

*Note: [28 Sep 2009] – The following version of 45-106CP replaced the version that was initially implemented on September 14, 2005. This version of 45-106CP is no longer current.*

**Companion Policy 45-106CP**  
***Prospectus and Registration Exemptions***

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**Companion Policy 45-106CP**  
*Prospectus and Registration Exemptions*

**PART 1 – INTRODUCTION**

National Instrument 45-106 *Prospectus and Registration Exemptions* (“NI 45-106”) provides: (i) exemptions from the prospectus requirement; (ii) exemptions from registration requirements; and (iii) one exemption from the issuer bid requirements.

The registration exemptions in Part 3 of NI 45-106 will not apply in any jurisdiction **six months** after National Instrument 31-103 *Registration Requirements and Exemptions* (“NI 31-103”) comes into force. A subset of registration exemptions will continue to apply after the six month transition period and will be located in NI 31-103.

**1.1 Purpose**

The purpose of this Companion Policy is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of NI 45-106. This Companion Policy includes explanations, discussion and examples of the application of various parts of NI 45-106.

**1.2 All trades are subject to securities legislation**

The securities legislation of a local jurisdiction applies to any trade in a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of “trade” in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade occurs.

**1.3 Multi-jurisdictional distributions**

A distribution can occur in more than one jurisdiction. If it does, the person conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person in Alberta to a purchaser in British Columbia may be considered a distribution in both jurisdictions.

**1.4 Other exemptions**

In addition to the exemptions in NI 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. The CSA has issued CSA Staff Notice 45-304 that lists other exemptions available under securities legislation.

## **1.5 Discretionary relief**

In addition to the exemptions contained in NI 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement and the registration requirements.

## **1.6 Advisers**

Subsection 1.5(2) of NI 45-106 provides that an exemption from the dealer registration requirement in NI 45-106 is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under NI 45-106.

## **1.7 Underwriters**

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the prospectus exemption in section 2.33 of NI 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where a dealer purchases securities under a prospectus exemption other than the exemption in section 2.33 of NI 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.

If a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be viewed as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under NI 45-106.

## **1.8 Persons created to use exemptions (“syndication”)**

Sections 2.3(5), 3.3(5), 2.4(1), 3.4(1), 2.9(3), 3.9(3), 2.10(2) and 3.10(2) of NI 45-106 specifically prohibit syndications. A distribution or a trade of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of, or trade in, securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing \$150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes \$10 000. In this situation the shareholders of the newly formed company are indirectly investing \$10 000 when the exemption requires that they each invest \$150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to rely on.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute or trade securities when the exemption is not available to directly distribute or trade securities to each person in the syndicate.

## **1.9 Responsibility for compliance**

A person distributing or trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person distributing or trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person distributing or trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.

For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement describing the purchaser’s relationship with the director. On the basis of that factual information, the issuer could determine whether the purchaser is a close personal friend of the director for the purposes of a family, friends and business associates exemption. The issuer should not rely merely on a representation: “I am a close personal friend of a director”. Likewise, under the accredited investor exemptions, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of “accredited investor”. Prior to discussing the particulars of the investment with the purchaser, the seller should discuss

with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.

It is not appropriate for a person to assume an exemption is available. For instance a seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.

### **1.10 Prohibited activities**

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

## **PART 2 – INTERPRETATION**

### **2.1 Definitions**

Unless defined in NI 45-106, terms used in NI 45-106 have the meaning given to them in local securities legislation or in National Instrument 14-101 *Definitions*.

The term “contract of insurance” in the definition of “financial assets” has the meaning assigned to it in the legislation for the jurisdiction referenced in Appendix A of NI 45-106.

### **2.2 Executive officer (“policy making function”)**

The definition of “executive officer” in NI 45-106 is based on the definition of the same term contained in National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”).

