REGULATION 45-106
SUMMARY OF COMMENTS RECEIVED DURING COMMENT PERIOD ENDED MARCH 17, 2005
AND CSA RESPONSES

		Summary of Comment	CSA Response
1.	General	Six commenters commend the CSA for attempting to create a harmonized approach to registration and prospectus exemptions, and recognize that *Regulation 45-106 respecting Prospectus and Registration Exemptions* (Regulation 45-106) is a significant improvement over the current regime.	We acknowledge the comment.
2.	General	Two commenters note that, while harmonization is an important and worthwhile goal, it is important to allow for regional differences. Regional markets differ in size and industry and we should not remove exemptions that support and promote capital raising in local markets for the sole purpose of achieving harmonization.	We acknowledge the comment.
3.	General	Three commenters commend the Autorité de marchés financiers (AMF) for its efforts in rationalizing the exempt distributions regime in Québec through its support of Bill 72 and its participation in Regulation 45-106 and *Regulation 45-102 respecting Resale of Securities* (Regulation 45-102).	We acknowledge the comment.
4.	General	Several commenters are disappointed that Regulation 45-106 contains differences across jurisdictions and that local exemptions would continue after Regulation 45-106 was implemented. The differences and local exemptions will perpetuate inefficiencies and higher costs. Smaller markets will suffer because some issuers will avoid distributions in small markets with different requirements. Several commenters urge the CSA to eliminate local exemptions and develop a truly harmonized rule without carve-outs. One commenter states that carve-outs should only be allowed if a compelling case is made by a particular regulator for a different regime in their jurisdiction based on the characteristics of the market and of investors in that jurisdiction.	The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one regulation and to harmonize them to the extent possible within an ambitious time frame. We see the implementation of Regulation 45-106 as an important first step toward further harmonization of the prospectus and registration exemptions across Canada. We believe the carve-outs and differences that are contained in Regulation 45-106 are only present where jurisdictions have made compelling arguments to maintain those carve-outs and differences.
5.	General	One commenter notes that local exemptions will be retained in certain provinces and that it is very difficult to comment on Regulation 45-106 without understanding the complete picture of prospectus and registration exemptions across Canada.	Although a few local exemptions will remain in some jurisdictions, Regulation 45-106 contains the vast majority of exemptions. Local exemptions that were not identified as the subject of repeal will remain in place upon implementation of Regulation 45-106. In addition, upon implementation of Regulation 45-106 we will publish a Notice that lists all local exemptions that will remain in effect.
6.	General	One commenter suggests that the grouping of the exemptions could be improved in a way that would assist the ease of interpretation and use of the Regulation 45-106. The commenter proposes grouping exemptions according to how subsequent trades are affected by resale provisions so that those exemptions that are subject to a seasoning period are grouped together in a division separate from those that are subject to a restricted period on resale.	We acknowledge that there may be a variety of approaches that could be employed to organize the exemptions. However, we feel the approach we adopted is valid and we are not inclined to re-order the exemptions based on which resale provisions apply. We believe that the text box at the beginning of each exemption explaining which resale provisions apply will greatly contribute to clarifying how resale provisions operate for the exemptions.
7.	Definition of "accredited investor" - general	One commenter supports the OSC's decision to amend the definition of "accredited investor" by removing clauses (p) to (s) of the definition in OSC Rule 45-501 *Exempt Distributions.*	We acknowledge the comment.
8.	Definition of "accredited investor" - general	The scope of section 45 of the Québec *Securities Act* may not be fully maintained by the definition of "accredited investor" under Regulation 45-106 (paragraphs (p) and (q) of the definition).	We believe that the scope of section 45 of Québec *Securities Act* is fully maintained with paragraphs (a), (d), (e), (p) and (q) of the definition of "accredited investor".
9.	Definition of "accredited investor" - paragraph (c)	One commenter asks whether paragraph (c) of the definition of "accredited investor" should refer to voting "shares" instead of voting "securities".	We believe "securities" is the appropriate term as it is broader and has a clear meaning in securities law. The term "shares" is not defined in securities law.
10.	Definition of "accredited investor" - paragraph (e)	One commenter believes that paragraph (e) of the definition of "accredited investor" that allows individuals formerly registered as representatives to qualify as accredited investors should not extend to individuals whose registration was terminated as a result of wrongdoing.	We are not inclined to make a change to this definition. While we do not disagree with the comment in principal, we are not inclined to make this change because securities regulatory authorities have the power to deny access to exemptions in appropriate circumstances.

