Chapter 6

Request for Comments

6.1.1 Notice of Multilateral Instrument 45-105 Trades to Employees, Senior Officers, Directors, and Consultants

MULTILATERAL INSTRUMENT 45-105 *TRADES TO EMPLOYEES, SENIOR OFFICERS, DIRECTORS, AND CONSULTANTS*

Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* (the Instrument) is an initiative of the securities regulatory authorities (the Participating Regulators) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, the Yukon Territory and the Northwest Territories (the Jurisdictions). The Instrument has been, or is expected to be, adopted as a rule in each of Alberta, Saskatchewan, Ontario, Manitoba, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, as an exemption order in British Columbia, as a regulation in the Northwest Territories, and as a policy in New Brunswick, the Yukon Territories, and Nunavut.

Provided all necessary ministerial approvals are obtained, the Instrument will come into force on August 15, 2003.

Substance and Purpose

The securities legislation in each Jurisdiction currently contains exemptions from the registration requirement and the prospectus requirement for trades in securities of an issuer's own issue to the issuer's employees. Furthermore, certain Jurisdictions have additional instruments that modify and expand the statutory employee exemptions, including:

- OSC Rule 45-503 *Trades to Employees, Executives and Consultants* (the OSC Rule 45-503)
- British Columbia Instrument 45-507 *Trades to Employees, Executives and Consultants* (the BC Instrument)
- Alberta Securities Commission Blanket Order 45-506 (the ASC Order)
- Nova Scotia Securities Commission Blanket Order No. 45-501 *Trades to Employees, Executives and Consultants* (the Nova Scotia Order)
- Saskatchewan Securities Commission General Ruling/Order 45-907 *Trades to Employees, Executives and Consultants* (the Saskatchewan Order)

The additional instruments listed above provide exemptions from the registration requirement and the prospectus requirement for trades to an issuer's non-employee directors and certain consultants, as well as other related relief. The Instrument consolidates and, as much as possible, harmonizes the requirements in each of OSC Rule 45-503, the BC Instrument, the ASC Order, the Nova Scotia Order and the Saskatchewan Order.

Summary of the Instrument

The Instrument has six parts.

Part 1 contains the definitions of terms and phrases used in the Instrument that are not defined in or interpreted under a national definition instrument in force in a Jurisdiction. National Instrument 14-101 *Definitions* sets out definitions for commonly used terms and should be read together with the Instrument.

Part 2 provides exemptions from the dealer registration requirement and the prospectus requirement in each of the following circumstances:

1. **Basic Trades –** Section 2.1 contains basic dealer registration and prospectus exemptions for trades by an issuer in securities of the issuer's own issue to

   (a) an employee, senior officer, director, or consultant of the issuer or an affiliated entity of the issuer; and

   (b) a permitted assign.

A "permitted assign" includes, for an employee, senior officer, director, or consultant of an issuer or of an affiliated entity of the issuer,

(i) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the employee, senior officer, director, or consultant,

(ii) a holding entity of the employee, senior officer, director, or consultant,

(iii) an RRSP or RRIF of the employee, senior officer, director, or consultant,

(iv) a spouse of the employee, senior officer, director, or consultant,

(v) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the spouse of the employee, senior officer, director, or consultant,

(vi) a holding entity of the spouse of the employee, senior officer, director, or consultant, or

(vii) an RRSP or RRIF of the spouse of the employee, senior officer, director, or consultant.

Section 2.1 also provides dealer registration and prospectus exemptions for trades in securities of the issuer (or options to acquire securities of the issuer) by a control person to any of the parties identified above.

If an issuer is a reporting issuer in any jurisdiction but not a "listed issuer", the exemptions in section 2.1 may not be available for a trade to certain investor relations persons, senior officers, directors or consultants (or their trustees, custodians, etc) unless prior shareholder approval has been obtained. This restriction will not apply in British Columbia.