Paragraph (c) of the definition "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who “performs a policy-making function” in respect of the issuer. The CSA is of the view that an individual who “performs a policy-making function” in respect of an issuer is someone who is responsible, solely or jointly with

others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

### **2.3 Directors, executive officers and officers of non-corporate issuers**

The term “director” is defined in NI 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in NI 45-106, or any of the NI 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with NI 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute or trade securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

### **2.4 Founder**

The definition of “founder” includes a requirement that, at the time of the distribution of, or trade in, a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of NI 45-106, regardless of the person’s degree of prior involvement with the issuer or the extent of the person’s continued ownership interest in the issuer.

### **2.5 Investment fund**

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

## **2.6 Affiliate, control and related entity**

### **1. Affiliate**

Section 1.3 of NI 45-106 contains rules for determining whether persons are affiliates for the purposes of NI 45-106, which may be different than those contained in other securities legislation.

### **2. Control**

The concept of control has two different interpretations in NI 45-106. For the purposes of Division 4 of Part 2 and Division 4 of Part 3 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in section 2.23(1) and section 3.23(1), respectively. For the purposes of the rest of NI 45-106, the interpretation of control is found in section 1.4 of NI 45-106. The reason for having two different interpretations of control is that the exemptions for distributions of, and trades in, securities to employees, executive officers, directors and consultants require a broader concept of control than is considered necessary for the rest of NI 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures.

## **2.7 Close personal friend**

For the purposes of both the private issuer exemptions and the family, friends and business associates exemptions, a “close personal friend” of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The term “close personal friend” can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

- (a) a relative,
- (b) a member of the same organization, association or religious group,  
or
- (c) a client, customer, former client or former customer.



## **2.8 Close business associate**

For the purposes of both the private issuer exemptions and the family, friends and business associates exemptions, a “close business associate” is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness.

An individual is not a close business associate solely because the individual is:

- (a) a member of the same organization, association or religious group,  
or
- (b) a client, customer, former client or former customer.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

## **2.9 Indirect interest**

Under paragraph (t) of the definition of “accredited investor” in section 1.1 of NI 45-106, an “accredited investor” includes a person in respect of which all of the owners of interests in that person, direct, indirect or beneficial, are accredited investors. The interpretive provision in section 1.2 of NI 45-106 is needed to confirm the meaning of indirect interest in British Columbia.

# **PART 3 – CAPITAL RAISING EXEMPTIONS**

## **3.1 Soliciting purchasers**

Part 2, Division 1, and Part 3, Division 1 (capital raising exemptions) in NI 45-106 do not prohibit the use of registrants, finders, or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer exemptions in sections 2.4 and 3.4 of NI 45-106, or under the family, friends and business associates exemptions in sections 2.5 and 3.5 of NI 45-106, may give rise to a presumption that the relationship required for use of these exemptions is not present. If, for example, an issuer advertises or pays a commission or finder’s fee to a third party to find purchasers under the family, friends and business associates exemptions, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on these exemptions.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemptions, provided that all of the other conditions to those exemptions are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

### **3.2 Soliciting purchasers – Newfoundland and Labrador and Ontario**

In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement identified in section 3.01 of NI 45-106 are not available to a “market intermediary”, except as therein provided (or as otherwise provided in local securities legislation – see, for instance, in the case of Ontario, OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*). Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario, the term “market intermediary” is defined in Ontario Securities Commission Rule 14-501 *Definitions*.

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer’s securities, the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

### **3.3 Advertising**

NI 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer’s public disclosure record.

### **3.4 Restrictions on finder’s fees or commissions**

The following restrictions apply with respect to certain exemptions under NI 45-106:

1. no commissions or finder's fees may be paid to directors, officers, founders and control persons in connection with a distribution or a trade made under the private issuer exemptions or the family, friends and business associates exemptions, except in connection with a distribution of, or trade in, a security to an accredited investor under a private issuer exemption; and
2. in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a distribution of, or a trade in, a security to a purchaser in one of those jurisdictions under an offering memorandum exemption.

