [*Employee, executive officer, director and consultant*] does not apply to a distribution to an employee or consultant of the unlisted reporting issuer who is an investor

relations person of the issuer, an associated consultant of the issuer, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the distribution,

- (a) the number of securities, calculated on a fully diluted basis, reserved for issuance under options granted to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person, exceeds 5% of the outstanding securities of the issuer, or
- (b) the number of securities, calculated on a fully diluted basis, issued within 12 months to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person and the associates of the related person, exceeds 5% of the outstanding securities of the issuer.

(3) Subsection (2) does not apply to a distribution if the unlisted reporting issuer

- (a) obtains security holder approval, and
- (b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:
 - (i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;
 - (ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;
 - (iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
 - (iv) in the case of options, the maximum term and the basis for the determination of the exercise price;
 - (v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability; and
 - (vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

Distributions among current or former employees, executive officers, directors, or consultants of non-reporting issuer

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.26 (1) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security of an issuer by

- (a) a current or former employee, executive officer, director, or consultant of the issuer or related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

to

- (c) an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or
- (d) a permitted assign of the employee, executive officer, director, or consultant.

(2) The exemption in subsection (1) is only available if

- (a) participation in the distribution is voluntary,
- (b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and
- (c) the price of the security being distributed is established by a generally applicable formula contained in a written agreement among some or all of the security holders of the issuer to which the transferee is or will become a party.

Permitted transferees

Refer to Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.27 (1) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer acquired by a person described in section 2.24(1)[*Employee, executive officer, director and consultant*] under a plan of the issuer if the distribution

- (a) is between
 - (i) a person who is an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, and
 - (ii) the permitted assign of that person,

or

(b) is between permitted assigns of that person.

(2) Subject to section 2.28, the prospectus requirement does not apply to a distribution of a security of an issuer by a trustee, custodian or administrator acting on behalf, or for the benefit, of employees, executive officers, directors or consultants of the issuer or a related entity of the issuer, to

(a) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or

(b) a permitted assign of a person referred to in paragraph (a),

if the security was acquired from

(c) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or

(d) the permitted assign of a person referred to in paragraph (c).

(3) For the purposes of the exemptions in subsection (1) and paragraphs (2) (c) and (d), all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

Limitation re: permitted transferees

2.28 The exemption from the prospectus requirement under subsection 2.27(1) or (2) is only available if the security was acquired

(a) by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] under any exemption that makes the resale of the security subject to section 2.6 of NI 45-102, or

(b) in Manitoba, and the Yukon, by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*].

Issuer bid

2.29 The issuer bid requirements do not apply to the acquisition by an issuer of a security of its own issue that was acquired by a person described in section 2.24(1) [*Employee, executive officer, director, and consultant*] if

(a) the purpose of the acquisition by the issuer is to

(i) fulfill withholding tax obligations, or

(ii) provide payment of the exercise price of a stock option,

(b) the acquisition by the issuer is made in accordance with the terms of a plan that specifies how the value of the securities acquired by the issuer is determined,

- (c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder, and
- (d) the aggregate number of securities acquired by the issuer within a 12 month period under this section does not exceed 5% of the outstanding securities of the class or series at the beginning of the period.

Division 5: Miscellaneous Exemptions

Isolated distribution by issuer

Refer to Appendix D of NI 45-102 *Resale of Securities*. First trades are subject to a restricted period.

2.30 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue if the distribution is an isolated distribution and is not made

- (a) in the course of continued and successive transactions of a like nature, and
- (b) by a person whose usual business is trading in securities.

Dividends and distributions

Subsection (1) is cited in Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

Subsection (2) is cited in Appendix D and Appendix E of NI 45-102. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

2.31 (1) The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a security holder of the issuer as a dividend or distribution out of earnings, surplus, capital or other sources.

(2) The prospectus requirement does not apply to a distribution by an issuer to a security holder of the issuer of a security of a reporting issuer as an in specie dividend or distribution out of earnings or surplus.

Distribution to lender by control person for collateral

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. Trades by a lender, pledgee, mortgagee or other encumbrancer to realize on a debt are regulated by section 2.8 of NI 45-102.

2.32 The prospectus requirement does not apply to a distribution of a security of an issuer to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person of the issuer for the purpose of giving collateral for a bona fide debt of the control person.

Acting as underwriter

Refer to Appendix F of NI 45-102 *Resale of Securities*. First trades are a distribution.

2.33 The prospectus requirement does not apply to a distribution of a security between a person and a purchaser acting as an underwriter or between or among persons acting as underwriters.

Specified debt

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.34 (1) In this section, “**permitted supranational agency**” means

- (a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;
- (b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;
- (c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;
- (d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act (Canada)*, that Canada is a founding member of;
- (e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;
- (f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act (Canada)*; and
- (g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act (Canada)*.

(2) The prospectus requirement does not apply to a distribution of a debt security

- (a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,

- (b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,
- (c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (e) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or
- (f) of or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

Short-term debt

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.35 The prospectus requirement does not apply to a distribution of a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper distributed

- (a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section, and
- (b) has an approved credit rating from an approved credit rating organization.

Mortgages

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.36 (1) In this section, “**syndicated mortgage**” means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by a mortgage.

(2) Subject to subsection (3), the prospectus requirement does not apply to a distribution of a mortgage on real property in a jurisdiction by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply to a syndicated mortgage.

Personal property security legislation

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.37 The prospectus requirement does not apply to a distribution of a security evidencing indebtedness secured by or under a security agreement provided for under personal property security legislation of a jurisdiction providing for the granting of security in personal property if the security is not offered for sale to an individual.

Not for profit issuer

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.38 The prospectus requirement does not apply to a distribution by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if

- (a) no part of the net earnings benefit any security holder of the issuer, and
- (b) no commission or other remuneration is paid in connection with the sale of the security.

Variable insurance contract

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.39 (1) In this section,

- (a) “**contract**” “**group insurance**”, “**insurance company**”, “**life insurance**” and “**policy**” have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.
- (b) “**variable insurance contract**” means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The prospectus requirement does not apply to a distribution of a variable insurance contract by an insurance company if the variable insurance contract is

- (a) a contract of group insurance,
- (b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,

- (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or
- (d) a variable life annuity.

RRSP/RRIF

Refer to Appendix D and Appendix E of NI 45-102 *Resale of Securities*. The resale restriction is determined by the exemption under which the security was first acquired.

2.40 The prospectus requirement does not apply to a distribution of a security between

- (a) an individual or an associate of the individual, and
- (b) an RRSP or RRIF
 - (i) established for or by the individual, or
 - (ii) under which the individual is a beneficiary.

Schedule III banks and cooperative associations - evidence of deposit

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.41 The prospectus requirement does not apply to a distribution of an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

Conversion, exchange, or exercise

Subsection (1)(a) is cited in Appendix D and Appendix E of NI 45-102 *Resale of Securities*. Resale restriction is determined by the exemption under which the previously issued security was first acquired.

Subsection (1)(b) is cited in Appendix E of NI 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale, unless the requirements of section 2.10 of NI 45-102 are met.

