

Notice No. 45-705 (Amendment)

NOVA SCOTIA SECURITIES COMMISSION
STAFF NOTICE

IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED

-AND-

IN THE MATTER OF NATIONAL INSTRUMENT 45-106
CAPITAL RAISING EXEMPTION MONITORING PROGRAM

NOTICE

WHEREAS:

1. Multilateral Instrument 45-103 Capital Raising Exemptions (MI 45-103) came into force as a rule on June 16, 2003. It contained new exemptions from the prospectus and dealer registration requirements that issuers could use to raise capital, including the accredited investor, the family, friends and business associates and the offering memorandum exemptions (the Exemptions).
2. Under Notice No. 45-705 Re: Multilateral Instrument 45-103 Capital Raising Exemption Monitoring Program dated September 24, 2003, staff of the Nova Scotia Securities Commission (Staff) gave notice of the adoption of a monitoring program for use of the Exemptions (the Program).
3. National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) came into force as a rule on September 14, 2005. NI 45-106 contains the Exemptions and MI 45-103 was repealed when NI 45-106 came into force.
4. Staff has continued to apply the Program to monitor use of the Exemptions as they are now set out in NI 45-106.

TAKE NOTICE that the Program continues to apply to use of the Exemptions with the data to be collected from both the Form 45-106F1 – Report of Exempt Distribution and the offering memorandum.

DATED at Halifax, Nova Scotia, this 6th day of December, 2006.

“J. William Slattery”

J. William Slattery, CA
Deputy Director, Corporate Finance and
Administration

Notice No. 45-705

NOVA SCOTIA SECURITIES COMMISSION STAFF NOTICE

**IN THE MATTER OF THE SECURITIES ACT,
R. S. N. S. 1989, C. 418, AS AMENDED**

- AND -

**IN THE MATTER OF
MULTILATERAL INSTRUMENT 45-103
CAPITAL RAISING EXEMPTION MONITORING PROGRAM**

NOTICE

Background

Effective June 16, 2003, the Commission introduced a new set of capital raising exemptions in Rule 45-103 which adopted Multilateral Instrument 45-103 as a rule in Nova Scotia.

There are four new exemptions: the private issuer, the accredited investor, the family, friends and business associates and the offering memorandum exemptions. The private issuer, accredited investor and family, friends and business associates exemptions are uniform between the jurisdictions.

The offering memorandum exemption is different in that in jurisdictions other than NS, BC and Newfoundland and Labrador, there is a maximum investment limit of \$10,000 unless the purchaser meets certain financial tests or obtains advice from an investment or securities dealer.

Private issuer exemption

A private issuer is a non-reporting issuer whose equity securities are subject to restrictions on transfer and are not owned by more than 50 persons, excluding employees. A private issuer may sell securities to close relatives, close personal friends, and close business associates of a director or senior officer of the issuer, to accredited investors and to persons who are not the public. No disclosure is required and no forms or reports need to be filed with the Commission.

Accredited investor exemption

An accredited investor includes financial institutions, pension and investment funds, substantial corporations and wealthy individuals. No disclosure is required under this exemption. A Form 45-103F4 must be filed with the Commission for any trade under this exemption.

Family, friends, and business associates exemption

An issuer that is no longer a private issuer may continue to sell securities to close relatives, close personal friends and close business associates of directors or senior officers of the issuer. No disclosure is required under this exemption. A Form 45-103F4 must be filed with the Commission for any trade under this exemption.

Offering memorandum exemption

Any issuer may raise any amount of money from any person provided the issuer gives the person an offering memorandum and the person signs a clear blunt risk statement. The issuer must file the offering memorandum and report all distributions under this exemption on a Form 45-103F4.

Monitoring Program

In NS, Commission staff have implemented a monitoring program for the use of the exemptions contained in Rule 45-103.

Reason for monitoring program

There are two main reasons for a monitoring program:

1. To better understand how capital is raised in NS.
2. To detect, to the extent practicable, if there are market abuses that need to be addressed.

Detect market abuses

The new offering memorandum exemption permits an issuer to raise any amount of money from any person or company. Raising money from all members of the public without a prospectus or the involvement of a registrant is new and untested for NS. The current prospectus regime is a timely and costly way for issuers to raise capital. This exemption provides the greatest opportunity for improving the ability of issuers to raise capital. This exemption also creates some new public interest risks. It is with these risks in mind that staff intend to collect data in connection with the use of the offering memorandum exemption. Staff will use this data to assess whether changes to this exemption should be recommended to the Commission.