### **3.4.1 Reinvestment plans**

1. When is a plan administrator acting "for or on behalf of the issuer"?

Sections 2.2 and 3.2 of NI 45-106 contain prospectus and dealer registration exemptions for distributions of, and trades in, securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts "for or on behalf of the issuer" and therefore falls within the language contained in sections 2.2(1) and 3.2(1) of NI 45-106. The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the exemptions contained in sections 2.2 or 3.2 of NI 45-106.

2. Providing a description of material attributes and characteristics of securities

The prospectus and dealer registration reinvestment plan exemptions in sections 2.2(5) and 3.2(5) of NI 45-106 add a requirement, effective September 28, 2009, that if the securities distributed or traded under a reinvestment plan, in reliance upon a reinvestment plan exemption, are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed or traded. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials. Section 8.3.1 of NI 45-106 provides a transition period, allowing the issuer or plan agent to meet this requirement not later than 140 days after the next financial year end of the issuer ending on or after September 28, 2009.

### 3. Interest payments

The exemptions in sections 2.2 and 3.2 of NI 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words “distributions out of earnings...or other sources” cover interest payable on debentures.

### 3.5 Accredited investor

#### 1. Individual qualification – financial tests

An individual is an “accredited investor” for the purposes of NI 45-106 if he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the “accredited investor” definition in section 1.1 of NI 45-106.

These branches of the definition are designed to treat spouses as a single investing unit, so that either spouse qualifies as an “accredited investor” if the combined financial assets, net income, or net assets of both spouses exceed the \$1 000 000, \$300 000, or \$5 000 000 thresholds, respectively.

For the purposes of the financial asset test in paragraph (j), “financial assets” are defined in NI 45-106 to mean cash, securities, or a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation. These financial assets are generally liquid or relatively easy to liquidate. The value of a purchaser’s personal residence would not be included in a calculation of financial assets. By comparison, the net asset test under paragraph (l) involves a consideration of all of the purchaser’s total assets minus the purchaser’s total liabilities. Accordingly, for the purposes of the net asset test, the calculation of total assets would include the value of a purchaser’s personal residence and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the purchaser’s personal residence.

If the combined net income of both spouses does not exceed \$300 000, but the net income of one of the spouses exceeds \$200 000, only the spouse whose net income exceeds \$200 000 qualifies as an accredited investor.

## 2. Bright-line standards – individuals

The monetary thresholds in the “accredited investor” definition are intended to create “bright-line” standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

## 3. Beneficial ownership of financial assets

Paragraph (j) of the “accredited investor” definition refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1 000 000. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual’s spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The following factors are indicative of beneficial ownership of financial assets:

- (a) physical or constructive possession of evidence of ownership of the financial asset;
- (b) entitlement to receipt of any income generated by the financial asset;
- (c) risk of loss of the value of the financial asset; and
- (d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the threshold test because paragraph (j) takes into account financial assets owned beneficially by a spouse. However, financial assets held in a group RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet these beneficial ownership requirements.

## 4. Calculation of purchaser’s net assets

To calculate a purchaser’s net assets under paragraph (l) of the “accredited investor” definition, subtract the purchaser’s total liabilities from the purchaser’s total assets. The

value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, the security.

#### 5. Financial statements

The minimum net asset threshold of \$5 000 000 specified in paragraph (m) of the “accredited investor” definition must, in the case of a non-individual entity, be shown on the entity’s “most recently prepared financial statements”. The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

#### 6. Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of, or trade in, the security. The person is not required to monitor the purchaser’s continuing qualification as an accredited investor after the distribution of, or trade in, the security is completed.

#### 7. Recognition or Designation as an Accredited Investor

Paragraph (v) of the “accredited investor” definition in NI 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or regulators, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the “accredited investor” definition generally covers all types of persons that do not require the protection of the prospectus requirement or the dealer registration requirement. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

### **3.6 Private issuer**

#### 1. Meaning of “the public”

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted “the public” very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to distribute or trade securities, in reliance upon the

private issuer prospectus exemption in section 2.4(2) or the private issuer dealer registration exemption in section 3.4(2) of NI 45-106, to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of, or trade in, the security is not to the public.

