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The New Brunswick Securities Commission, being of the opinion that

- a) it is in the public interest to make the proposed rule without delay because there is an urgent need for the proposed rule, and
- b) without the proposed rule being made, there is a substantial risk of material harm to investors or to the integrity of the capital markets

resolves that Prospectus and Exemptions Rule 45-501 is adopted as an emergency rule.

DATED at Saint John, New Brunswick this 21st day of July, 2004.

Donne W. Smith,
Chair

CONTENTS

PART 1: DEFINITIONS AND INTERPRETATION

Section	Page
1.1 Definitions	1
1.2 Affiliate	8
1.3 Control.....	9
1.4 Dealer and Adviser registration	9
1.5 Exchange contracts.....	9

PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS

Division 1: Capital Raising Exemptions

2.1	Rights offering	10
2.2	Reinvestment plan	10
2.3	Accredited investor.....	11
2.4	Private Issuer	11
2.5	Family, friends and business associates.....	12
2.6	Affiliates.....	13
2.7	Offering memorandum	13
2.8	Minimum amount investment	15

Division 2: Transaction Exemptions

2.9	Business combination and reorganization	16
2.10	Asset acquisition	16
2.11	Mining claims and oil and gas rights	17
2.12	Securities for debt	17
2.13	Issuer acquisition or redemption	17
2.14	Take-over bid and issuer bid.....	17
2.15	Offer to acquire to security holder in foreign jurisdiction	17

Division 3: Investment Fund Exemptions

2.16	Investment fund reinvestment	18
2.17	Additional investment in investment funds	19
2.18	Private investment club	19
2.19	Private investment fund – loan and trust pools	20

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

2.20	Definitions	20
2.21	Interpretation	24
2.22	Employee, executive officer, director, and consultant.....	24
2.23	Investor relations person exception	25
2.24	Unlisted reporting issuer exception	25
2.25	Trades Among Current or Former Employees, Executive Officers, Directors, or Consultants of Non-Reporting Issuer	26
2.26	Permitted transferees.....	27
2.27	First trades – non-reporting issuer	28
2.28	Issuer bid.....	28

Division 5: Miscellaneous Exemptions

2.29	Incorporation or Organization.....	29
2.30	Isolated trade by an issuer	29
2.31	Dividends	30
2.32	Trade to lender by control person for collateral.....	30
2.33	Underwriter.....	30
2.34	Guaranteed debt	30
2.35	Minimum amount short-term debt	32
2.36	Mortgages	32
2.37	Personal Property Security Act	32
2.38	Not for profit issuer.....	33

2.39	Cooperatives and Credit Unions	33
2.40	Variable insurance contract.....	33
2.41	RRSP/RRIF	34
2.42	Schedule III banks.....	34
2.43	Conversion, exchange, or exercise	34

PART 3: REGISTRATION ONLY EXEMPTIONS

3.1	Registered dealer	35
3.2	Isolated trade by a person.....	35
3.3	Estates, bankruptcies, and liquidations	35
3.4	Employees of registered dealer	35
3.5	Small security holder selling and purchase arrangements.....	36
3.6	Adviser	37
3.7	Investment dealer acting as portfolio manager	38

PART 4: CONTROL BLOCK DISTRIBUTIONS

4.1	Control block distributions	38
4.2	Trades by a control person after a take-over bid	39

PART 5: OFFERINGS BY TSX VENTURE EXCHANGE OFFERING DOCUMENT

5.1	Definitions	40
5.2	TSX Venture exchange offering	41
5.3	Underwriter obligations	43

PART 6: REPORTING REQUIREMENTS

6.1	Report of exempt distribution	43
6.2	Required form of report of exempt distribution	44
6.3	Required form of offering memorandum	44
6.4	Required form of risk acknowledgement.....	44

PART 7: EXEMPTION

7.1	Exemption	44
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PART 8: EFFECTIVE DATE

8.1	Effective date	45
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	Appendix "A"	46
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PROSPECTUS AND REGISTRATION