2.42 (1) The prospectus requirement does not apply to a distribution by an issuer if

- (a) the issuer distributes a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or
- (b) subject to subsection (2), the issuer distributes a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

(2) For a distribution under subsection (1)(b),

- (a) the issuer must give the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the distribution, and
- (b) the regulator or, in Québec, the securities regulatory authority, must not object in writing to the distribution within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the distribution, the issuer must deliver to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority.

Self-directed registered educational savings plans

This provision is not cited in any Appendix of NI 45-102 *Resale of Securities*. These securities are free trading.

2.43 The prospectus requirement does not apply to a distribution of a self-directed RESP to a subscriber if

- (a) the distribution is conducted by
 - (i) a mutual fund dealer or a person who is registered as a salesperson, partner or officer of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or
 - (ii) a Canadian financial institution or, in Ontario, a financial intermediary or a person who is an officer, salesperson or employee of a Canadian financial institution or, in Ontario, a financial intermediary and who is acting on behalf of the Canadian financial institution or, in Ontario, the financial intermediary, and
- (b) the self-directed RESP restricts its investments in securities to securities in which the person who distributed the self-directed RESP is permitted to distribute.

PART 3: REGISTRATION EXEMPTIONS

Application

3.0 On • [being six months after the coming into force of National Instrument 31-103 *Registration Requirements*], Part 3 does not apply in any jurisdiction except British Columbia and Manitoba.

3.01 On • [being six months after the coming into force of National Instrument 31-103 *Registration Requirements*] in British Columbia and Manitoba, Part 3 does not apply to any person who is registered in any jurisdiction.

Removal of exemptions – market intermediaries

3.02 (1) Subject to subsection (2), in Ontario and Newfoundland and Labrador, the exemptions from the dealer registration requirement under the following sections are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:

- (a) section 3.1 [*Rights offering*];
- (b) section 3.3 [*Accredited investor*];
- (c) section 3.4 [*Private issuer*];
- (d) section 3.7 [*Founder, control person and family - Ontario*];
- (e) section 3.10 [*Minimum amount investment*];
- (f) section 3.11 [*Business combination and reorganization*];
- (g) section 3.12 [*Asset acquisition*];
- (h) section 3.14 [*Securities for debt*];
- (i) section 3.15 [*Issuer acquisition or redemption*];
- (j) section 3.16 [*Take-over bid and issuer bid*];
- (k) section 3.17 [*Offer to acquire to security holder outside local jurisdiction*];
- (l) section 3.19 [*Additional investment in investment funds*];
- (m) section 3.21 [*Private investment fund - loan and trust pools*];
- (n) section 3.29 [*Isolated trade*];
- (o) section 3.30 [*Isolated trade by issuer*];
- (p) section 3.31 [*Dividends and distributions*];
- (q) section 3.33 [*Acting as underwriter*];
- (r) section 3.34 [*Specified debt*];
- (s) section 3.35 [*Short-term debt*];
- (t) section 3.39 [*Variable insurance contract*];
- (u) section 3.42 [*Conversion, exchange, or exercise*];
- (v) section 3.44 [*Registered dealer*].

(2) Subsection (1) does not apply in respect of a trade in a security by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant.

Person or company not in the business of trading

3.03 In British Columbia and in New Brunswick, notwithstanding section 3.0 or section 3.01, a person or company may trade a security without registration if the person or company

- (a) is not engaged in the business of trading securities or exchange contracts as a principal or agent; and
- (b) does not hold himself or itself out as engaging in the business of trading in securities or exchanges contracts as a principal or agent.

Division 1: Capital Raising Exemptions

Rights offering

3.1 The dealer registration requirement does not apply in respect of a trade by an issuer in a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

- (a) the issuer has given the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up,
- (b) the regulator or, in Québec, the securities regulatory authority, has not objected in writing to the trade within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the trade, the issuer has delivered to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority, and
- (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.

Reinvestment plan

3.2 (1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:

- (a) a trade in a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security, and
- (b) subject to subsection (2), a trade in a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section does not apply to a trade in a security of an investment fund.

(5) Subject to section 8.4.1, if the security traded under a plan described in subsection (1) is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security traded under the plan or notice of a source from which the participant can obtain the information without charge.

Accredited investor

3.3 (1) The dealer registration requirement does not apply in respect of a trade in a security if the purchaser purchases the security as principal and is an accredited investor.

(2) Subject to subsection (3), for the purpose of this section, a trust company or trust corporation described in paragraph (p) of the definition of “accredited investor” in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(3) Subsection (2) does not apply to a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered or authorized under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(4) For the purpose of this section, a person described in paragraph (q) of the definition of “accredited investor” in section 1.1 [*Definitions*] is deemed to be purchasing as principal.

(5) This section does not apply to a trade in a security to a person if that person is created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of “accredited investor” in section 1.1 [*Definitions*].

Private issuer

3.4 (1) In this section,

“**private issuer**” means an issuer

- (a) that is not a reporting issuer or an investment fund,
- (b) whose securities, other than non-convertible debt 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, not including employees and former employees of the issuer or its affiliates, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the issuer in which case each

beneficial owner or each beneficiary of the person, as the case may be, must be counted as a separate beneficial owner, and

- (c) that
 - (i) has distributed its securities only to persons described in subsection (2), or
 - (ii) has completed a transaction and immediately following the completion of the transaction, its securities were beneficially owned, directly or indirectly, only by persons described in subsection (2) and since the completion of the transaction has distributed its securities only to persons described in subsection (2).

(2) The dealer registration requirement does not apply in respect of a trade in a security of a private issuer to a person who purchases the security as principal and is

- (a) a director, officer, founder or control person of the issuer,
- (b) an employee of the issuer or an affiliate of the issuer,
- (c) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer, founder or control person of the issuer,
- (d) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer, founder or control person of the issuer,
- (e) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (f) a close business associate of a director, executive officer, founder or control person of the issuer,
- (g) a spouse, parent, grandparent, brother, sister, child or grandchild of the selling security holder or of the selling security holder's spouse,
- (h) a security holder of the issuer,
- (i) an accredited investor,
- (j) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
- (k) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (l) a person that is not the public.

(3) Except for a trade to an accredited investor, no commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a trade under subsection (2).

Family, friends and business associates

3.5 (1) Except in Ontario and subject to section 3.6 [*Family, friends and business associates - Saskatchewan*], the dealer registration requirement does not apply in respect of a trade in a security to a person who purchases the security as principal and is

- (a) a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (b) a spouse, parent, grandparent, brother, sister, child or grandchild of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister, child or grandchild of the spouse of a director, executive officer or control person of the issuer or of an affiliate of the issuer,
- (d) a close personal friend of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (e) a close business associate of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (f) a founder of the issuer or a spouse, parent, grandparent, brother, sister, child, grandchild, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister, child or grandchild of a spouse of a founder of the issuer,
- (h) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (g), or
- (i) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (g).

(2) No commission or finder's fee may be paid to any director, officer, founder, or control person of an issuer or an affiliate of the issuer in connection with a trade under subsection (1).