## 2. Meaning of “close personal friends” and “close business associates”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

### 2.1 Meaning of “non-convertible debt securities”

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

## 3. Business combination of private issuers

A distribution of, or trade in, securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers, to holders of securities of those issuers is not a distribution of, or trade in, a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of, or trade in, securities by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of, or trade in, securities to the public, provided the offeror remains a private issuer after completion of the bid.

## 4. Acquisition of a private issuer

Persons relying on a private issuer exemption in NI 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the sale will not be considered to have been to the public.

## 5. Ceasing to be a private issuer

The term “private issuer” is defined in section 2.4(1) (with the same definition repeated in section 3.4(1) of NI 45-106). A private issuer can distribute securities only to the persons listed in section 2.4(2) of NI 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer prospectus exemption in section 2.4(2) (or the private issuer dealer registration exemption in section 3.4(2)). For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers will still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates prospectus exemption (except in Ontario) or the accredited investor prospectus exemption. However, issuers that rely on these prospectus exemptions must file a report of exempt distribution with the securities regulatory authority or regulator in each jurisdiction in which the distribution took place.

An issuer that completes a going private transaction (for example, by way of an amalgamation squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can however use the private issuer exemption after a going private transaction.

### **3.7 Family, friends and business associates**

#### 1. Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemptions in sections 2.5 and 3.5 of NI 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

#### 2. Meaning of “close personal friends” and “close business associates”

See sections 2.7 and 2.8 of this Companion Policy for a discussion of the meaning of “close personal friend” and “close business associate”.

#### 3. Risk acknowledgement - Saskatchewan

Under sections 2.6 and 3.6 of NI 45-106, the corresponding family, friends and business associates exemption in section 2.5 or 3.5 of NI 45-106 cannot be relied upon in Saskatchewan for a distribution of, or trade in, securities based on a close personal friendship or close business association unless the person obtains a signed “risk



acknowledgement” in the required form from the purchaser and retains the form for eight years after the distribution of, or trade in, securities.

### **3.8 Offering memorandum**

#### **1. Eligibility criteria - Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan**

Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan, and Yukon impose eligibility criteria on persons investing under the offering memorandum exemptions. In these jurisdictions, the purchaser must be an eligible investor if the purchaser’s acquisition cost is more than \$10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The \$10 000 maximum acquisition cost is calculated per distribution of, or trade in, security.

Nevertheless, concurrent and consecutive, closely-timed offerings to the same purchaser will usually constitute one distribution of, or trade in, a security. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the \$10 000 threshold by dividing a subscription in excess of \$10 000 by one purchaser into a number of smaller subscriptions of \$10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either \$75 000 pre-tax net income or has \$400 000 worth of net assets. In calculating a purchaser’s net assets, subtract the purchaser’s total liabilities from the purchaser’s total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, a security.

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser’s jurisdiction) that is authorized to give advice with respect to the type of security being distributed or traded. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the “know your client” and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the “know your client” and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

## 2. Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form 45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), management’s discussion and analysis (MD&A), annual financial statements and subsequent specified continuous disclosure documents required under NI 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under NI 51-102 and has met all of its other continuous disclosure obligations, including those in 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*. Under NI 51-102, venture issuers are not required to file AIFs. However, if a venture issuer wants to use Form 45-106F3, the venture issuer must voluntarily file an AIF under NI 51-102 in order to incorporate that AIF into its offering memorandum.

## 3. Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(9), (10), (10.1), (10.2), (10.3), (11), (11.1), or (12) or 3.9(9), (10), (10.1), (10.2), (10.3), (11), (11.1), or (12) of NI 45-106.

“Promoter” is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. “Promoter” has not been defined in the *Securities Act* (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemptions.