EXEMPTION RULE

45-501

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) and (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 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,
- (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or 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 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 persons
 - (i) who are accredited investors, or
 - (ii) in the circumstances referred to in sections 2.8 (minimum amount investment), and 2.17 (additional investment in investment funds),
- (o) an investment fund that is distributing or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator 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 an account that is fully 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 is registered or authorized to carry on business as an adviser or the equivalent or is exempt from registration as an adviser or the equivalent under
 - (i) the securities legislation of a jurisdiction of Canada, or
 - (ii) a foreign jurisdiction,
- (r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered to provide 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) and paragraph (i) in form and function,
- (t) a person in respect of which all of the owners of interests, direct or indirect, legal 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 registered adviser or is exempt from registration as an adviser, or
- (v) a person that is recognized or designated by the securities regulatory authority as an accredited investor; (*investisseur agréé*)

“AIF” means

- (a) for financial years starting before January 1, 2004, a current AIF as defined in former Multilateral Instrument 45-102 *Resale of Securities* effective 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 yet 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; (*FIA*)

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

“approved credit rating organization” has the same meaning as in National Instrument 81-102 *Mutual Funds*; (*agence de notation approuvée*)

“Canadian financial institution” means

- (a) the Confédération des caisses populaires et d'économie Desjardins du Québec,

- (b) 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,
- (c) a bank, loan corporation, trust company, insurance company, treasury branch, credit union, caisse populaire, 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; (*institution financière canadienne*)

“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; (*norme de SCD*)

“debt security” means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured; (*valeur de créance*)

“director”

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

“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 two most recent years and who reasonably expects to exceed that income level in the current year, or
 - (iii) net income before taxes combined with that of a spouse exceeded \$125,000 in each of the two most recent years and who reasonably expects to exceed that income level in the current year,

- (b) a person 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 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; (*investisseur admissible*)

“eligibility adviser” means an investment dealer or equivalent category of registration, registered under the securities legislation of the jurisdiction of a purchaser and authorized to give advice with respect to the type of security being distributed; (*conseiller en admissibilité*)

“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,
- (c) an officer or any of its subsidiaries and who performs a policy-making function in respect of the issuer, or
- (d) an individual who performs a policy-making function; (*cadre dirigeant*)

“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; (*avoirs financiers*)

“founder”, in respect of an issuer, means 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 proposed trade is actively involved in the business of the issuer; (*fondeur*)

“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; (*compte entièrement géré*)

“investment fund” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*; (*fonds d'investissement*)

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

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

“MI 45-102” means Multilateral Instrument 45-102 *Resale of Securities* effective March 30, 2004; (*NM 45-102*)

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

“non-redeemable investment fund” has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*; (*fonds d'investissement non remboursable*)

“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, counting any two or more joint registered owners as one beneficial owner, and not counting employees and former employees of the issuer or its affiliates, and
- (c) that has distributed securities only to persons described in section 2.4(1) [*private issuer exemption*]; (*investisseur privé*)

“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 including under NI 51-102, National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, and
- (c) if a venture issuer, has filed in a jurisdiction of Canada,
 - (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; (*émetteur admissible*)

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

“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; (*dettes connexes*)

“RRIF” means a registered retirement income fund as defined in the *Income Tax Act* (Canada); (*FERR*)

“RRSP” means a registered retirement savings plan as defined in the *Income Tax Act* (Canada); (*RÉER*)

“**Schedule III bank**” means an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada); (*banque de l’annexe III*)

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

“**spouse**” means, if used to indicate a relationship with an individual,

- (a) an individual who is married to that individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), or
- (b) an individual who is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender; (*conjoint*)

“**subsidiary**” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary; (*filiale*)

“**syndicated mortgage**” means a mortgage in which 2 or more persons participate, directly or indirectly, as a mortgagee; (*hypothèque d’un consortium financier*)

“**venture issuer**” has the same meaning as in NI 51-102. (*émetteur de capital de risque*)

Affiliate

1.2 Except in Part 2, Division 4, 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 mentioned) is considered to control another person (second mentioned) if

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

Dealer and Adviser registration

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 adviser registration requirement that refers to a registered adviser is only available if the adviser is registered in a category that permits the advising described in the exemption.