2. Trades Among Employees, etc. – Section 2.2 provides dealer registration and prospectus exemptions for trades from current or former employees, senior officers, directors, and consultants to current employees, senior officers, directors, and consultants. However, these exemptions are only available where:

(a) the issuer of the securities is not a reporting issuer in any jurisdiction;

(b) participation in the trade by the employee, senior officer, director, or consultant is voluntary; 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. Conversions or Exchanges – Section 2.3 provides dealer registration and prospectus exemptions for trades that are, or are incidental to, the issuance of securities upon the exercise of an exchange or conversion right that was originally distributed:

(a) to a person or company described in subsection 2.1(1), and

(b) under a prospectus exemption that would cause Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) to impose a "seasoning period" on the first trade of the security.

4. Trades Among Permitted Transferees – Section 2.4 provides dealer registration and prospectus exemptions for certain trades between an employee, senior officer, director, or consultant and a trustee, custodian or administrator acting on their behalf, their holding entity, their RRSP or RRIF, their spouse or an RRSP or RRIF of their spouse. However, the exemption is only available for a trade in a security that was originally distributed:

(a) to a person or company described in subsection 2.1(1); and

(b) under a prospectus exemption that would cause MI 45-102 to impose a "seasoning period" on the first trade of the security.

Part 3 of the Instrument sets out resale restrictions for securities acquired under Part 2 of the Instrument. Section 3.1 provides that the first trade of a security acquired under Part 2 must comply with section 2.6 of MI 45-102. [1] Section 3.2 provides a dealer registration exemption for the resale of securities of a non-reporting issuer provided the conditions in section 2.14 of MI 45-102 are met. In each case, the resale provisions refer to the *first trade of a security acquired under an exemption in Part 2 or by a*

[1] The resale provisions in section 3.1 will not apply in Manitoba.

person or company described in subsection 2.1(1). As a result, Part 3 will apply to the resale of securities by former employees, senior officers, directors, and consultants.

Part 4 of the Instrument provides an exemption from the issuer bid requirements that could otherwise apply to a trade by an employee, director, etc. to an issuer. However, the exemption will only apply if the trade is either to fulfil a withholding tax obligation or to provide payment of an exercise price of a stock option.

Part 5 provides for the granting of exemptions from the Instrument.

Part 6 establishes an effective date for the Instrument.

Summary of Comments Received

The Instrument was published for comment on November 1, 2002. During the subsequent 90-day comment period, the Participating Regulators received submissions from seven commenters (listed in Schedule A). The Participating Regulators would like to take this opportunity to thank each of the commenters for their views on the Instrument.

Several commenters expressed their appreciation to the Participating Regulators for proposing a rule that consolidates the numerous and differing policies and rules currently in place. It was noted that the Instrument would have "clear cost savings and benefits to issuers" and would generally promote the efficient regulation of capital markets in Canada.

A summary of the comments received and the responses of the Participating Regulators are contained in Schedule B.

Significant Changes to the Instrument

Set out below are the significant differences between the Instrument and the version of the Instrument that was published for comment on November 1, 2002. In the view of the Participating Regulators, none of the changes may be considered material changes.

1. **Permitted assign**
   The term "permitted assign" has been added to section 1.1 of the Instrument. This new definition now includes (i) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the spouse of the employee, senior officer, director, or consultant; and (ii) the holding entity of a spouse of an employee, senior officer, director, or consultant.

2. **Definition of plan**
   The definition of "plan" in section 1.1 has been amended to clarify that it includes plans established or maintained by issuers that provide a mechanism through an administrator for employees, senior officers, directors, and consultants to acquire securities in the issuer using their own resources.

3. **Definition of related person**
   The definition of "related person" in section 1.1 of the Instrument has been expanded to include companies that are permitted assigns of directors and senior officers.

4. **Approval by security holders**
   The requirement for prior security holder approval in subsection 2.1(4) has now been restricted to apply only to those issuers that are reporting issuers *and* not listed issuers. Consequently, certain private companies and foreign listed issuers that are not reporting issuers will not be subject to the security holder approval requirement.

   The definition of "security holder approval" has been clarified.

   A new subsection 2.1(6) has also been included to provide a transition period for issuers complying with the prior security holder approval requirement.

