

**ALBERTA SECURITIES COMMISSION NOTICE**

***AMENDMENTS TO ASC RULES AND OTHER INSTRUMENTS IN RESPONSE TO  
STATUTORY AMENDMENTS RELATING TO  
PROSPECTUS AND REGISTRATION EXEMPTIONS***

***REPEAL OF ASC FORM 20 AND ASC RULE 45-802***

***AND***

***SUMMARY OF STATUTORY AMENDMENTS RELATING TO PROSPECTUS AND  
REGISTRATION EXEMPTIONS***

**June 13, 2003**

**Amendments and Effective Date**

Effective June 16, 2003, the Alberta Securities Commission (ASC) will:

- adopt the amending rule entitled *Alberta Securities Commission Rules (General) Amendment Rule*;
- adopt the amending rule entitled *Repeal of Form ASC 20 and ASC Rule 45-802*;
- revoke Blanket Order 87/05/21 - *Certain Statutory Exemptions at Sections 65(1)(v)(v.1) and 107(1)(p) and (q) of The Act*;
- revoke Blanket Order 87/06/04 - *Offering Memoranda and Form 43 of The Securities Regulations*;
- repeal ASC Policy 5.1 - *Statutory Exemptions*;
- repeal ASC Notice 13 - *Guide to Raising Capital Without the Need of a Prospectus*; and
- amend Blanket Order 45-506 *Trades to Employees, Senior Officers, Directors and Consultants*.

**Statutory Amendments**

Certain sections of Bill 14, the *Securities Amendment Act, 2003* that relate to prospectus and dealer registration exemptions will be proclaimed into effect on June 16, 2003. The ASC requested the amendments that relate to the prospectus and dealer registration exemptions in connection with adoption of Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103) in March 2002. **A summary of the statutory amendments in Bill 14 that relate to prospectus and registration exemptions can be found in the attached schedule. However,**

readers should refer to the Alberta Hansard for full details and to verify proclamation dates.

### Consequential Amendments

Various consequential amendments to the ASC Rules and other instruments are necessary as a result of the statutory amendments. The most significant amendments are:

- the creation of a new \$97,000 exemption;
- the repeal of ASC Form 43 *Offering Memorandum*;
- the repeal of ASC Form 20 *Report of Trade*;
- the adoption of Form 45-103F4 *Report of Exempt Distribution*; and
- the creation of an alternative reporting regime for mutual funds using the \$97,000 exemption.

The following table summarizes all amendments to the ASC Rules and other instruments that have been made in response to the statutory amendments relating to prospectus and registration exemptions.

### Proposed Amendments to the ASC General Rules

	Changes	Reason for Changes
1.	Repeal s.1(j)	The section provides a definition of “sophisticated purchaser”. The term is only used in the old offering memorandum exemptions (sections 131(1)(q) and (r) of the Act) that is to be repealed by the Alberta Legislature.
2.	Amend s. 66 and s.122(d)	The sections currently provide a “top-up” exemption from the registration and prospectus requirements so that a purchaser who previously acquired more than \$97,000 worth of mutual fund securities is permitted to buy more of the same securities (in increments of less than \$97,000) provided the purchaser still owns at least \$97,000 worth of the mutual fund securities. The amendment provides a new cross-reference to the replacement \$97,000 exemption (described below in row #4).
3.	Amend s.66.1 and 122.1	Subsections (1), (3), (4) and (5) of sections 66.1 and 122.1 are repealed. These sections specify various limits (dollar amounts and numbers of purchasers) on certain of the statutory exemptions. All of the limits to be repealed relate to statutory exemptions that will be repealed. Accordingly, the sections are unnecessary.
4.	New s.66.2 and s.122.2	<p>These new sections create both a replacement \$97,000 registration exemption and a replacement \$97,000 prospectus exemption because the statutory prospectus and registration \$97,000 exemptions will be repealed.</p> <p>The replacement \$97,000 exemption differs from the statutory \$97,000 exemption in two ways.</p> <p>1. The new \$97,000 exemption refers to the new offering memorandum forms adopted in Multilateral Instrument 45-103 <i>Capital Raising Exemptions</i> (MI 45-103). Reference to the new offering memorandum forms should make it easier for issuers to use the \$97,000 exemption in conjunction with the other new exemptions in MI 45-103. The issuer will continue to have the option of providing an offering memorandum consisting of a statement that there has been no misrepresentation and a statement of the rights of action.</p> <p>2. Under the new \$97,000 exemption, if an issuer advertises, it will not trigger a requirement to provide an offering memorandum in the prescribed form to a prospective purchaser.</p>
5.	Repeal s.122(b)	This section provides a prospectus exemption for trades by an issuer or registered dealer to a registered dealer. The exemption is no longer necessary as the accredited investor exemption provides a broader exemption permitting anyone to trade securities to a registered dealer.