Family, friends and business associates - Saskatchewan

3.6 (1) In Saskatchewan, section 3.5 [*Family, friends and business associates*] does not apply unless the person making the trade obtains a signed risk acknowledgement from the purchaser in the required form for a trade to

- (a) a person described in section 3.5(1) (d) or (e) [*Family, friends and business associates*],
- (b) a close personal friend or close business associate of a founder of the issuer, or
- (c) a person described in section 3.5(1)(h) or (i) [*Family, friends and business associates*] if the trade is based in whole or in part on a close personal friendship or close business association.

(2) The person making the trade must retain the required form referred to in subsection (1) for 8 years after the trade.

Founder, control person and family - Ontario

3.7 In Ontario, the dealer registration requirement does not apply in respect of a trade in a security to a person who purchases the security as principal and is

- (a) a founder of the issuer,
- (b) an affiliate of a founder of the issuer,
- (c) a spouse, parent, brother, sister, grandparent or child of an executive officer, director or founder of the issuer, or
- (d) a person that is a control person of the issuer.

Affiliates

3.8 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to an affiliate of the issuer that is purchasing as principal.

Offering memorandum

3.9 (1) In British Columbia, New Brunswick, Nova Scotia and Newfoundland and Labrador, the dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (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 subsections (5) to (11), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12).

(2) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, the dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,
- (c) 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 subsections (5) to (11), and

- (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (12),

and

- (d) if the issuer is an investment fund, the investment fund is
 - (i) a non-redeemable investment fund, or
 - (ii) a mutual fund that is a reporting issuer.

(3) In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan, this section does not apply to a trade in a security to a person described in paragraph (a) of the definition of “eligible investor” in section 1.1 [*Definitions*] if that person is created or used solely to purchase or hold securities in reliance on an exemption from the dealer registration requirement set out in subsection (2).

(4) No commission or finder’s fee may be paid to any person, other than a registered dealer, in connection with a trade to a purchaser in Northwest Territories, Nunavut and Saskatchewan under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to 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.

(7) 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 delivered under this section, the offering memorandum 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 information or documents 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.

(8) An offering memorandum delivered under this section must contain a certificate that states the following:

“This offering memorandum does not contain a misrepresentation.”

(9) A certificate under subsection (8) 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 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.

(10) A certificate under subsection (8) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

(11) If a certificate under subsection (8) 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 (9), and
- (c) the purchaser re-signs the agreement to purchase the security.

(12) A risk acknowledgement under subsection (1) or (2) must be in the required form and an issuer relying on subsection (1) or (2) must retain the signed risk acknowledgment for 8 years after the trade.

(13) The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a trade in a security under subsection (1) or (2) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
- (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

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

(15) If a qualifying issuer 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 NI 43-101 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 previously filed technical report under NI 43-101.

Minimum amount investment

3.10 (1) The dealer registration requirement does not apply in respect of a trade in a security to a person if

- (a) that person purchases as principal,
- (b) the security has an acquisition cost to the purchaser of not less than \$150 000 paid in cash at the time of the trade, and
- (c) the trade is in a security of a single issuer.

(2) This section does not apply to a trade in a security to a person if that person is created or used solely to purchase or hold securities in reliance on this exemption from the dealer registration requirement.

Division 2: Transaction Exemptions

Business combination and reorganization

3.11 The dealer registration requirement does not apply in respect of a trade in a security in connection with

- (a) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,
- (b) an amalgamation, merger, reorganization or arrangement that
 - (i) is described in an information circular made pursuant to NI 51-102 or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and
 - (ii) is approved by the security holders referred to in subparagraph (i),

or

- (c) a dissolution or winding-up of the issuer.

Asset acquisition

3.12 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a person as consideration for the acquisition, directly or indirectly, of the assets of the person, if those assets have a fair value of not less than \$150 000.

Petroleum, natural gas and mining properties

3.13 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue as consideration for the acquisition, directly or indirectly, of petroleum, natural gas or mining properties or any interest in them.

Securities for debt

3.14 The dealer registration requirement does not apply in respect of a trade by a reporting issuer in a security of its own issue to a creditor to settle a bona fide debt of that reporting issuer.

Issuer acquisition or redemption

3.15 The dealer registration requirement does not apply in respect of a trade in a security to the issuer of the security.

Take-over bid and issuer bid

3.16 The dealer registration requirement does not apply in respect of a trade in a security in connection with a take-over bid in a jurisdiction of Canada or an issuer bid in a jurisdiction of Canada.

Offer to acquire to security holder outside local jurisdiction

3.17 The dealer registration requirement does not apply in respect of a trade by a security holder outside the local jurisdiction to a person in the local jurisdiction if the trade would have been in connection with a take-over bid or issuer bid made by that person were it not for the fact that the security holder is outside of the local jurisdiction.

Division 3: Investment Fund Exemptions

Investment fund reinvestment

3.18 (1) Subject to subsections (3), (4), (5) and (6), the dealer registration requirement does not apply in respect of the following trades by an investment fund to a security holder of the investment fund if the trades are permitted by a plan of the investment fund:

- (a) a trade in a security of the investment fund's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the security that is of the same class or series as the securities to which the dividend or distribution out of earnings, surplus, capital or other sources is attributable, and

- (b) subject to subsection (2), a trade in a security of the investment fund's own issue if the security holder makes an optional cash payment to purchase the security of the investment fund that is of the same class or series of securities described in paragraph (a) that trade on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in subsection (1) (b) must not exceed, in any financial year of the investment fund during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) No sales charge is payable on a trade described in subsection (1).

(5) An investment fund that is a reporting issuer and in continuous distribution must set out in its current prospectus:

- (a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
- (b) any right that the security holder has to make an election to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund and instructions on how the right can be exercised.

(6) An investment fund that is a reporting issuer and is not in continuous distribution must provide the information required by subsection (5) in its prospectus, annual information form or a material change report.

Additional investment in investment funds

3.19 The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a security holder of the issuer if

- (a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than \$150 000 paid in cash at the time of the trade,
- (b) the subsequent trade is for a security of the same class or series as the initial trade, and
- (c) the security holder, as at the date of the subsequent trade, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than \$150 000, or
 - (ii) a net asset value of not less than \$150 000.

Private investment club

3.20 The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

- (a) has no more than 50 beneficial security holders,
- (b) does not seek and has never sought to borrow money from the public,
- (c) does not and has never distributed its securities to the public,
- (d) does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees, and
- (e) for the purpose of financing the operations of the investment fund, requires security holders to make contributions in proportion to the value of the securities held by them.

Private investment fund - loan and trust pools

3.21 (1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if the investment fund

- (a) is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada,
- (b) has no promoter or manager other than the trust company or trust corporation referred to in paragraph (a), and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act (Canada)* or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of subsection (1)(a).

Division 4: Employee, Executive Officer, Director and Consultant Exemptions

Definitions

3.22 The definitions in Division 4 of Part 2 of this Instrument have the same meaning in this Division.

Interpretation

3.23 (1) In this Division, a person (first person) is considered to control another person (second person) if the first person, directly or indirectly, has the power to direct the management and policies of the second person by virtue of

- (a) ownership of or direction over voting securities in the second person,

- (b) a written agreement or indenture,
- (c) being the general partner or controlling the general partner of the second person, or
- (d) being a trustee of the second person.