5. **Transition Issues**
   As initially published, the exemptions in sections 2.3 and 2.4 would have only been available for trades in securities acquired under an exemption in Part 2. We have now amended sections 2.3 and 2.4 to extend the exemptions to any securities that were acquired by a person or company referred to in subsection 2.1(1) provided that the securities were acquired under an exemption that makes the first trade of a security subject to a "seasoning period" under MI 45-102. This amendment allows the exemptions in sections 2.3 and 2.4 to be used notwithstanding that the security in question was originally acquired under an exemption in a previous local instrument.

6. **First trade registration relief in Manitoba**
   Section 3.2 has been amended to make the registration exemption available for first trades that occur in Manitoba.

7. **Issuer bid relief**
As initially published, the exemption in section 4.1 was limited to securities of the issuer that were originally distributed under an exemption contained in Part 2. This exemption has now been extended to apply to the acquisition of any securities of the issuer that were acquired by a person or company described in subsection 2.1(1).

Authority for the Instrument (Ontario)

The following provisions of the *Securities Act* (Ontario) provide the Ontario Securities Commission (the OSC) with authority to make the Instrument:

- paragraph 143(1)8 authorizes the OSC to provide for exemptions from the registration requirements under the Act or for the removal of exemptions from those requirements;
- paragraph 143(1)20 authorizes the OSC to provide for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements;
- paragraph 143(1)28 authorizes the OSC to regulate issuer bids, including by providing for exemptions in addition to those set out in subsections 93(1) and (3) of the Act; and
- paragraph 143(1)48 authorizes the OSC to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

The Instrument and the material required by the *Securities Act* (Ontario) to be delivered to the Minister of Finance were delivered on May 22, 2003. If the Minister does not reject the Instrument or return it to the OSC for further consideration by July 21, 2003, or if the Minister approves the Instrument, the Instrument will come into force on August 15, 2003.

Alternatives Considered[2]

The Participating Regulators considered maintaining the *status quo*, with each regulator preserving its existing registration and prospectus requirements. However, the Participating Regulators determined that a harmonized instrument would better serve issuers, investors and other market participants. No other alternatives were considered.

Unpublished Materials[3]

In developing the Instrument, the Participating Regulators did not rely upon any significant unpublished study, report or other written materials.

Anticipated Costs and Benefits

The Instrument harmonizes the existing prospectus, registration and issuer bid requirements for trades to employees, senior officers, directors, and consultants. The Participating Regulators (other than the Manitoba Securities Commission) believe that harmonizing such requirements will ease the regulatory burden of issuers by reducing the sheer number of requirements that would otherwise require consideration. Because the Instrument does not incorporate the filing or disclosure requirements previously contained in the BC Instrument, the ASC Order or the Nova Scotia Order, the Participating Regulators (other than the Manitoba Securities Commission) also believe that the cost of complying with securities legislation will be lowered. There are no filing or disclosure requirements under the securities legislation of Manitoba for the employee exemption.

The Instrument will not result in any additional costs.

In the view of the Participating Regulators, other than the Manitoba Securities Commission, the benefits of making the Instrument will therefore outweigh the costs. The Manitoba Securities Commission has not undertaken an analysis of the Instrument.

Related Amendments

Local Amendments

Each of OSC Rule 45-503, BC Instrument, ASC Order, Nova Scotia Order and the Saskatchewan Order will be revoked upon the coming into force of the Instrument.

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2 This section does not apply in Manitoba.

3 This section does not apply in Manitoba.

The OSC has concurrently made Commission Rule 45-801 *Implementing Multilateral Instrument 45-105 Trades to Employees, Senior Officers, Directors, and Consultants*. No Ontario regulations will be revoked or amended in connection with the making of the Instrument.

The text of the Instrument follows.

June 6, 2003.