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

Exchange contracts

1.5 In this Instrument, a reference to “security” or “securities” includes a reference to “exchange contract” or “exchange contracts”.

PART 2: PROSPECTUS AND REGISTRATION EXEMPTIONS

Division 1: Capital Raising Exemptions

Rights offering

2.1 (1) The dealer registration requirement does not apply to a trade by an issuer in a right issued by it to existing security holders to purchase its securities if

- (a) the issuer has given the regulator written notice stating the date, amount, nature and conditions of the proposed 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 has not objected in writing to the proposed trade within 10 days of receipt of a notice referred to in paragraph (a) or, if the regulator objects to the proposed trade, the issuer has delivered to the regulator information relating to the securities that is satisfactory to and accepted by the regulator, and
- (c) the issuer has complied with the applicable requirements of National Instrument 45-101 *Rights Offerings*.

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

Reinvestment plan

2.2 (1) Subject to subsection (4), the dealer registration requirement does not apply to a trade by an issuer or by a trustee, custodian or administrator acting for or on behalf of the issuer in its securities to existing security holders, under a plan if

- (a) the plan permits the security holder to direct that dividends or distributions out of earnings, surplus, capital or other sources payable in respect of the issuer's securities be applied to the purchase of securities of the same class or series as the securities to which the dividend or distributions out of earnings, surplus, capital or other sources is attributable,
- (b) the plan is available to every security holder to which the dividend or distribution is available,

(2) A plan referred to in subsection (1) may permit the security holder to make optional cash payments to purchase additional securities of the issuer that trade on a marketplace in addition to the securities that may be purchased by that holder under subsection (1)(a) if, in any financial year of the issuer during which the trade takes place, the aggregate number of securities issued under the optional cash payment does not exceed 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

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

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

Accredited investor

- 2.3 (1)** The dealer registration requirement does not apply to a trade to a purchaser if the purchaser purchases the security as principal and is an accredited investor.
- (2)** Subsection (1) does not apply if the purchaser is an underwriter.
- (3)** The prospectus requirement does not apply to a distribution in a security in the circumstances referred to in subsection (1).
- (4)** Subject to subsection (5), for the purpose of this section, a trust company or trust corporation described in paragraph (p) of the definition of “accredited investor” is deemed to be purchasing as principal.
- (5)** Subsection (4) does not apply to 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.
- (6)** For the purpose of this section, a person described in paragraph (q) of the definition of “accredited investor” is deemed to be purchasing as principal.

Private Issuer

- 2.4 (1)** The dealer registration requirement does not apply to a trade in a security of a private issuer to a purchaser if the purchaser 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 current holder of securities 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 are persons described in paragraphs (a) to (h), or
- (k) a person that is not a member of the public.

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

(3) 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 (1) except a trade to an accredited investor.

Family, friends and business associates

2.5 (1) The dealer registration requirement does not apply to a trade in a security to a purchaser 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 or child of a director, executive officer or control person of the issuer, or of an affiliate of the issuer,
- (c) a parent, grandparent, brother, sister or child 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, close personal friend or close business associate of a founder of the issuer,
- (g) a parent, grandparent, brother, sister or child 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 are persons described in paragraphs (a) to (g).

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

(3) 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 (1).

Affiliates

2.6 (1) The dealer registration requirement does not apply to a trade by an issuer in its security to an affiliate of the issuer who is purchasing as principal.

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

Offering memorandum

2.7 (1) The dealer registration requirement does not apply to a trade by an issuer in its security 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 (4) to (9), and
 - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (10).

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

(3) 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.

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

(5) 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.

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

“This offering memorandum does not contain a misrepresentation.”

(7) A certificate under subsection (6) 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.

(8) A certificate under subsection (6) must be true

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

(9) If a certificate under subsection (6) 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 (7), and
- (c) the purchaser re-signs the agreement to purchase the security.

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

(11) The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a trade in a security under subsection (1) 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 (5).

(12) 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.