(2) In this Division, participation in a trade is considered voluntary if

- (a) in the case of an employee or the employee's permitted assign, the employee or the employee's permitted assign is not induced to participate in the trade by expectation of employment or continued employment of the employee with the issuer or a related entity of the issuer,
- (b) in the case of an executive officer or the executive officer's permitted assign, the executive officer or the executive officer's permitted assign is not induced to participate in the trade by expectation of appointment, employment, continued appointment or continued employment of the executive officer with the issuer or a related entity of the issuer,
- (c) in the case of a consultant or the consultant's permitted assign, the consultant or the consultant's permitted assign is not induced to participate in the trade by expectation of engagement of the consultant to provide services or continued engagement of the consultant to provide services to the issuer or a related entity of the issuer, and
- (d) in the case of an employee of a consultant, the individual is not induced by the issuer, a related entity of the issuer, or the consultant to participate in the trade by expectation of employment or continued employment with the consultant.

Employee, executive officer, director and consultant

3.24 (1) Subject to section 3.25 [*Unlisted reporting issuer exception*], the dealer registration requirement does not apply in respect of

- (a) a trade by an issuer in a security of its own issue, or
- (b) a trade by a control person of an issuer in a security of the issuer or in an option to acquire a security of the issuer,

with

- (c) an employee, executive officer, director or consultant of the issuer,
- (d) an employee, executive officer, director or consultant of a related entity of the issuer, or
- (e) a permitted assign of a person referred to in paragraphs (c) or (d)

if participation in the trade is voluntary.

(2) For the purposes of subsection (1), a person referred to in paragraph (c), (d) or (e) includes a trustee, custodian or administrator acting as agent for that person for the purpose of facilitating a trade.

(3) The dealer registration requirement does not apply in respect of an act by a related entity of an issuer in furtherance of a trade referred to in subsection (1).

Unlisted reporting issuer exception

3.25 (1) For the purpose of this section, “**unlisted reporting issuer**” means a reporting issuer in a jurisdiction of Canada that is not a listed issuer.

(2) Subject to subsection (3), section 3.24 [*Employee, executive officer, director and consultant*] does not apply to a trade to an employee or consultant of the unlisted reporting issuer who is an investor relations person of the issuer, an associated consultant of the issuer, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the trade,

- (a) the number of securities, calculated on a fully diluted basis, reserved for issuance under options granted to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person, exceeds 5% of the outstanding securities of the issuer, or
- (b) the number of securities, calculated on a fully diluted basis, issued within 12 months to
 - (i) related persons, exceeds 10% of the outstanding securities of the issuer, or
 - (ii) a related person and the associates of the related person, exceeds 5% of the outstanding securities of the issuer.

(3) Subsection (2) does not apply to a trade if the unlisted reporting issuer

- (a) obtains security holder approval, and
- (b) before obtaining security holder approval, provides security holders with the following information in sufficient detail to permit security holders to form a reasoned judgment concerning the matter:
 - (i) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under a plan;
 - (ii) the maximum number of securities that may be issued, or in the case of options, the number of securities that may be issued on exercise of the options, as compensation or under a plan;
 - (iii) particulars relating to any financial assistance or support agreement to be provided to participants by the issuer or any related entity of the issuer to facilitate the purchase of securities as compensation or under a plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
 - (iv) in the case of options, the maximum term and the basis for the determination of the exercise price;

- (v) particulars relating to the options or other entitlements to be granted as compensation or under a plan, including transferability; and
- (vi) the number of votes attaching to securities that, to the issuer's knowledge at the time the information is provided, will not be included for the purpose of determining whether security holder approval has been obtained.

Trades among current or former employees, executive officers, directors, or consultants of non-reporting issuer

3.26 (1) Subject to subsection (2), the dealer registration requirement does not apply in respect of a trade in a security of an issuer by

- (a) a current or former employee, executive officer, director, or consultant of the issuer or related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

to

- (c) an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or
- (d) a permitted assign of the employee, executive officer, director, or consultant.

(2) The exemption in subsection (1) is only available if

- (a) participation in the trade is voluntary,
- (b) the issuer of the security is not a reporting issuer in any jurisdiction of Canada, and
- (c) the price of the security being traded is established by a generally applicable formula contained in a written agreement among some or all of the security holders of the issuer to which the transferee is or will become a party.

Permitted transferees

3.27 (1) The dealer registration requirement does not apply in respect of a trade in a security of an issuer acquired by a person described in section 3.24(1) [*Employee, executive officer, director and consultant*] under a plan of the issuer if the trade

- (a) is between
 - (i) a person who is an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, and
 - (ii) the permitted assign of that person,

or

(b) is between permitted assigns of that person.

(2) The dealer registration requirement does not apply in respect of a trade in a security of an issuer by a trustee, custodian or administrator acting on behalf, or for the benefit, of employees, executive officers, directors or consultants of the issuer or a related entity of the issuer, to

- (a) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (b) a permitted assign of a person referred to in paragraph (a),

if the security was acquired from

- (c) an employee, executive officer, director or consultant of the issuer or a related entity of the issuer, or
- (d) the permitted assign of a person referred to in paragraph (c).

(3) For the purposes of the exemptions in subsection (1) and paragraphs (2) (c) and (d), all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

Resale - non-reporting issuer

3.28 The dealer registration requirement does not apply in respect of the resale of a security that was acquired under this Division or by a person described in section 3.24(1) [*Employee, executive officer, director, and consultant*] if the conditions in section 2.14 of NI 45-102 are satisfied.

Division 5: Miscellaneous Exemptions

Isolated trade

3.29 The dealer registration requirement does not apply in respect of a trade in a security by a person if the trade is an isolated trade and is not made

- (a) by the issuer of the security,
- (b) in the course of continued and successive transactions of a like nature, and
- (c) by a person whose usual business is trading in securities.

Isolated trade by issuer

3.30 The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue if the trade is an isolated trade and is not made

- (a) in the course of continued and successive transactions of a like nature, and
- (b) by a person whose usual business is trading in securities.

Dividends and distributions

3.31 (1) The dealer registration requirement does not apply in respect of a trade by an issuer in a security of its own issue to a security holder of the issuer as a dividend or distribution out of earnings, surplus, capital or other sources.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer to a security holder of the issuer in a security of a reporting issuer as an in specie dividend or distribution out of earnings or surplus.

Trade to lender by control person for collateral

3.32 The dealer registration requirement does not apply in respect of a trade in a security of an issuer to a lender, pledgee, mortgagee or other encumbrancer from the holdings of a control person of the issuer for the purpose of giving collateral for a bona fide debt of the control person.

Acting as underwriter

3.33 The dealer registration requirement does not apply in respect of a trade in a security between a person and a purchaser acting as an underwriter or between or among persons acting as underwriters.