SCHEDULE A

LIST OF COMMENTERS

Stikeman Elliott LLP

Securities Law Subcommittee of the Business Law Section of the Ontario Bar Association

Borden Ladner Gervais LLP

The Canadian Advocacy Committee of the Association for Investment Management and Research

Thompson Dorfman Sweatman
Barristers & Solicitors

Thea L. Koshman

Blake, Cassels & Graydon LLP

SCHEDULE B

SUMMARY OF COMMENTS AND RESPONSES

#	Theme	Comments	Response
1.	Definition of "plan"	One commenter suggested expanding the definition of "plan" in MI 45-105 to accommodate plans established or maintained by issuers that provide a mechanism through an administrator for employees, consultants, or directors to acquire securities in the issuer using their own resources.	The Participating Regulators agree with the comment and have amended the definition of plan in MI 45-105 to mean a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by persons and companies described in subsection 2.1(1), as compensation or as an incentive or benefit for services provided by its employees, senior officers, directors, or consultants.
2.	Definition of "senior officer"	One commenter suggested that MI 45-105 include a definition for "senior" officer to capture the concept of an officer appointed by the board of directors or equivalent governing body of an entity at a level equivalent to or superior to, for example, the office of Vice-President.	The Participating Regulators do not think that a definition of "senior" is required. Each of the participating jurisdictions has a local statute that contains a definition of senior officer. The Participating Regulators are satisfied that the local definitions of this term are adequate for the purposes of MI 45-105.
3.	Subsection 2.1(1)(a) and (b) - scope of exemptions	One commenter suggested that the definition of holding entity in MI 45-105 be expanded to include the holding entity of the spouse of an individual referred to in section 2.1(a) of MI 45-105. One commenter suggested that the "trustee, custodian, or administrator" exemption in section 2.1(1)(b) be expanded to apply to all other persons and entities specified in section 2.1(1). One commenter noted that as many consultants will be entities rather than individuals, consideration should be given to extending the exemptions to employees, directors, and senior officers of consultants.	The comment has been addressed by defining the categories of persons and companies that can acquire securities under MI 45-105 to include (i) a trustee, custodian, or administrator acting on behalf, or for the benefit, of the spouse of an employee, senior officer, director, and consultant, and (ii) a holding entity of the spouse of the employee, senior officer, director, or consultant. These categories are included in the new defined term "permitted assign". The Participating Regulators do not think that expansion of the exemptions to include employees, senior officers, and directors of consultants is necessary. A consulting company will be in a position to trade any securities acquired under the exemptions to employees, senior officers, or directors of the consulting company once the seasoning period with respect to the securities has expired. The Participating Regulators will monitor this exemption on an application-by-application basis and consider whether an expansion is justified.
4.	Subsection 2.1(4) - "not a listed issuer" and "non-reporting issuer"	One commenter stated that it was not clear whether the term "not a listed issuer" in subsection 2.1(4) of MI 45-105 was a distinct concept from a "non-reporting issuer".	"Not a listed issuer" is a separate and distinct concept from a "non-reporting issuer". An issuer that is not a listed issuer is any issuer that is not listed on any of the exchanges set out it MI 45-105. A non-reporting issuer could be either a listed issuer or an issuer that is not a listed issuer. In any event, subsection 2.1(4) of MI 45-105 has been amended to make it clear that the security holder approval requirement applies to issuers that are reporting issuers in any jurisdiction in Canada and are not listed issuers.