	<b>Changes</b>	<b>Reason for Changes</b>
6.	Repeal s.125	This is the section that imposes a requirement to provide an offering memorandum to a purchaser under the \$97,000 exemption if the issuer advertises the offering.
7.	Amend s.126	This section imposes the resale restrictions (hold periods) on the prospectus exemption at section 122(b) of the Rules, referred to in row #5 above. Reference to that exemption has been removed since section 122(b) is to be repealed.  Section 126 is also amended to impose the resale restrictions on the new replacement \$97,000 exemption described in row #4 above.
8.	Repeal s.127	The section imposes conditions regarding the filing of offering memoranda under statutory exemptions that are to be repealed. The section is therefore unnecessary.
9.	New s.127.1	The prescribed form of offering memorandum under the exempt purchaser exemption will not be ASC Form 43, but instead, the offering forms under MI 45-103. An issuer selling to an exempt purchaser may deliver an offering memorandum prepared in accordance with one of the forms in MI 45-103 or an offering memorandum that states that there is no misrepresentation in the material provided and setting forth the rights of action given to the purchaser.
10.	New s.127.2	The new section imposes the filing requirements for the offering memoranda filed under the statutory exemptions and the new replacement \$97,000 exemption.
11.	Amend s.128	The section prohibits anyone from stating that the Commission has reviewed or approved an offering memorandum.
12.	New ss.129.1 & 129.2	The Act is being amended to remove reference to the exemptions requiring a report of trade and will instead indicate that the exemptions for which a report is required are specified by rule. This new section of the rules will provide this specification.  The section will also provide an alternative reporting regime for mutual funds and non-redeemable investment funds relying on the \$97,000 exemption or the top-up exemption. Those funds will be permitted to report annually rather than within 10 days of the trade. This alternative reporting regime will only be applicable to trades under the \$97,000 exemption and the top-up exemption.
13.	Repeal Form 20	Form 20 is repealed and replaced with a new form, Form 45-103F4 <i>Report of Exempt Distribution</i> . Form 45-103F4 is the report of distribution required under the revised MI 45-103. That form will be available for filing in any jurisdiction of Canada other than Ontario and Quebec.
13.	Repeal Form 43	Form 43 - <i>Offering Memorandum</i> is the old form of offering memorandum required under the statutory exemptions. Most of the statutory exemptions requiring an offering memorandum will be repealed. For those limited circumstances where a statutory exemption requires an offering memorandum, the prescribed form is one of the new forms of offering memorandum under MI 45-103.
14.	Repeal ASC Rule 45-802	This rule was introduced in March 2002 when MI 45-103 was first implemented. It was necessary because, among other things, the original version of MI 45-103 did not specify the required forms under that instrument. However, the revised version of MI 45-103 will specify the required forms. Consequently, the rule is unnecessary.

### Proposed Amendments Relating to Other Instruments

	<b>Change</b>	<b>Reason for Change</b>
1.	Revoke Blanket Order 87/05/21 <i>Certain Statutory Exemptions at Sections 65(1)(v)(v.1) and 107(1)(p) and (q) of The Act</i>	The Blanket Order provides an exemption from the requirement to obtain a notarial certificate from a "sophisticated purchaser". The Blanket Order is unnecessary as the condition was previously removed from the Act.
2.	Revoke Blanket Order 87/06/04 - <i>Offering Memoranda and Form 43 of The Securities</i>	The Blanket Order provides certain exemptions relating to the disclosure in a Form 43 offering memorandum and the

	<b>Change</b>	<b>Reason for Change</b>
	<i>Regulations</i>	disclosure that must be provided to an investor under the \$97,000 exemption. Form 43 is being repealed and consequently, this Blanket Order will no longer be necessary.
3.	Repeal ASC Policy 5.1 - <i>Statutory Exemptions</i> and ASC Notice 13 - <i>Guide to Raising Capital Without the Need of a Prospectus</i>	This policy and notice provide guidance on use of the statutory exemptions. Most of the exemptions to which the guidance relates are to be repealed rendering the policy and notice no longer necessary.
4.	Amend Blanket Order 45-506 <i>Trades to Employees, Senior Officers, Directors and Consultants</i>	One of the statutory exemptions to be repealed by the Act amendments is the exemption that permits trades to employees. However, an exemption for trades to employees will continue to exist through Blanket Order 45-506 <i>Trades to Employees, Senior Officers, Directors and Consultants</i> . Under the statutory exemption, there is no requirement to report trades made to employees. Under the exemption in the Blanket Order, a report of trade to employees is required. Until June 16, 2003, issuers have a choice of which exemption to rely upon and, if they do not wish to file a report of trade, can use the statutory exemption rather than the exemption in the Blanket Order. However, upon repeal of the statutory exemption, this choice will no longer be available. Consequently, the Blanket Order will be amended to remove the requirement to report trades made under it.