		Summary of Comment	CSA Response
11.	Definition of "accredited investor" - paragraph (i)	One commenter wants paragraph (i) of the definition of "accredited investor" to include pension plans if the sponsor or investment advisor makes the investment decisions or the sponsor acts as an intermediary between the plan members and the issuer of the investment. The commenter submits that these types of pension plans should be deemed to be purchasing a principal for the purposes of the accredited investor exemption. In addition, the commenter states that, for the purposes of the accredited investor exemption, pension funds should be deemed to be purchasing as principal if the plan administrator or its investment adviser (and not the members) makes the investment decision. The same commenter made a number of comments on the CAP exemption and amendments to OSC Rule 45-501 to incorporate the content of OSC Rule 32-503.	Consideration of this comment will require further policy analysis and will be addressed in future amendments to Regulation 45-106.
12.	Definition of "accredited investor" - paragraph (j), (k), and (l)	One commenter thinks that the financial criteria is too high for an individual but that the private investment club exemption provides an alternative.	We believe the current thresholds strike an appropriate balance between investor protection and allowing individuals access to the exemption to facilitate capital raising. Regarding the second part of the comment, we are unclear how the investment club exemption would provide an alternative to the accredited investor exemption. The investment club exemption only permits the issuance of securities in a private investment fund. It would not permit a number of non-accredited investors to pool their investments to collectively become an accredited investor.
13.	Definition of "accredited investor" - paragraph (n)	Two commenters suggest that investment funds should qualify under this paragraph of the definition without regard to the status of investors in the investment fund who reside outside the jurisdiction.	In exceptional circumstances investment funds that fall outside this provision may wish to seek designation as an accredited investor or, in Alberta or British Columbia seek recognition as an exempt purchaser.
14.	Definition of "accredited investor" - paragraph (n)	One commenter states that an investment fund that distributes, or has distributed, its securities to persons in the circumstances referred to in section 2.18 [*investment fund reinvestment*] should also be considered to be an accredited investor and added to those listed in paragraph (n)(ii) and that there should not be a distinction between the distribution circumstances in sections 2.10 and 2.19 and the distribution circumstances in section 2.18.	We agree. Section 2.18 will be added to paragraph (n) by adding a subparagraph (iii) that states: "(iii) a person described in subparagraph (i) or (ii) that acquires or acquired securities under section 2.18 [investment fund reinvestment]". We would also add at the beginning of subparagraph (ii) the following: "who acquire securities…".
15.	Definition of "accredited investor" - paragraph (q)	Several commenters are concerned that foreign registered portfolio managers are carved out (for Ontario) of the accredited investor definition in paragraph (q). The commenters could not see a reason for carving out foreign portfolio managers who advise their foreign clients.	The Ontario carve out in paragraph (q) of the definition of "accredited investor" relating to foreign advisers has been removed.
16.	Definition of "accredited investor" - paragraph (q)	Seven commenters support the removal of the Ontario restriction that prohibits investments in securities of an investment fund by persons managing fully managed accounts who rely on the "accredited investor" definition.	Paragraph (x) of the definition of "accredited investor" in the current OSC Rule 45-501 *Exempt Distributions* contains a restriction that prohibits persons managing fully managed accounts from relying on the accredited investor exemption for investments in securities of a mutual fund or non-redeemable investment fund. In light of recent events concerning hedge funds and comments made by the Investment Dealers Association of Canada in its report of May 18, 2005 entitled Regulatory Analysis of Hedge Funds, the OSC has decided to maintain this restriction in paragraph (q) of the definition of "accredited investor" in Regulation 45-106. We intend to study this issue further.
17.	Definition of "accredited investor" - paragraph (r)	One commenter takes issue with the requirement in paragraph (r) of the definition of "accredited investor" that charities obtain advice in regard to a trade. The commenter notes that the current regime in Ontario simply qualifies all registered charities as accredited investors. The commenter is unaware of general abuse under the current regime and submits that regulation should emphasize the responsibility of charity trustees and other administrators to manage funds appropriately, rather than requiring issuers to inquire about the quality of advice given to the	This requirement addresses investor protection. Charities are not required to meet any sort of sophistication test to be registered as a charity and carry on charitable activities. When this requirement was added to Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103) some charities commented that it did not pose a problem. The requirement is new to some jurisdictions but given the above and in the interests of harmonization we are not willing

		Summary of Comment	CSA Response
		charity before accepting an investment from the charity.	to remove it.
18.	Definition of "accredited investor" - paragraph (t) in French version	The French version of paragraph (t) excludes a significant element when compared with the English version: The exception refers to the voting securities required by law to be owned by directors of that person. The French version of this paragraph should be based on the similar phraseology used in the French version of paragraph (c) of the definition.	We agree. Paragraph (t) of the French version has been changed to reflect the comment.