#	Theme	Comments	Response
5.	Subsection 2.1(4) - "as compensation"	One commenter noted that the words "as compensation" contained at the end of subsection 2.1(4) of MI 45-105 before subsection 2.1(4)(a) were not quite appropriate, as for example, a trustee, custodian, or administrator would not be receiving compensation by way of the security.	The Participating Regulators agree that the words "as compensation" in subsection 2.1(4) of MI 45-105 should not apply to a trade to the persons and companies set out in paragraph (d) of subsection 2.1(4). The words "if the security is issued or granted as compensation" have been removed from above paragraph (a) through (d). The following words have been inserted immediately after paragraph (d): "if the security is issued or granted, directly or indirectly, as compensation for an individual referred to in paragraph (a), (b), or (c) and…".
6.	Subsection 2.1(4) - "fully diluted"	One commenter suggested the relevant calculations described in subparagraphs (i) through (iv) following paragraph (h) in subsection 2.1(4) should be done on a fully diluted basis.	The Participating Regulators agree that the relevant calculations described in subsection 2.1(4) should be done on a fully diluted basis and have amended the subsection by adding the words "on a fully diluted basis" after the word "compensation" contained in the paragraph immediately following paragraph (d) in subsection 2.1(4).
7.	Subsection 2.1(5) - "consent resolution"	One commenter suggested adding a definition for the term "consent resolution", which is used in subsection 2.1(5) of MI 45-105.	The term "consent resolution" has been deleted from subsection 2.1(5) of MI 45-105. Instead of requiring delivery of a consent resolution, subsection 2.1(5) of MI 45-105 will require delivery of a "resolution that will, when signed, evidence the security holder approval".
8.	Subsection 2.1(4) and (5) - scope of security holder approval	Three commenters requested that the Participating Regulators reconsider the scope of the shareholder approval requirement contained in subsection 2.1(4) of MI 45-105 for trades by issuers that are not listed issuers. One commenter noted that, in subsection 2.1(4) of MI 45-105, issuers that are not listed issuers includes issuers that are non-reporting issuers. The commenter pointed out that, in Ontario, non-reporting issuers seeking to issue securities to officers, directors, or investor relations consultants could no longer rely on the "private company" exemption and would generally be required to rely on: (i) the closely held issuer exemption in section 2.1 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* ("OSC Rule 45-501"); (ii) the accredited investor exemption in section 2.3 of OSC Rule 45-501; or (iii) Ontario Securities Commission Rule 45-503 *Trades to Employees, Executives, and Consultants* ("OSC Rule 45-503"). In many circumstances, the exemptions in (i) and (ii) will not be available. Therefore, the shareholder approval requirement may prove to be unnecessarily restrictive. While the requirement may be justifiable in other contexts, it is burdensome for non-reporting issuers, particularly issuers that are private companies.	The Participating Regulators have amended subsection 2.1(4) of MI 45-105 to reduce the number of issuers that will be subject to the requirement. The security holder approval requirement will apply to an issuer that "is a reporting issuer in any jurisdiction in Canada and not a listed issuer". As a result, private issuers and many foreign issuers will not be required to obtain security holder approval before using the exemptions in MI 45-105.

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		Two commenters suggested that there was no reason to require foreign issuers that were not listed issuers to obtain shareholder approval prior to using the exemptions in MI 45-105. One commenter argued that maintaining the requirement for all issuers that are not listed issuers results in the removal of a currently available exemption in Ontario for non-listed issuers under section 3.3 of OSC Rule 45-503. The other commenter argued that it seems anomalous to require a foreign company with a *de minimus* market in Canada to obtain shareholder approval in order to allow a Canadian director or senior officer to participate in a plan offered by the company. The commenter suggested restricting the requirement for shareholder approval to reporting issuers who are not listed issuers. One commenter stated that the definition of listed issuer in MI 45-105 is too narrow. The commenter argued that the definition should be expanded to include any issuer that has securities listed on an exchange or quoted on a quotation and trade reporting system that is regulated by an ordinary member of the International Organization of Securities Commissions. The commenter points to the definition of foreign exchange-traded security in section 1.1 of National Instrument 21-101 *Marketplace Operation.*	The current list of exchanges is derived from the list of exchanges used in OSC Rule 45-503 (inclusive of "foreign-listed issuers"). The Participating Regulators are not inclined to expand on the list of exchanges in MI 45-105 at this time, but will monitor applications and may consider adding exchanges to the list at a later date.
9.	Subsection 2.1(4) and (5) - "grandfathering" securityholder approval	One commenter suggested "grandfathering" the grant of securities or plans that received shareholder approval prior to the implementation of MI 45-105, but which did not comply with subsection 2.1(5) of MI 45-105. The commenter noted that it would seem unfair to require issuers to have such grants or issuances re-approved by shareholders if the issuances or grants have already been approved.	A new subsection (6) has been added to section 2.1of MI 45-105. Subsection 2.1(6) states that subsection (5) will not apply for a period of 12 months after the effective date of the Instrument if prior security holder approval has been obtained. This effectively "grandfathers" prior security holder approval for a period of 12 months.
10.	Subsection 2.2(3) - price formula	One commenter suggested that subsection 2.2(3) of MI 45-105 be changed to state that if shareholder approval for the trade is obtained, the written price formula as set out in subsection 2.2(3)(c) is not be required.	The Participating Regulators do not agree that shareholder approval is a proper substitute for the written price formula as set out in subsection 2.1(3)(c) of MI 45-105.
11.	Section 2.3 - conversions or exchanges.	One commenter suggested that conversions or exchanges of securities by the personal representatives of employees, senior officers, directors, or consultants and holders of securities who are permitted transferees of such persons should be permitted under MI 45-105.	Section 2.3 of MI 45-105 would operate to permit the conversions or exchanges referred to by the commenter.
12.	Subsection 2.3(1) - "in connection with"	One commenter suggested broadening the use of the word "incidental" in subsection 2.3(1) of MI 45-105 by adding the words "in connection with or" immediately before	The Participating Regulators do not think it is appropriate to expand subsection 2.3(1) at this time. The primary purpose of section 2.3 of MI 45-105 is to provide a mechanism by which