Specified debt

3.34 (1) In this section, “**permitted supranational agency**” means

- (a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;
- (b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;
- (c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;
- (d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act (Canada)*, that Canada is a founding member of;
- (e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;
- (f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act (Canada)*; and

- (g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The dealer registration requirement does not apply in respect of a trade in a debt security

- (a) of or guaranteed by the Government of Canada or the government of a jurisdiction of Canada,
- (b) of or guaranteed by a government of a foreign jurisdiction if the debt security has an approved credit rating from an approved credit rating organization,
- (c) of or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
- (d) of or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities,
- (e) of the Comité de gestion de la taxe scolaire de l'île de Montréal, or
- (f) of or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

Short-term debt

3.35 The dealer registration requirement does not apply in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper traded

- (a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in this section, and
- (b) has an approved credit rating from an approved credit rating organization.

Mortgages

3.36 (1) In this section, “**syndicated mortgage**” means a mortgage in which 2 or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by a mortgage.

(2) Subject to subsection (3), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction by a person who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, Québec and Saskatchewan, subsection (2) does not apply to a syndicated mortgage.

Personal property security legislation

3.37 The dealer registration requirement does not apply in respect of a trade in a security evidencing indebtedness secured by or under a security agreement provided for under personal property security legislation of a jurisdiction providing for the granting of security in personal property if the security is not offered for sale to an individual.

Not for profit issuer

3.38 The dealer registration requirement does not apply in respect of a trade by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if

- (a) no part of the net earnings benefit any security holder of the issuer, and
- (b) no commission or other remuneration is paid in connection with the sale of the security.

Variable insurance contract

3.39 (1) In this section,

- (a) “**contract**” “**group insurance**”, “**insurance company**”, “**life insurance**” and “**policy**” have the respective meanings assigned to them in the legislation for a jurisdiction referenced in Appendix A.
- (b) “**variable insurance contract**” means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract is

- (a) a contract of group insurance,
- (b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,
- (c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or
- (d) a variable life annuity.

RRSP/RRIF

3.40 The dealer registration requirement does not apply in respect of a trade in a security between

- (a) an individual or an associate of the individual, and
- (b) an RRSP or RRIF

- (i) established for or by the individual, or
- (ii) under which the individual is a beneficiary.

Schedule III banks and cooperative associations - evidence of deposit

3.41 The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

Conversion, exchange, or exercise

3.42 (1) The dealer registration requirement does not apply in respect of a trade by an issuer if

- (a) the issuer trades a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or
- (b) subject to subsection (2), the issuer trades a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

(2) For a trade under subsection (1)(b),

- (a) the issuer must give the regulator or, in Québec, the securities regulatory authority, prior written notice stating the date, amount, nature and conditions of the trade, and
- (b) the regulator or, in Québec, the securities regulatory authority, must not object in writing to the trade within 10 days of receipt of the notice referred to in paragraph (a) or, if the regulator or securities regulatory authority objects to the trade, the issuer must deliver to the regulator or securities regulatory authority information relating to the securities that is satisfactory to and accepted by the regulator or securities regulatory authority.

Self-directed registered educational savings plans

3.43 The dealer registration requirement does not apply to a trade in a self-directed RESP to a subscriber if

- (a) the trade is made by
 - (i) a mutual fund dealer or a person who is registered as a salesperson, partner or officer of a mutual fund dealer and who is acting on behalf of the mutual fund dealer, or
 - (ii) a Canadian financial institution or, in Ontario, a financial intermediary or a person who is an officer, salesperson or employee of a Canadian financial institution or, in Ontario, a financial intermediary and who is acting on behalf of the Canadian financial institution or, in Ontario, the financial intermediary, and
- (b) the self-directed RESP restricts its investments in securities to securities in which the person who traded the self-directed RESP is permitted to trade.

Registered dealer

3.44 The dealer registration requirement does not apply in respect of a trade by a person acting solely through an agent who is a registered dealer.

Exchange contract

3.45 (1) In Alberta, British Columbia, Québec and Saskatchewan, the dealer registration requirement does not apply in respect of the following trades in exchange contracts:

- (a) a trade by a person acting solely through a registered dealer;
- (b) subject to subsection (2) and (3), a trade resulting from an unsolicited order placed with an individual who is not a resident of and does not carry on business in the jurisdiction;
- (c) a trade that may occasionally be transacted by employees of a registered dealer if the employees
 - (i) do not usually trade in exchange contracts, and
 - (ii) have been designated by the regulator or, in Québec, the securities regulatory authority, as “non-trading” employees, either individually or as a class.

(2) An individual referred to in subsection (1)(b) must not

- (a) advertise or engage in promotional activity that is directed to persons in the jurisdiction during the 6 months preceding the trade, and
- (b) pay any commission or finder’s fee to any person in the jurisdiction in connection with the trade.

(3) Subsection (1)(b) does not apply in Saskatchewan.

Estates, bankruptcies, and liquidations

3.46 The dealer registration requirement does not apply in respect of a trade by a person acting under the authority of

- (a) a direction, order or judgment of a court,
- (b) a will, or
- (c) any law of a jurisdiction

in the course of enforcing legal obligations or administering the affairs of another person.

Employees of registered dealer

3.47 The dealer registration requirement does not apply in respect of a trade by an employee of a registered dealer in a security if the employee does not usually trade in securities and has been designated

by the regulator or, in Québec, the securities regulatory authority, as a “non-trading” employee, either individually or as a class.

Small security holder selling and purchase arrangements

3.48 (1) For the purposes of this section

“exchange” means

- (a) the Toronto Stock Exchange,
- (b) the TSX Venture Exchange Inc., or
- (c) an exchange that
 - (i) has a policy that is substantially similar to the policy of the Toronto Stock Exchange, and
 - (ii) is designated by the securities regulatory authority for the purpose of this section;

“policy” means

- (a) in the case of the Toronto Stock Exchange, Policy Statement on Small Shareholder Selling and Purchase Arrangements as amended from time to time,
- (b) in the case of the TSX Venture Exchange Inc., Policy 5.7 Small Shareholder Selling and Purchase Arrangements as amended from time to time, or
- (c) in the case of an exchange referred to in paragraph (c) of the definition of “exchange”, the rule, policy or other similar instrument of the exchange on small shareholder selling and purchase arrangements and every successor to that rule, policy or other similar instrument published by that exchange as amended from time to time.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer or its agent, in securities of the issuer that are listed on an exchange if

- (a) the trade is an act in furtherance of participation by the holders of the securities in an arrangement that is in accordance with the policy of that exchange,
- (b) the issuer and its agent do not provide advice to a security holder about the security holder’s participation in the arrangement referred to in paragraph (a), other than a description of the arrangement’s operation, procedures for participation in the arrangement, or both,
- (c) the trade is made in accordance with the policy of that exchange, without resort to an exemption from, or variation of, the significant subject matter of the policy, and
- (d) at the time of the trade after giving effect to a purchase under the arrangement, the market value of the maximum number of securities that a security holder is permitted to hold in order to be eligible to participate in the arrangement is not more than \$25 000.

(3) For the purposes of subsection (2)(c), an exemption from, or variation of, the maximum number of securities that a security holder is permitted to hold under a policy in order to be eligible to participate in the arrangement provided for in the policy is not an exemption from, or variation of, the significant subject matter of the policy.