(13) 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 National Instrument 43-101 *Standards of Disclosure for Mineral Projects* to file a technical report to support scientific or technical information about the qualifying issuer's mineral project in the offering memorandum or incorporated by reference into the offering memorandum if the information about the mineral project is contained in a previously filed technical report under National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

Minimum amount investment

2.8 (1) The dealer registration requirement does not apply to a trade in a security to a purchaser if

- (a) the purchaser purchases as principal, and
- (b) the security has an acquisition cost to the purchaser of not less than \$150,000.

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

Division 2: Transaction Exemptions

Business combination and reorganization

2.9 (1) The dealer registration requirement does not apply to 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) dissolution or winding-up of the issuer.

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

Asset acquisition

2.10 (1) The dealer registration requirement does not apply to a trade by an issuer in its security to a person as consideration for the assets of the person, if those assets have a fair value of not less than \$150,000.

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

Mining claims and oil and gas rights

2.11 (1) The dealer registration requirement does not apply to a trade by an issuer in its security as consideration for the acquisition of

- (a) petroleum or natural gas properties or any interest in them, or
- (b) mining properties or any interest in them.

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

Securities for debt

2.12 (1) The dealer registration requirement does not apply to a trade by a reporting issuer in its security to settle a bona fide debt.

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

Issuer acquisition or redemption

2.13 (1) The dealer registration requirement does not apply to a trade in a security to the issuer of the security.

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

Take-over bid and issuer bid

2.14 (1) The dealer registration requirement does not apply to a trade in a security under a take-over bid or issuer bid.

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

Offer to acquire to security holder in foreign jurisdiction

2.15 (1) The dealer registration requirement does not apply to a trade by a security holder in a foreign jurisdiction to a person in the local jurisdiction making an offer to acquire that would have been a take-over bid or issuer bid if the offer to acquire had been made to a security holder in the local jurisdiction.

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

Division 3: Investment Fund Exemptions

Investment fund reinvestment

2.16 (1) The dealer registration requirement does not apply to a trade by an investment fund in its securities to existing security holders under a plan if

- (a) the plan permits the security holder to direct that dividends or distributions out of earnings, surplus, capital or other sources payable in respect of securities of the investment fund be applied to the purchase of securities 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,
- (b) the plan is available to every security holder to which the dividend or distribution is attributable,
- (c) no sales charge is payable on the trade, and
- (d) the most recent prospectus of the investment fund, if any, sets out
 - (i) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security,
 - (ii) any right that the person 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
 - (iii) instructions on how the right referred to in subparagraph (ii) can be exercised.

(2) A plan referred to in subsection (1) may permit the security holder to make optional cash payments to purchase additional securities of the investment fund that trade on a marketplace in addition to the securities that may be purchased by that holder under subsection (1)(a) if, in any financial year of the investment fund, the aggregate number of securities issued pursuant to the optional cash payment does not exceed 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

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

Additional investment in investment funds

2.17 (1) The dealer registration requirement does not apply to a trade by an investment fund in its securities to a purchaser if

- (a) for the initial trade, the purchaser purchased as principal and the aggregate acquisition cost to that purchaser was not less than \$150,000,
- (b) for any subsequent trade, the purchase of securities is for the same class or series as the initial trade, and
- (c) the net asset value or the aggregate acquisition cost held by the purchaser as at the date of any subsequent trade is not less than \$150,000.

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

Private investment club

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

- (a) has no more than 50 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 issued.

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

Private investment fund - loan and trust pools

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

- (a) is administered by a trust company,
- (b) has no promoter or manager other than the trust company, and
- (c) co-mingles the money of different estates and trusts for the purpose of facilitating investment.

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

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

Definitions

2.20 In this Division

“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 in a similar capacity,
- (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 spouseif the relative has the same home as that individual; (*associé*)

“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; (*conseiller associé*)

“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; (*indemnité*)

“consultant” means, for an issuer, a person, other than an employee, executive officer, or director 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, 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; (*conseiller*)

“holding entity” means a person that is controlled by an individual; (*entité détentrice*)

“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 market on which the issuer’s securities trade, or

- (c) activities or communications necessary to follow securities directions of any jurisdiction of Canada; (*activités liées aux relations avec les investisseurs*)

“investor relations person” means a person that is a registrant or that provides services that include investor relations activities; (*représentant des relations avec les investisseurs*)