#### 4. Consideration to be held in trust

The purchaser has, or must be given, the right to cancel the agreement to purchase the securities until midnight on the 2<sup>nd</sup> business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser's cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer's responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

#### 5. Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority or regulator in each of the jurisdictions in which the issuer distributes or trades securities under an offering memorandum exemption. The issuer must file the offering memorandum on or before the 10<sup>th</sup> day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

#### 6. Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of

action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

### **3.9 Minimum amount investment**

An issuer may wish to distribute or trade more than one kind of security of its own issue, such as shares and debt, in a single transaction under a minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than \$150 000 paid in cash at the time of the distribution of, or trade in, a security, the exemptions can, if otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than \$150 000.

## **PART 4 - OTHER EXEMPTIONS**

### **4.1 Employee, executive officer, director and consultant exemptions**

Trustees, custodians or administrators who engage in activities, contemplated in the prospectus and dealer registration exemptions in sections 2.27 and 3.27 of NI 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of National Instrument 21-101 *Marketplace Operation* respecting “marketplaces” and “alternative trading systems”.

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to participate in the growth of the employer’s business and to compensate persons for the services they provide to an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

## 4.2 Business combination and reorganization

### 1. Statutory procedure

The securities regulatory authorities interpret the phrase “statutory procedure” broadly and are of the view that the prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 apply to all distributions of, and trades in, securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the distribution of, or trade in, a security occurs.

The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 exempt distributions of, and trades in, securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done “under a statutory procedure”. The securities regulatory authorities or regulators are of the view that the references to statutory procedure in sections 2.11 and 3.11 of NI 45-106 are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the *Companies’ Creditors Arrangement Act* (Canada).

### 2. Three-cornered amalgamations

Certain corporate statutes permit a so-called “three-cornered merger or amalgamation” under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 refer to these distributions of, or trades in, a security when they refer to a distribution of, or a trade in, a security made in connection with an amalgamation or merger done under a statutory procedure.

### 3. Exchangeable shares

A transaction involving a procedure described in the prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of NI 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the

shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder's choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the exemptions now contained in sections 2.11 and 3.11 of NI 45-106 were available for all distributions or trades necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities or regulators take the position that the statutory procedure exemptions contained in section 2.11 and section 3.11 of NI 45-106 refer to all distributions or trades of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section 2.11 or section 3.11, even where such distributions or trades occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement represented a decision to, ultimately, exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in circumstances where the original transaction was completed in reliance on these exemptions.

#### **4.3 Asset acquisition - character of assets to be acquired**

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations, cash assets that make up working capital could also be considered in the total calculation of the fair market value.

#### **4.4 Securities for debt - *bona fide debt***

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute or trade securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other

written statement to the issuer indicating that the debt is due. The securities for debt exemptions may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

#### **4.5 Take-over bid and issuer bid**

##### **1. Exempt bids**

The terms take-over bid and issuer bid, for the purposes of sections 2.16 and 3.16 of NI 45-106, include an exempt take-over bid and exempt issuer bid.

##### **2. Bids involving exchangeable shares**

The take-over bid and issuer bid exemptions refer to all distributions or trades necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Companion Policy), even where such distributions or trades may occur several months or even years after the bid is completed.

#### **4.6 Isolated distribution or trade**

The exemptions contained in section 2.30 and 3.30 of NI 45-106 are limited to distributions of, or trades in, a security made by an issuer in a security of its own issue. There is also an additional isolated trade dealer registration exemption contained in section 3.29 of NI 45-106. While the latter exemption refers to trades in any security, it does not apply to any trades by an issuer in a security that is issued by the issuer.

It is intended that these exemptions will only be used rarely and are not available for registrants or others whose business is trading in securities.

Reliance upon the isolated trade exemption might, for example, be appropriate when a person who is not involved in the business of trading securities wishes to make a single trade of a security that the person owns to another person. The exemption would not be available to a person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.

#### **4.7 Mortgages**

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, NI 45-106 specifically excludes syndicated mortgages from the mortgage prospectus and dealer registration exemptions in sections 2.36 and 3.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36(1) or 3.36(1) of NI 45-106.