Adviser

3.49 The adviser registration requirement does not apply to

- (a) the following persons if performance of services as an adviser are incidental to their principal business or occupation:
 - (i) a Canadian financial institution and a Schedule III bank;
 - (ii) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
 - (iii) a société d'entraide économique or the Fédération des sociétés d'entraide économique du Québec governed by the Act respecting the sociétés d'entraide économique (Québec);
 - (iv) a lawyer, accountant, engineer or teacher, or, in Québec, a notary, if that individual
 - A) does not recommend securities of an issuer in which that individual has an interest, and
 - B) does not receive remuneration for the performance of services as an adviser separate from remuneration received by that individual for practicing in their professions;
 - (v) a registered dealer or any partner, officer or employee of a registered dealer;

or

- (b) a publisher or a writer for a newspaper, news magazine or business or financial journal or periodical, however delivered, that is of general and regular paid circulation, and only available to subscribers for value, or purchasers of it, if the publisher or writer
 - (i) gives advice only through the written publication,
 - (ii) has no interest either directly or indirectly in any of the securities on which that individual gives advice, and
 - (iii) receives no commission or other consideration for giving the advice other than for acting in that person's capacity as a publisher or writer.

Investment dealer acting as portfolio manager

3.50 (1) Subject to subsection (2), the adviser registration requirement does not apply to a registered investment dealer who manages the investment portfolios of its clients through discretionary authority

granted by the clients if the investment dealer follows the following rules and policies made by the Investment Dealers Association of Canada for portfolio managers, as amended from time to time:

- (a) Regulation 1300 *Supervision of Accounts*;
- (b) Part VII Discretionary and Managed Account Supervision of Policy 2 Minimum Standards for Retail Account Supervision;
- (c) Policy 4 Minimum Standards for Institutional Account Opening, Operation and Supervision; and
- (d) Part I Proficiency Requirements of Policy 6 Proficiency and Education.

(2) Any partner, director, officer or employee of a registered investment dealer referred to in subsection (1) who manages an investment portfolio for the registered investment dealer must be registered under the securities legislation of the jurisdiction to trade in securities.

PART 4: CONTROL BLOCK DISTRIBUTIONS

Control block distributions

4.1 (1) In this Part

“control block distribution” means a trade to which the provisions of securities legislation listed in Appendix B apply;

“NI 62-103” means National Instrument 62-103 *The Early Warning System and Related Take-over Bid and Insider Reporting Issues*.

(2) Terms defined or interpreted in NI 62-103 and used in this Part have the same meaning as is assigned to them in that Instrument.

(3) The prospectus requirement does not apply to a control block distribution by an eligible institutional investor of a reporting issuer’s securities if

- (a) the eligible institutional investor
 - (i) has filed the reports required under the early warning requirements or files the reports required under Part 4 of NI 62-103,
 - (ii) does not have knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed,
 - (iii) does not receive in the ordinary course of its business and investment activities knowledge of any material fact or material change with respect to the reporting issuer that has not been generally disclosed, and
 - (iv) either alone or together with any joint actors, does not possess effective control of the reporting issuer,

- (b) there are no directors or officers of the reporting issuer who were, or could reasonably be seen to have been, selected, nominated or designated by the eligible institutional investor or any joint actor,
- (c) the control block distribution is made in the ordinary course of business or investment activity of the eligible institutional investor,
- (d) securities legislation would not require the securities to be held for a specified period of time if the trade was not a control block distribution,
- (e) no unusual effort is made to prepare the market or to create a demand for the securities, and
- (f) no extraordinary commission or consideration is paid in respect of the control block distribution.

(4) An eligible institutional investor that makes a distribution in reliance on subsection (3) must file a letter within 10 days after the distribution that describes the date and size of the distribution, the market on which it was made and the price at which the securities being distributed were sold.

Trades by a control person after a take-over bid

4.2 (1) Subject to subsection (2), the prospectus requirement does not apply to a trade in a security from the holdings of a control person acquired under a take-over bid for which a take-over bid circular was issued and filed if

- (a) the issuer whose securities are being acquired under the take-over bid has been a reporting issuer for at least 4 months at the date of the take-over bid,
- (b) the intention to make the trade is disclosed in the take-over bid circular issued in respect of the take-over bid,
- (c) the trade is made within the period beginning on the date of the expiry of the bid and ending 20 days after that date,
- (d) a notice of intention to distribute securities in Form 45-102F1 *Notice of Intention to Distribute Securities under Section 2.8 of NI 45-102 Resale of Securities* under NI 45-102 is filed before the trade,
- (e) an insider report of the trade in Form 55-102F2 *Insider Report* or Form 55-102F6 *Insider Report*, as applicable, under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* is filed within 3 days after the completion of the trade,
- (f) no unusual effort is made to prepare the market or to create a demand for the security, and
- (g) no extraordinary commission or consideration is paid in respect of the trade.

(2) A control person referred to in subsection (1) is not required to comply with subsection (1) (b) if

- (a) another person makes a competing take-over bid for securities of the issuer for which the take-over bid circular is issued, and
- (b) the control person sells those securities to that other person for a consideration that is not greater than the consideration offered by that other person under its take-over bid.

PART 5: OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT

Application and interpretation

5.1 (1) This Part does not apply in Ontario.

(2) In this Part

“exchange policy” means Exchange Policy 4.6 - *Public Offering by Short Form Offering Document* and Exchange Form 4H - *Short Form Offering Document*, of the TSX Venture Exchange as amended from time to time;

“gross proceeds” means the gross proceeds that are required to be paid to the issuer for listed securities distributed under a TSX Venture exchange offering document;

“listed security” means a security of a class listed on the TSX Venture Exchange;

“NI 51-101” means National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*;

“prior exchange offering” means a distribution of securities by an issuer under a TSX Venture exchange offering document that was completed during the 12-month period immediately preceding the date of the TSX Venture exchange offering document;

“subsequently triggered report” means a material change report that must be filed no later than 10 days after a material change under securities legislation as a result of a material change that occurs after the date the TSX Venture exchange offering document is certified but before a purchaser enters into an agreement of purchase and sale;

“TSX Venture Exchange” means the TSX Venture Exchange Inc.;

“TSX Venture exchange offering document” means an offering document that complies with the exchange policy;

“warrant” means a warrant of an issuer distributed under a TSX Venture exchange offering document that entitles the holder to acquire a listed security or a portion of a listed security of the same issuer.

TSX Venture Exchange offering

Refer to Appendix D of NI 45-102 *Resale of Securities*. These securities are free trading unless the security is acquired by

- (i) a purchaser that, at the time the security was acquired, was an insider or promoter of the issuer of the security, an underwriter of the issuer, or a member of the underwriter's professional group, or**
- (ii) any other purchaser in excess of \$40 000 for the portion of the securities in excess of \$40 000.**

The first trade by purchasers under (i) and (ii) are subject to a restricted period.