“issuer bid requirements” means the requirements under securities legislation that apply to an issuer bid; (*exigences relatives à l’offre de l’émetteur*)

“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
 - (vi) any successor to any of the entities listed in subparagraphs (i) to (v), or
- (b) are quoted on the Nasdaq Stock Market or any successor to that entity; (*émetteur coté*)

“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 an 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 an RRIF of the spouse of the person; (*ayant droit*)

“**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 2.22(1) as compensation; (*plan*)

“**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; (*entité liée*)

“**related person**”, for an issuer, means

- (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; (*personne liée*)

“**secondary market**” means a market where securities are bought and sold after their original issue; (*marché secondaire*)

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

- (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; (*approbation d'un détenteur de valeurs*)

“**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; (*entente d'aide*)

Interpretation

2.21 (1) In this Division, a person is considered to control another 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 other person.

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

- (a) in the case of an employee, 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, 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, and
- (c) in the case of a consultant, 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.

Employee, executive officer, director, and consultant

2.22 (1) Subject to sections 2.23 and 2.24, the dealer registration requirement does not apply to

- (a) a trade by an issuer in its securities, 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) and (d)

if participation in the trade is voluntary.

(2) A trade under subsection (1) with a person referred to in paragraph (c), (d) or (e) includes a trade with a trustee, custodian or administrator acting as agent on behalf, or for the benefit of those entities to facilitate a trade under a plan.

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

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

Investor relations person exception

2.23 Section 2.22 does not apply to a trade in a security to an investor relations person if the compensation or other amount of remuneration paid directly or indirectly to the investor relations person is dependent on the trading price or trading volume of the securities of the issuer.

Unlisted reporting issuer exception

2.24 (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) Section 2.22 does not apply to a trade by an unlisted reporting issuer in its security to an employee or consultant that is an investor relations person, an associated consultant, an executive officer of the issuer, a director of the issuer, or a permitted assign of those persons if, after the trade,

- (a) the numbers of securities reserved for issuance under options granted to
 - (i) related persons, exceeds 10% of the outstanding issue, or
 - (ii) a related person, exceeds 5% of the outstanding issue, or
- (b) the number of securities issued within 12 months to
 - (i) related persons, exceeds 10% of the outstanding issue, or

- (ii) a related person and the associates of the related person, exceeds 5% of the outstanding issue.

(3) Subsection (2) does not apply to an unlisted reporting issuer if the unlisted reporting issuer has received security holder approval and complied with subsection (4).

(4) An unlisted reporting issuer must, before obtaining security holder approval, provide security holders with the following information about the compensation or plan in sufficient detail to permit security holders to form a reasoned judgement concerning the matter:

- (a) the eligibility of employees, executive officers, directors, and consultants to be issued or granted securities as compensation or under the plan;
- (b) 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 the plan;
- (c) 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 the plan, including whether the assistance or support is to be provided on a full-, part-, or non-recourse basis;
- (d) in the case of options, the maximum term and the basis for the determination of the exercise price;
- (e) particulars relating to the options or other entitlements to be granted as compensation or under the plan, including transferability; and
- (f) 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

2.25 (1) Subject to subsection (2), the dealer registration requirement does not apply to a trade 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 an employee, executive officer, director, or consultant of the issuer or a related entity of the issuer, or to 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.

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

Permitted transferees

2.26 (1) The dealer registration requirement does not apply to a trade in a security acquired by a person described in section 2.22(1) 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 to a trade in an issuer's securities 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 exemption in subsections (1) and (2) all references to employee, executive officer, director, or consultant include a former employee, executive officer, director, or consultant.

(4) The prospectus requirement does not apply to a distribution in the circumstances referred to in subsection (1) or (2), if the security was acquired

(a) on a secondary market under a plan,

(b) by a person described in section 2.22(1) under any exemption that makes the first trade of the security subject to section 2.6 of MI 45-102;

First trades - non-reporting issuer

2.27 The dealer registration requirement does not apply to the first trade of a security that was acquired under this Division or by a person described in section 2.22(1) if the conditions in section 2.14 of MI 45-102 are satisfied.