The mortgage exemptions do not apply to distributions or trades in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage exemptions

also do not apply to a distribution of, or a trade in, a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

#### **4.8 Not for profit issuer**

##### **1. Eligibility to use these exemptions**

These exemptions apply to distributions of, and trades in, securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit (“not for profit issuer”). To use these exemptions, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on these exemptions. For example, if an issuer organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer *may* be unable to rely on these exemptions. The same would also be true if one of an issuer’s mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use these exemptions, because no part of the issuer’s net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are *not* typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on these exemptions, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of, or trade in, the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within these exemptions.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the *Securities Act* (Québec).



2. Meaning of “no commission or other remuneration”

Sections 2.38(b) and 3.38(b) provide that “no commission or other remuneration is paid in connection with the sale of the security”. This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

**4.9 Exchange contracts**

The dealer registration exemption for exchange contracts contained in section 3.45 of NI 45-106 (and as limited by section 3.0 of NI 45-106) is only available in Alberta, British Columbia, Québec and Saskatchewan. In Manitoba and Ontario, exchange contracts are governed by commodity futures legislation.

Except in Saskatchewan, the dealer registration exemption for exchange contracts contained in section 3.45(1)(b) (and as limited by section 3.0) of NI 45-106 provides for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.

**PART 5 – FORMS**

**5.1 Report of Exempt Distribution**

1. Requirement to file

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of NI 45-106 is required to file Form 45-106F1 *Report of Exempt Distribution*, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of NI 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

In determining if it is required to file a report in a particular jurisdiction, the issuer or underwriter should consider the following questions:

- (a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance, if any, on when a distribution occurs in the jurisdiction.)

- (b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?
- (c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of NI 45-106.)

A distribution may occur in more than one jurisdiction. In this case, the issuer is required to file a single report in each Canadian jurisdiction where the distribution has occurred. The report will set out all distributions in each Canadian jurisdiction.

## 2. Access to information

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

- (a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,
- (b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and
- (c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or regulators, as applicable, have determined that the information listed in Form 45-106F1 *Report of Exempt Distribution*, Schedule I (“Schedule I”) discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta, the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently, the information listed in Schedule I will not be made publicly available.

### 3. Filings in British Columbia

For filings made in British Columbia, issuers are required to file Form 45-106F1 and pay the fees associated with that filing electronically using BCSC e-services. This requirement only applies to Form 45-106F1 filings that are required to be made within 10 days of the distribution. It does not apply to Form 45-106F1 filings made annually by investment funds under section 6.2(2) of NI 45-106. Please refer to BC Instrument 13-502 *Electronic Filing of Reports of Exempt Distribution* for further information.

#### **5.2 Forms required under the offering memorandum exemption**

NI 45-106 designates two forms of offering memorandum. The first, Form 45-106F2, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in NI 45-106).

The required form of risk acknowledgment under sections 2.9(1), 3.9(1), 2.9(2) and 3.9(2) of NI 45-106 is Form 45-106F4.

#### **5.3 Real estate securities**

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

#### **5.4 Risk Acknowledgement Form Respecting Close Personal Friends and Close Business Associates – Saskatchewan**

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of NI 45-106 (and under section 3.6(1)) if the person intends to rely upon the “family, friends and business associates exemption” in section 2.5 (or in section 3.5) of NI 45-106, which is based on a relationship of close personal friendship or close business association. The form of risk acknowledgement required in these circumstances is Form 45-106F5.

## **PART 6 – RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION**

### **6.1 Resale restrictions**

In most jurisdictions, securities distributed under a prospectus exemption may be subject to restrictions on their resale. The particular resale, or “first trade”, restrictions depend on the parties to the distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt distribution will be freely tradable.

Resale restrictions are imposed under National Instrument 45-102 *Resale of Securities* (“NI 45-102”). While NI 45-106 contains text boxes providing commentary on resale,

these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in NI 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed under an exemption from the prospectus requirement, whether under NI 45-106 or other securities legislation.

**Amended and Restated September 28, 2009 except in Ontario.**

**In Ontario, Amended and Restated on the later of the following:**

- (a) **September 28, 2009;**
- (b) **the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009* are proclaimed in force.**