5.2 The prospectus requirement does not apply to a distribution by an issuer in a security of its own issue if

- (a) the issuer has filed an AIF in a jurisdiction of Canada,
- (b) the issuer is a SEDAR filer,
- (c) the issuer is a reporting issuer in a jurisdiction of Canada and has filed with the securities regulatory authority of that jurisdiction
 - (i) a TSX Venture exchange offering document,
 - (ii) all documents required to be filed under the securities legislation of that jurisdiction, and
 - (iii) any subsequently triggered report,
- (d) the distribution is of listed securities or units consisting of listed securities and warrants,
- (e) the issuer has filed with the TSX Venture Exchange a TSX Venture exchange offering document in respect of the distribution, that
 - (i) incorporates by reference the following documents of the issuer filed with the securities regulatory authority in any jurisdiction of Canada:
 - A) the AIF,
 - B) the most recent annual financial statements and the MD&A relating to those financial statements,
 - C) all unaudited interim financial statements and the MD&A relating to those financial statements, filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document,

- D) all material change reports filed after the date of the AIF but before or on the date of the TSX Venture exchange offering document, and
- E) all documents required under NI 43-101 and NI 51-101 filed on or after the date of the AIF but before or on the date of the TSX Venture exchange offering document,
 - (ii) deems any subsequently triggered report required to be delivered to a purchaser under this Part to be incorporated by reference,
 - (iii) grants to purchasers contractual rights of action in the event of a misrepresentation, as required by the exchange policy,
 - (iv) grants to purchasers contractual rights of withdrawal, as required by the exchange policy, and
 - (v) contains all the certificates required by the exchange policy,
- (f) the distribution is conducted in accordance with the exchange policy,
- (g) the issuer or the underwriter delivers the TSX Venture exchange offering document and any subsequently triggered report to each purchaser
 - (i) before the issuer or the underwriter enters into the written confirmation of purchase and sale resulting from an order or subscription for securities being distributed under the TSX Venture exchange offering document, or
 - (ii) not later than midnight on the 2nd business day after the agreement of purchase and sale is entered into,
- (h) the listed securities issued under the TSX Venture exchange offering document, when added to the listed securities of the same class issued under prior exchange offerings do not exceed,
 - (i) the number of securities of the same class outstanding immediately before the issuer distributes securities of the same class under the TSX Venture exchange offering document, or
 - (ii) the number of securities of the same class outstanding immediately before a prior exchange offering,
- (i) the gross proceeds under the TSX Venture exchange offering document, when added to the gross proceeds from prior exchange offerings do not exceed \$2 million,
- (j) no purchaser acquires more than 20% of the securities distributed under the TSX Venture exchange offering document, and
- (k) no more than 50% of the securities distributed under the TSX Venture exchange offering document are subject to section 2.5 of NI 45-102.

Underwriter obligations

5.3 An underwriter that qualifies as a “sponsor” under TSX Venture Exchange Policy 2.2 - *Sponsorship and Sponsorship Requirements* as amended from time to time must sign the TSX Venture exchange offering document and comply with TSX Venture Exchange Appendix 4A - *Due Diligence Report* in connection with the distribution.

PART 6: REPORTING REQUIREMENTS

Report of exempt distribution

6.1 (1) Subject to subsection (2) and section 6.2 [*When report not required*], issuers that distribute their own securities and underwriters that distribute securities they acquired under section 2.33 must file a report if they make the distribution under one or more of the following exemptions:

- (a) section 2.3 [*Accredited investor*];
- (b) section 2.5 [*Family, friends and business associates*];
- (c) subsection 2.9 (1) or (2) [*Offering memorandum for Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Québec, and Saskatchewan*];
- (d) section 2.10 [*Minimum amount investment*];
- (e) section 2.12 [*Asset acquisition*];
- (f) section 2.13 [*Petroleum, natural gas and mining properties*];
- (g) section 2.14 [*Securities for debt*];
- (h) section 2.19 [*Additional investment in investment funds*];
- (i) section 2.30 [*Isolated distribution by issuer*];
- (j) section 5.2 [*TSX Venture Exchange offering*].

(2) The issuer or underwriter must file the report in the jurisdiction where the distribution takes place no later than 10 days after the distribution.

When report not required

6.2 (1) An issuer is not required to file a report under section 6.1(a) [*Report of exempt distribution*] for a distribution of a debt security of its own issue or, concurrently with the distribution of the debt security, an equity security of its own issue, to a Canadian financial institution or a Schedule III bank.

(2) An investment fund is not required to file a report under section 6.1 [*Report of exempt distribution*] for a distribution under section 2.3 [*Accredited investor*], section 2.10 [*Minimum amount*] or section 2.19 [*Additional investment in investment funds*] if the investment fund files the report not later than 30 days after the financial year-end of the investment fund.

Required form of report of exempt distribution

6.3 (1) The required form of report under section 6.1 [*Report of exempt distribution*] is Form 45-106F1.

(2) Except in Manitoba, an issuer that makes a distribution under an exemption from a prospectus requirement not provided for in this Instrument is exempt from the requirements in securities legislation to file a report of exempt trade or exempt distribution in the required form if the issuer files a report of exempt distribution in accordance with Form 45-106F1.

Required form of offering memorandum

6.4 (1) The required form of offering memorandum under section 2.9 or section 3.9 [*Offering memorandum*] is Form 45-106F2.

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.

Required form of risk acknowledgement

6.5 (1) The required form of risk acknowledgement under subsection 2.9(12) or subsection 3.9(12) [*Offering memorandum*] is Form 45-106F4.

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 or section 3.6 [*Family, friends and business associates*] is Form 45-106F5.

Reporting requirements in British Columbia

6.6 (1) In British Columbia, a person that relies on a registration exemption in this Instrument must:

- (a) file an initial notice in the required form;
- (b) file an annual notice in the required form; and
- (c) obtain a signed risk acknowledgement from the purchaser of the security in the required form.

(2) The person relying on the registration exemption must retain the signed risk acknowledgment for 8 years after the trade.

(3) In British Columbia, the required forms under subsection 6.6(1) are the forms specified by the regulator under section 182 of the *Securities Act* (British Columbia).

PART 7: EXEMPTION

Exemption

7.1 (1) Subject to subsection (2), the regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) In Ontario, only the regulator may grant an exemption and only from Part 6, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 8: TRANSITIONAL, COMING INTO FORCE

Additional investment - investment funds

8.1 (1) The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a purchaser that initially acquired the security as principal before this Instrument came into force if

- (a) the security was initially acquired under any of the following provisions:
 - (i) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
 - (ii) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
 - (iii) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation MR 491/88R*;
 - (iv) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;
 - (v) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);
 - (vi) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
 - (vii) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 1;
 - (viii) in Nunavut, section 3(c) and (z) of Blanket Order No. 1;
 - (ix) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;
 - (x) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -*Exempt Distributions - Exemption for Purchase of Mutual Fund Securities*;
 - (xi) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);

- (xii) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).
- (b) the trade is for a security of the same class or series as the initial trade, and
- (c) the security holder, as at the date of the trade, holds securities of the investment fund that have
 - (i) an acquisition cost of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted, or
 - (ii) a net asset value of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted.

(2) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (1).