Issuer bid

2.28 Issuer bid requirements do not apply to the acquisition by an issuer of the issuer's securities that were acquired by a person described in section 2.22(1) 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

Incorporation or Organization

2.29 (1) The dealer registration requirement does not apply to a trade by an issuer in its securities if the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than 5 incorporators or organizers.

(2) Despite subsection (1), if the statute under which the issuer is incorporated or organized requires the trade to be for a greater consideration or to a larger number of incorporators or organizers, the securities may be traded for that greater consideration or to that larger number of incorporators or organizers.

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

Isolated trade by an issuer

2.30 (1) The dealer registration requirement does not apply to a trade by an issuer in its securities if the trade is

- (a) an isolated trade,
- (b) not made in the course of continued and successive transactions of a like nature, and
- (c) not made by a person whose usual business is trading in securities.

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

Dividends

2.31 (1) The dealer registration requirement does not apply to a trade by an issuer in its security to an existing security holder as a dividend or distribution out of earnings, surplus, capital or other sources as long as no commission or other remuneration is paid or given to others in respect of the trade except for administrative or professional services or for services performed by a registered dealer.

(2) The dealer registration requirement does not apply to a trade by an issuer in a security of a reporting issuer to an existing security holder as a dividend in specie.

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

Trade to lender by control person for collateral

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

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

Underwriter

2.33 (1) The dealer registration requirement does not apply to a trade in a security between a person and an underwriter acting as purchaser or between or among underwriters.

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

Guaranteed debt

2.34 (1) In this section

- (a) **“Asian Development Bank”** means a bank established pursuant to a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965; (*Banque asiatique de développement*)
- (b) **“Inter-American Development Bank”** means a bank established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, of which Canada is a member; (*Banque interaméricaine de développement*)
- (c) **“International Bank for Reconstruction and Development”** means the bank established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada); (*Banque internationale pour la reconstruction et le développement*)
- (d) **“International Finance Corporation”** means the corporation established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada); (*Société financière internationale*)

- (e) “**permitted supranational agency**” means the Asian Development Bank, the International Bank for Reconstruction and Development, the Inter-American Development Bank and the International Finance Corporation. (*organisme supranational autorisé*)

(2) The dealer registration requirement does not apply to a trade in a debt security or options to acquire a debt security

- (a) of or guaranteed by the Government of Canada, the government of a jurisdiction of Canada or a government of a foreign jurisdiction,
- (b) 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,
- (c) 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,
- (d) of any school board in Ontario or of a corporation established under section 248(1) of the Education Act (Ontario),
- (e) of the Conseil Scolaire de L’île de Montréal, or
- (f) of or guaranteed by a permitted supranational agency if
 - (i) the debt securities are payable in the currency of Canada or the United States of America, and
 - (ii) with respect to those securities, documents, certificates, reports, releases, statements, agreements or other information as may be required by the regulator, are filed with the regulator.

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

Minimum amount short-term debt

2.35 (1) The dealer registration requirement does not apply to 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.

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

Mortgages

2.36 (1) The dealer registration requirement does not apply to a trade in a mortgage on real property by a person who is registered or licensed or exempted from registration or licensing under mortgage brokerage or mortgage dealer legislation of a jurisdiction of Canada.

(2) Subsection (1) does not apply to a syndicated mortgage.

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

Personal Property Security Act

2.37 (1) The dealer registration requirement does not apply to a trade in a security evidencing indebtedness due under any security agreement provided for under personal property security legislation of a jurisdiction providing for the acquisition of personal property if the security is not offered for sale to an individual.

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

Not for profit issuer

2.38 (1) The dealer registration requirement does not apply to a trade in a security by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit if

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

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

Cooperatives and Credit Unions

2.39 (1) The dealer registration requirement does not apply to a trade in a security that is:

- (a) a share as defined in the *Co-operative Associations Act* of New Brunswick, and
- (b) a membership share of a credit union within the meaning of the *Credit Unions Act* of New Brunswick.

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

Variable insurance contract

2.40 (1) The dealer registration requirement does not apply to a trade in a variable insurance contract by an insurance company incorporated by or under an act of the legislature of a jurisdiction 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.