Collecting data

Staff will collect data from both the Form 45-103F4 and the offering memorandum to determine whether a potential problem needs to be addressed.

The following data will be collected.

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| Form – Reporting issuer status | Initially, we will review the OMs of all issuers with a more detailed review of OMs for non-reporting issuers. |
| Form – First time filer | Certain filers routinely access the exempt market, use experienced advisers and pose a lower risk to the public. A new filer on the other hand may not have the experience or knowledge to properly access the public OM market. The OM of a new filer will be reviewed in more detail. |
| OM – Did a registrant sell the offering? Name of registrant Name of other persons receiving a commission | There may be a higher risk where the securities are not sold through a registrant. These offerings may receive a more detailed review. Where a registrant is involved, staff may review the sales practices used and advise Capital Markets if there are any issues relating to a registrant's involvement. |
| OM - Is the issuer a registrant? | Where the issuer is a registrant it may indicate the registrant has a capital problem and Capital Markets would be advised of this situation. |
| Form – Compensation | The amount of compensation paid to a person selling the security may indicate abusive sales practices. If a registrant is involved, there may be a further examination, including an assessment of suitability standards. This information will be provided to Capital Markets. |
| Form – Significant purchases | Where the purchase price is unusually high and the issuer is relying on the OM exemption for sales to the general public, staff may conduct a further review, or contact the purchasers directly if there has been no response to the sales practice questionnaire, particularly if no registrant is involved. |
| Form – Type of security | Certain types of securities, such as derivatives, may have greater risks. Where a registrant is involved, it may indicate suitability issues. If no registrant is involved, there may be an issue of abusive sales practices and further |

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| | review may result. |
| OM - Names of directors & officers | Compliance and Enforcement will review the names to determine if there are any individuals which are of concern. |
| Form – Geographic location of purchasers | For statistical purposes, staff will note the location of the purchasers based upon province of residence. |
| OM – Industry/Business | Certain industries may pose higher risks. If staff see unusual activity in what may be a high-risk industry or business, staff may publish an investor alert or further review may be warranted. Examples of high-risk industries include mortgage investment corporations, real estate, commodity pools and flavours of the month. |
| OM – Mining company | A non-reporting mining company is subject to NI 43-101. The disclosure in the OM must comply with NI 43-101 and the issuer is required to file a technical report. |
| OM – Cost of offering | If the cost of the offering appears excessive, this may be an indication of other problems. |
| Form – Does the OM contain FOFI | If an OM contains FOFI, staff will conduct a more detailed review of the FOFI and the OM. |
| OM – Mutual funds | The offering memorandum exemption is available in NS to mutual funds. Certain jurisdictions prohibit mutual funds from using this exemption. Their primary concern is that a mutual fund will use the offering memorandum exemption and never conduct a prospectus offering. Staff will monitor the use of this exemption by mutual funds to see if a mutual fund is selling to the public in NS under the offering memorandum exemption while selling in other jurisdictions under a prospectus. Staff will also be looking for unusual funds. |

Review of offering memorandum

The offering memoranda will be reviewed to assess whether there are indications of serious non-compliance with the disclosure requirements. While the primary purpose of the monitoring program is to assess if the new exemptions are achieving their purpose of improving access to capital while providing adequate investor protection, staff want to establish a compliance presence as well.

Attached to this notice is a sample offering memorandum for a hypothetical company, LBC Cryogenics Corp., prepared by the staff of the British Columbia Securities

Commission using Form 45-103F1. It provides an example of the type of disclosure that would be expected for an offering memorandum used under the offering memorandum exemption.

Sales practice questionnaire

The most likely area of abuse is sales practices, particularly where no registrant is involved. For example, an OM may contain adequate disclosure but the investment is clearly not suitable for the purchaser. The purchaser may have made or may have been pressured to make a bad investment decision. If a registrant was involved, the registrant may not be fulfilling his or her suitability review obligations.

Staff will be sending a copy of the attached questionnaire to a percentage of the purchasers in each offering. The purpose of this exercise is to gain knowledge about how the securities sold under the offering memorandum are being marketed. If a purchaser in an offering memorandum offering would like to complete a questionnaire, it may do so using the attached questionnaire and return the completed questionnaire to staff.

Commission Staff Contacts

Any questions relating to Rule 45-103 can be referred to Shirley P. Lee, Staff Solicitor, at (902) 424-5441 and any questions relating to the disclosure in an offering memorandum can be referred to J. William Slattery, Deputy Director, Corporate Finance and Administration at (902) 424-7355.

September 24, 2003.