### **Questions**

If you have any questions, please contact:

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**Schedule to Notice**  
**Summary of Statutory Amendments Relating to**  
**Prospectus and Dealer Registration Exemptions**

The amendments to the *Securities Act* in Bill 14 that relate to prospectus and registration exemptions can be summarized as follows:

- Amendment to the definition of **offering memorandum** in section 1 so that it refers to an offering memorandum required to be delivered under Alberta securities law but not other offering materials that may be delivered voluntarily.
- Repeal of the definition of **private issuer** in section 1 as it is defined in Current MI 45-103.
- Repeal of sections **86(1)(c)** and **131(1)(a)** which permit trades to financial institutions, insurance companies, governments, etc. because they have been superseded by the accredited investor exemption in the revised MI 45-103.
- Repeal of sections **86(1)(e)** and **131(1)(d)** which permit trades where the aggregate acquisition cost is at least \$97,000.
- Repeal of sections **86(1)(i)** and **131(1)(v)** which permit trades to underwriters because they have been superseded by the accredited investor exemption.
- Amendment to section **86(1)(j)** and repeal section **131(1)(u)** to remove reference to trades between registered dealers as the exemptions have been superseded by the broader accredited investor exemption in the revised MI 45-103.
- Repeal of section **86(1)(u)** and section **131(1)(o)** permitting trades to employees because they have been superseded by the exemption in Blanket Order 45-506 *Trades to Employees, Senior Officers, Directors and Consultants*.
- Repeal of sections **86(1)(v)** and **131(1)(w)** permitting trades between control persons because they have been superseded by the broader family, friends and business associates exemption in the revised MI 45-103.
- Repeal of sections **86(1)(w)** and **131(1)(p)** regarding trades to facilitate incorporation because they are obsolete and not used.
- Repeal of sections **86(1)(y)**, **86(1)(z)**, **131(1)(q)** and **131(1)(r)** permitting seed capital or offering memorandum trades as they are superseded by the broader offering memorandum exemption in the revised MI 45-103.
- Repeal of sections **86(1)(aa)**, **86(1)(bb)**, **131(1)(s)** and **131(1)(t)** permitting purchasers under an offering made under the exemptions in section 86(1)(y) and 131(1)(q) or 86(1)(z) and 131(1)(r) to trade to each other. The exemptions will no longer be relevant

as the exemptions under which the purchasers must have acquired the securities are being repealed. However, the Act will provide transitional provisions for purchasers holding securities previously acquired under those repealed exemptions.

- Repeal of sections **86(1)(ff)** and **131(1)(bb)** permitting trades to directors, senior officers, their family, promoters and the close friends and business associates of promoters because they have been superseded by the broader family, friends and business associates exemption in the revised MI 45-103.
- Repeal of section **87(i)** providing the private issuer exemption as it is superseded by the private issuer exemption in the revised MI 45-103.
- Amendment to section **92** to prohibit unfair practices. The provision will apply to all trades not just trades under prospectus and registration exemptions.
- Amendment to section **132** that requires the filing of a report of trade (Form 20 or the proposed new Form 45-103F4) in connection with certain exemptions so that the applicable exemptions can instead be stated in the rules. The amendment also eliminates the requirement for a vendor who is not the issuer to file the report.
- Repeal of section **133** which mandates the filing of offering memoranda in certain circumstances. The circumstances in which offering memoranda must be filed will be specified in the applicable rules, e.g. in revised MI 45-103 and Part 10 of the ASC General Rules.
- Repeal of sections **134 to 139** which provide resale restrictions on securities acquired under a prospectus exemption and repeal section **140** which provides exemptions for distributions by control persons. These provisions have been superseded by Multilateral Instrument 45-102 *Resale of Securities*.
- Amendment to section **204** which provides statutory civil liability under an offering memorandum against the issuer. The amendments will extend liability to every director and every other person who signs the offering memorandum (i.e., CEO, CFO and promoters). The amendment will provide for all of the same defences as afforded under the prospectus civil liability provisions. In addition, the amendments allow a defendant who is found liable to recover a contribution from a person who is jointly and severally liable. Further, the amendments clarify that a misrepresentation in a document incorporated by reference into an offering memorandum constitutes a misrepresentation in the offering memorandum. (These latter two amendments are also made to the prospectus and take-over bid civil liability provisions).
- Amendment to section **206** which gives purchasers under a prospectus, take-over bid or issuer bid a right of action if they do not receive the disclosure document to provide a similar right to a purchaser who should have been provided with an offering memorandum.

- Creation of a new section **209.1** which will give purchasers under an offering memorandum a two day right to cancel their investment.
- Amendment to section **211** to extend the limitation period for an action (other than rescission). Currently, the Act provides a limitation period of the earlier of 180 days from the plaintiff having knowledge of the cause of action and one year from the transaction giving rise to the cause of action. The amendment will provide a limitation period of 180 days from the plaintiff having knowledge of the cause of action and three years from the transaction giving rise to the cause of action. Section 211 is the general limitation period in the Act; consequently, the change affects more than just limitation periods under an offering memorandum. For example, it would apply to prospectuses.

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