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

(3) For the purposes of subsection (1), “contract”, “group insurance”, “life insurance” and “policy” have the respective meanings assigned to them in the legislation set out in Appendix A.

RRSP/RRIF

2.41 (1) The dealer registration requirement does not apply to a trade in a security between an individual or an associate of the individual and an RRSP or RRIF established for or by that individual or under which that individual is a beneficiary.

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

Schedule III banks

2.42 (1) The dealer registration requirement does not apply to a trade in an evidence of deposit issued by a Schedule III bank.

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

Conversion, exchange, or exercise

2.43 (1) The dealer registration requirement does not apply to a trade by an issuer if

- (a) the issuer trades its security to an existing security holder 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 to an existing security holder 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 written notice stating the date, amount, nature and conditions of the proposed trade, and
- (b) the regulator must not object in writing to the proposed trade within 10 days of receipt of a notice referred to in paragraph (a) or, if the regulator objects to the proposed trade, the issuer must deliver to the regulator information relating to the securities that is satisfactory to and accepted by the regulator.

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

PART 3: REGISTRATION ONLY EXEMPTIONS

Registered dealer

3.1 The dealer registration requirement does not apply to a trade by a person acting solely through an agent who is a registered dealer.

Isolated trade by a person

3.2 The dealer registration requirement does not apply to a trade in a security by a person if the trade

- (a) is not made by the issuer of the security,
- (b) is not made in the course of continued and successive transactions of a like nature, and
- (c) is not made by a person whose usual business is trading in securities.

Estates, bankruptcies, and liquidations

3.3 The dealer registration requirement does not apply to a trade by a person acting under the authority of a direction, order or judgment of a court, a will or any law of a jurisdiction in the course of enforcing legal obligations or administering the affairs of another person.

Employees of registered dealer

3.4 The dealer registration requirement does not apply to 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 as a “non-trading” employee, either individually or as a class.

Small security holder selling and purchase arrangements

3.5 (1) For the purposes of this section

“exchange” means

- (a) the Toronto Stock Exchange,
- (b) the TSX Venture Exchange Inc./Bourse de croissance TSX 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; (*bourse*)

“policy” means

- (a) in the case of the Toronto Stock Exchange, the latest edition of *Policy Statement on Small Shareholder Selling and Purchase Arrangements*,
- (b) in the case of the TSX Venture Exchange Inc., the latest edition of *Policy 5.7 Small Shareholder Selling and Purchase Arrangements*, or
- (c) in the case of an exchange referred to in subsection (1)(c) in 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. (*politique*)

(2) The registration requirement does not apply to 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 holder of securities about their 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 holder of a security 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 holder of a security 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

3.6 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 lawyer, accountant, engineer or teacher;
 - (iv) 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 as an adviser only through the publication,
 - (ii) has no interest either directly or indirectly in any of the securities on which that person 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

3.7 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 rules, policies or other similar instruments made by the Investment Dealers Association of Canada for portfolio managers.

PART 4: CONTROL BLOCK DISTRIBUTIONS

Control block distributions

4.1 (1) In this Part

“control block distribution” means a trade in previously issued securities of an issuer from the holdings of a control person; (*placement de blocs de contrôle*)

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

(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) files the reports required under the early warning requirements or 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 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 MI 45-102 Resale of Securities* under MI 45-102 is filed before the trade,
- (e) an insider report of the trade in Form 55-102 F2 *Insider Report* or Form 55-102 F6 *Insider Report*, as applicable, under NI 55-102 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 of securities 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

5.1 In this Part

“exchange policy” means the latest edition of Exchange Policy 4.6 - *Public Offering by Short Form Offering Document* and Exchange Form 4H - *Short Form Offering Document*, of the TSX Venture exchange; (*politique de la bourse*)

“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; (*produit brut*)

“listed security” means a security of a class listed on the TSX Venture exchange; (*valeur mobilière cotée*)

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

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

“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; (*offer à la bourse antérieure*)

“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; (*rapport produit par la suite*)