#	Theme	Comments	Response
		"incidental".	convertible or exchangeable securities can be converted or exchanged by persons and companies described in subsection 2.1(1) of MI 45-105. The Participating Regulators believe the existing wording achieves this result without the risk of including trades where the primary purpose may not be a simple conversion or exchange of a security by a person or company described in subsection 2.1(1) of MI 45-105.
13.	Section 3.1 and 3.2 - resale restrictions.	One commenter stated that the language of section 3.1 of MI 45-105 appears to preclude reliance on any section of MI 45-102 other than section 2.6 of MI 45-102 for the first trade of securities acquired under Part 2 of MI 45-105. As a result, the commenter argues, the prospectus exemption in section 2.14 of MI 45-102 may not be available for first trades outside Canada for securities acquired under MI 45-105. One commenter suggested that the registration exemption contained in section 3.2 of MI 45-105 be extended to include the first trade of a security acquired under any exemption. The commenter noted that the prospectus exemption contained in section 2.14 of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102") applies to securities acquired under an "exemption".	The Participating Regulators do not agree that the language of section 3.1 of MI 45-105 precludes reliance on section 2.14 of MI 45-102 for first trades outside Canada. Section 2.6 of MI 45-102 states that the first trade of a security that has been made subject to section 2.6 of MI 45-102 will be a distribution unless certain conditions are satisfied. A trade can occur outside section 2.6 of MI 45-102 if a prospectus is filed or if an exemption from the prospectus requirement is available. Section 2.14 of MI 45-102 provides an exemption from the prospectus requirement if certain conditions are met. The exemption in section 2.14 of MI 45-102 is available for any trade that is a distribution, if the conditions in section 2.14 are satisfied. Section 3.2 of MI 45-105 has been amended to apply to the first trade of a security that was acquired by a person or company described in subsection 2.1(1) of MI 45-105.
14.	Section 4.1 - issuer bid exemption.	One commenter noted a problem with the practical application of the issuer bid exemption contained in section 4.1 of MI 45-105. An issuer can use the exemption to acquire its own securities as long as the issuer is acquiring securities that were initially acquired under MI 45-105 or on the secondary market. The commenter notes that it is difficult and at times impossible to identify the source of the securities being delivered to the issuer in connection with the stock exercise or withholding for tax purposes. For example, the securities being tendered may have been acquired under another exemption from the registration and prospectus requirements. Also, the commenter notes that the exemption would not be available for issuer bids involving securities granted before the introduction of MI 45-105. The commenter submits that the issuer bid exemption should be available in all cases where a security is acquired by the issuer to fulfill tax withholding obligations or to provide payment on the exercise of an option. The commenter suggests removing the words "acquired under Part 2, or in the secondary market" from section 4.1 of MI 45-105.	Section 4.1 has been amended to apply to acquisitions by an issuer of securities of the issuer that were acquired by a person or company described in subsection 2.1(1) of MI 45-105, regardless of how the person or company acquired the security.