Definition of “accredited investor” - investment fund

8.2 An investment fund that distributed its securities to persons pursuant to any of the following provisions is an investment fund under paragraph (n)(ii) of the definition of “accredited investor”:

- (a) in Alberta, sections 86(e) and 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules (General)*;
- (b) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia),
- (c) in Manitoba, sections 19(3) and 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation MR 491/88R*;
- (d) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;
- (e) in Newfoundland and Labrador, sections 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);
- (f) in Nova Scotia, sections 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);
- (g) in Northwest Territories, section 3(c) and (z) of Blanket Order No. 2;
- (h) in Nunavut, section 3(c) and (z) of Blanket Order No. 3;
- (i) in Ontario, sections 35(1)5 and 72(1)(d) of the *Securities Act* (Ontario) and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004 ;

- (j) in Prince Edward Island, section 2(3)(d) of the *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 -*Exempt Distributions - Exemption for Purchase of Mutual Fund Securities*;
- (k) in Québec, section 51 and 155.1(2) of the *Securities Act* (Québec);
- (l) in Saskatchewan, sections 39(1)(e) and 81(1)(d) of the *The Securities Act, 1988* (Saskatchewan).

Transition - MI 45-103/MI 45-105/ OSC Rule 45-501

8.3 (1) In this section,

“MI 45-103” means Multilateral Instrument 45-103 *Capital Raising Exemptions* that came into force on June 6, 2003;

“MI 45-105” means Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants* that came into force on August 15, 2003;

“2004 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004.

(2) The dealer registration requirement or the prospectus requirement does not apply in respect of a trade in a security if the trade complies with and is completed in accordance with the requirements of MI 45-103, MI 45-105, or 2004 OSC Rule 45-501 by November 30, 2005.

Transition - Closely-held issuer

8.4 (1) In this section,

“2001 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on November 30, 2001;

“2004 OSC Rule 45-501” means the Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

“closely-held issuer” has the same meaning as in 2004 OSC Rule 45-501;

(2) The dealer registration requirement does not apply in respect of a trade in a security that was previously distributed by a closely-held issuer under section 2.1 of 2001 OSC Rule 45-501 or under section 2.1 of 2004 OSC Rule 45-501 to a person who purchases the security as principal and is

- (a) a director, officer, employee, founder or control person of the issuer,
- (b) a spouse, parent, grandparent, brother, sister or child of a director, executive officer, founder or control person of the issuer,
- (c) a parent, grandparent, brother, sister or child of the spouse of a director, executive officer, founder or control person of the issuer,

- (d) a close personal friend of a director, executive officer, founder or control person of the issuer,
- (e) a close business associate of a director, executive officer, founder or control person of the issuer,
- (f) a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse,
- (g) a security holder of the issuer,
- (h) an accredited investor,
- (i) a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h),
- (j) a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons described in paragraphs (a) to (h), or
- (k) a person that is not the public.

(3) The prospectus requirement does not apply to a distribution of a security in the circumstances referred to in subsection (2).

Transition – reinvestment plan

8.4.1 Despite subsection 2.2(5) or 3.2(5), if an issuer's reinvestment plan was established before ●, and provides for the distribution of a security that is of a different class or series than the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator of the plan must provide to each person who is already a participant the description of the material attributes and characteristics of the securities traded under the plan or notice of a source from which the participant can obtain the information not later than 140 days after the next financial year end of the issuer ending on or after ●.

Repeal of former instrument

8.5 National Instrument 45-106 *Prospectus and Registration Exemptions* which came into force on September 14, 2005 is repealed on ●

Effective date

8.6 This Instrument comes into force on ●

Appendix A
to
National Instrument 45-106 *Prospectus and Registration Exemptions*

Variable insurance contract exemption
(section 2.39 and 3.39)

JURISDICTION

LEGISLATION REFERENCE

ALBERTA

“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the *Insurance Act* (Alberta) and the regulations under that Act.

“insurance company” means an insurer as defined in the *Insurance Act* (Alberta) that is licensed under that Act.

BRITISH COLUMBIA

“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the *Insurance Act* (British Columbia) and the regulations under that Act.

“insurance company” means an insurance company, or an extraprovincial insurance corporation, authorized to carry on insurance business under the *Financial Institutions Act* (British Columbia).

MANITOBA

“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the *Insurance Act* (Manitoba) and the regulations under that Act.

“insurance company” means an insurer as defined in the *Insurance Act* (Manitoba) that is licensed under that Act.

NEW BRUNSWICK

“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the *Insurance Act* (New Brunswick) and the regulations under that Act.

“insurance company” means an insurer as defined in the *Insurance Act* (New Brunswick) that is licensed under that Act.

NOVA SCOTIA

“contract”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the *Insurance Act* (Nova Scotia) and the regulations under that Act.

“insurance company” has the same meaning as in section

3(1)(a) of the *General Securities Rules* (Nova Scotia).

ONTARIO

“contract”, “group insurance”, “life insurance” and “policy” have the respective meanings assigned to them in section 1 and 171 of the *Insurance Act* (Ontario).

“insurance company” has the same meaning as in section 1(2) of the *General Regulation* (Ont. Reg. 1015).

QUÉBEC

“contract of insurance”, “group insurance”, “life insurance”, and “policy” have the respective meanings assigned to them under the Civil Code of Québec.

“insurance company” means an insurer holding a license under the Act respecting insurance (R.S.Q., c. A-32).

PRINCE EDWARD ISLAND

“contract”, “group insurance”, “insurer”, “life insurance and “policy” have the respective meanings assigned to them in sections 1 and 174 of the *Insurance Act* (Prince Edward Island).

“insurance company” means an insurance company licensed under the *Insurance Act* (R.S.P.E.I. 1988, Cap. I-4),

SASKATCHEWAN

“contract”, “life insurance” and “policy” have the respective meanings assigned to them in section 2 of *The Saskatchewan Insurance Act* (Saskatchewan).

“group insurance” has the respective meaning assigned to it in section 133 of *The Saskatchewan Insurance Act* (Saskatchewan).

“insurance company” means an issuer licensed under *The Saskatchewan Insurance Act* (Saskatchewan).

Appendix B
to
National Instrument 45-106 *Prospectus and Registration Exemptions*
Control Block Distributions
(PART 4)

JURISDICTION	SECURITIES LEGISLATION REFERENCE
ALBERTA	Section 1(p)(iii) of the <i>Securities Act</i> (Alberta)
BRITISH COLUMBIA	Paragraph (c) of the definition of “distribution” contained in section 1 of the <i>Securities Act</i> (British Columbia)
MANITOBA	Section 1(b) of the definition of “primary distribution to the public” contained in subsection 1(1) of the <i>Securities Act</i> (Manitoba)
NEW BRUNSWICK	Paragraph (c) of the definition of “distribution” contained in section 1(1) of the <i>Securities Act</i> (New Brunswick)
NEWFOUNDLAND AND LABRADOR	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Newfoundland and Labrador)
NOVA SCOTIA	Section 2(1)(1)(iii) of the <i>Securities Act</i> (Nova Scotia)
ONTARIO	Paragraph (c) of the definition of “distribution” contained in subsection 1(1) of the <i>Securities Act</i> (Ontario)
PRINCE EDWARD ISLAND	Section 1(f)(iii) of the <i>Securities Act</i> (Prince Edward Island)
QUÉBEC	Paragraph 9 of the definition of “distribution” contained section 5 of the <i>Securities Act</i> (Québec)
SASKATCHEWAN	Section 2(1)(r)(iii) of <i>The Securities Act, 1988</i> (Saskatchewan)