“TSX Venture exchange” means the TSX Venture Exchange Inc./Bourse de croissance TSX Inc.; (*Bourse de croissance TSX*)

“TSX Venture exchange offering document” means an offering document that complies with the exchange policy, subject to any waiver or variation the TSX Venture exchange permits; (*notice d’offre de la Bourse de croissance TSX*)

“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. (*bon de souscription d’actions*)

TSX Venture exchange offering

5.2 The prospectus requirement does not apply to a distribution by an issuer in its security 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 that securities regulatory authority
 - (i) all documents required to be filed under the securities legislation of that jurisdiction, and
 - (ii) 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, and the TSX Venture exchange has accepted, 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, for financial years starting on or after January 1, 2004, the MD&A relating to those financial statements,
 - C) all unaudited interim financial statements and, for financial years starting on or after January 1, 2004, 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, subject to any waiver or variation the TSX Venture exchange permits,
- (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 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 MI 45-102.

Underwriter obligations

5.3 An underwriter that qualifies as a “sponsor” under the latest edition of TSX Venture Exchange Policy 2.2 - *Sponsorship and Sponsorship Requirements* 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 subsections (2), (3) and (4), if an issuer distributes its security, the issuer must file a report in the local jurisdiction in which the distribution takes place, on or before the 10th day after the distribution under the following exemptions:

- (a) section 2.3(2) (accredited investor);
- (b) section 2.5(2) (family, friends and business associates exemption);
- (c) section 2.7 (2) (Offering memorandum);
- (d) section 2.8 (2) (minimum amount investment);
- (e) section 2.10 (2) (asset acquisition);
- (f) section 2.11(2) (mining claims and oil and gas rights);
- (g) section 2.12 (2) (securities for debt);
- (h) section 2.17 (2) (additional investment in investment funds);
- (i) section 5.2 (TSX Venture Exchange offering).

(2) A report is not required under subsection (1)(a) for a distribution under section 2.3 (*accredited investor exemption*) of a debt security to a Canadian financial institution or a Schedule III bank as security for a loan made by the Canadian financial institution or a Schedule III bank to the person.

(3) An issuer who files a report under subsection (1)(i) may indicate the total number of purchasers by jurisdiction instead of providing the names and residential addresses of each purchaser under item 5 of Form [45-103F4](#).

(4) An investment fund is not required to file the report under subsection (1) for a distribution under sections 2.3 (2) (*accredited investor*), 2.8 (2) (*minimum amount investment*) and 2.17 (2) (*additional investment in investment funds*), if the report is due to be filed not later than 30 days after the financial year-end of the investment fund.

Required form of report of exempt distribution

6.2 The required form of report under section 6.1 is Form [45-103F4](#).

Required form of offering memorandum

6.3 (1) The required form of offering memorandum under section 2.7 [*offering memorandum*] is Form [45-103F1](#).

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form [45-103F2](#).

Required form of risk acknowledgement

6.4 The required form of risk acknowledgement under subsection 2.7(10) [*offering memorandum*] is Form [45-103F3](#).

PART 7: EXEMPTION

Exemption

7.1 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.

PART 8: EFFECTIVE DATE

8.1 Effective Date

This rule comes into effect on July 22, 2004

Appendix A
To
Local Rule 45-501 *Registration and Prospectus Exemptions*

Variable insurance contract exemptions
(section 2.40)

Definitions for “contract”, “life insurance”, “group insurance” and “policy” as defined in the Insurance Act of New Brunswick.

"contract" means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement; (*contrat*)

"group insurance" means insurance, other than creditor's group insurance and family insurance, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person; (*assurance collective*)

“life insurance” means insurance whereby an insurer undertakes to pay insurance money

- (a) on death,
- (b) on the happening of an event or contingency dependent on human life,
- (c) at a fixed or determinable future time, or
- (d) for a term dependent on human life,

and without restricting the generality of the foregoing, includes

- (e) accidental death insurance but not accident insurance;
- (f) disability insurance; and
- (g) an undertaking, entered into by an insurer in the ordinary course of its business, to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount; (*assurance-vie*)

"policy" means the instrument evidencing a contract. (*police*)