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		One commenter suggested that the issuer bid exemption in section 4.1 of MI 45-105 should not be restricted to apply only to trades to fulfill a withholding tax obligation or to provide payment of an exercise price of a stock option. The commenter could identify no policy reason for restricting the exemption as proposed.	The purpose of the issuer bid exemption in section 4.1 of MI 45-105 is to facilitate acquisitions under a variety of incentive and compensation plans offered by issuers. Typically, under these plans, acquisitions by issuers of their own securities occur for the two purposes as set out in the exemption. Giving a complete exemption from the issuer bid requirements to issuers for any purchase from employees would potentially defeat the protections of the issuer bid requirements.
15.	Filing Form 45-102F2 - subsection 2.7(2) of MI 45-102	Two commenters addressed issues regarding the requirement in subsection 2.7(2) of MI 45-102 for a qualifying issuer to file a Form 45-102F2 when securities are issued by a qualifying issuer under MI 45-105. One commenter suggested that the filing requirement contained in subsection 2.7(2) of MI 45-102 should be referenced in MI 45-105. The commenter pointed out that without a reference to the filing requirement in MI 45-105 there is a strong possibility that the reporting obligation will be overlooked. The other commenter suggested that MI 45-105 and MI 45-102 be amended to codify the current administrative practise in Ontario of allowing annual filing of reports of trades.	The Participating Regulators do not agree that it is necessary to refer to the Form 45-102F2 in MI 45-105. Issuers are becoming more familiar with the Form 45-102F2, particularly issuers that intend to rely on the shortened hold period by being qualified issuers. Also, staff notice 45-302 provides that the Form 45-102F2 need only be filed in limited circumstances. Finally, amendments have been proposed to MI 45-102 that will eliminate the requirement to file a Form 45-102F2.
16.	Subsection 2.1(4) - application in British Columbia.	One commenter noted that the British Columbia Securities Commission ("BCSC") invited comment on whether the BCSC should impose the shareholder approval requirement contained in section 2.1(4) of MI 45-105 that applies to issuers that are not listed issuers. The commenter supports the application of the shareholder approval requirement in all provinces and "strongly encourages" the BCSC to impose the requirement in section 2.1(4) of MI 45-105. The commenter does not believe that doing so would negatively affect issuers. One commenter suggested the shareholder approval requirement should not apply in any jurisdiction. The commenter argued it is not a relevant consideration in determining whether the employee, senior officer, director, or consultant requires a prospectus.	The BCSC thanks the commenters for providing comments on this issue. The BCSC has decided not to add the requirement for shareholder approval as it would be a substantial change from the exemptions that have been in effect in British Columbia for a number of years. As such, the BCSC believes adding the requirement would negatively affect issuers. Other than British Columbia, the Participating Regulators believe the shareholder approval requirement for companies that are reporting issuers and not listed, and that exceed the specified thresholds is necessary for reasons that go beyond the protection that a prospectus would offer employees, senior officers, directors, and consultants. Requiring shareholder approval in the circumstances described provides an additional oversight mechanism for the use of these exemptions by an issuer.
17.	Exceptions for British Columbia and Manitoba	One commenter suggested that there should not be any exceptions in MI 45-105 for British Columbia and Manitoba.	The exceptions for British Columbia and Manitoba take into account regional differences in the local legislation, and the experiences of the local regulator. Specifically, Manitoba does not have a closed system of regulation. As such, it must be excepted out of the first trade provisions of MI 45-105. See the discussion above (number 16) for the BCSC's response to the comments on its exceptions.

#	Theme	Comments	Response
18.	Reporting Requirements	Two commenters supported removing the requirement to file reports of distributions under MI 45-105.	The Participating Regulators agree.
19.	Fee Requirement for Non-reporting Issuers	One commenter suggested maintaining the fee requirement for non-reporting issuers to, among other things, track the use of the exemption.	The Participating Regulators do not believe it is appropriate to maintain the fee requirement, particularly in the absence of a reporting requirement. It would not be appropriate to impose these obligations on foreign issuers only, as this would discourage the use of the exemptions in the participating jurisdictions, to the prejudice of employees, senior officers, directors, and consultants in those jurisdictions.