19.	Definition of "AIF"	One commenter suggests that the definition of AIF should include information circulars prepared in the context of reverse takeovers and changes of business undertaken by TSX Venture issuers. The commenter notes that these types of information circulars are very similar to information circulars prepared for qualifying transactions, which are included in the definition of AIF.	We have not expanded the definition of "AIF" at this time. An expansion of this definition will require policy review and analysis that is beyond the scope of this project.
20.	Definition of "Canadian financial institution"	One commenter submits that this definition should be revised to require that a financial institution must be authorized to carry on business as a specified form of entity in Canada in order to benefit from treatment as an "accredited investor". For example, paragraph (c) of the definition should state that a trust company must be qualified to do business as a trust company rather than simply be authorized by an enactment to carry on business.	We believe the current wording of the definition is clear. A loan corporation, for example, must be authorized under the appropriate legislation to carry on business as a loan corporation.
21.	Definition of "eligibility adviser"	One commenter states that the term "eligibility adviser" is an inappropriate term to describe the concept of an individual who advises eligible investors. The use of "eligibility adviser" may lead to confusion and misunderstanding since the "adviser" is not providing advice on the eligibility of investments, but rather is advising on the suitability of investments for eligible investors. The commenter suggested that the term "eligibility consultant" would be more appropriate.	The term is a defined term that was taken from MI 45-103, which is in place in many jurisdictions in Canada. We are not aware of this term being misunderstood or causing confusion.
22.	Definition of "eligibility adviser"	One commenter questioned why accountants and lawyers are considered to be appropriate "eligibility advisers" in Saskatchewan and Manitoba, and not in other Canadian jurisdictions, and what the policy reason is for this different treatment of accountants and lawyers.	This provision is carried forward from MI 45-103. The commenters on the previous publication of MI 45-103 (summarized in the comment summary published June 2, 2003) actually supported the use of lawyers and accountants in Manitoba and Saskatchewan. In Manitoba and Saskatchewan, this carries forward existing provisions under a local exemption. This also recognizes the fact that in Manitoba and Saskatchewan there is not a sufficient presence of registrants whose registration would allow them to act as an advisor in rural and northern parts of those provinces.
23.	Definition of "eligibility adviser"	One commenter asks how a lawyer or accountant will know if the person they have been retained by has ever acted for or been retained by the issuer, or its directors or officers without a great deal of time-consuming effort. The real concern is whether the lawyer or accountant has a direct or indirect relationship with the issuer. The commenter also questions why a lawyer or accountant who is bound by a code of professional conduct could not have an indirect relationship since it is open to an IDA member to have an indirect relationship.	This definition has been in place for some time in MI 45-103 and we have not had any complaints regarding how it works. Most law and accounting firms have systems in place to address the problem of determining whether the lawyer or accountant has acted for an issuer. We also note that, for indirect relationships, the relevant period of time is limited to the previous 12 months.
24.	Definition of "founder"	One commenter states that the founder of an issuer should not have to be "actively involved in the business of the issuer" in order to benefit from the family, friends and business associates exemption. Because of their past involvement with the issuer, this individual should be considered to have an appropriate level of in-depth knowledge about the issuer so as to warrant an exemption.	This exemption is based on up-to-date knowledge of the business and affairs of the issuer. As a matter of policy we have determined that current involvement with the issuer is a necessary and important condition for use of the exemption.
25.	Definition - non-redeemable investment fund	One commenter suggests that the CSA should consider defining "non-redeemable investment fund" in National Instrument 14-101, *Definitions* since the term "non-redeemable investment fund" is used in several regulations and national instruments and could thereby be harmonized.	We will consider the comment in future amendments to National Instrument 14-101, *Definitions*.
26.	Definition of "person"	One commenter submits that the definition of "person" should be broadened because the current definition will lead to uncertainty as to the form of corporate organizations that qualify as persons. The	We have not changed the definition. We feel this definition encompasses all of the entities that we want to capture, including those entities mentioned in the commenters'

		Summary of Comment	CSA Response
		commenter recommends replacing paragraphs (b) and (c) with the following: "(b) a corporation, limited or unlimited company, other form of corporate organization, partnership, limited partnership, limited liability partnership, trust, fund, any organization, analogous to the foregoing, any association, syndicate, organization or other organized group of persons, whether incorporated or not, and".	comment.
27.	Section 1.5	Three commenters question why a purchaser acting as an underwriter was restricted to the exemption in section 2.34, which restricted the underwriter by allowing it to re-sell only through a prospectus or exemption. The commenters believe underwriters should be subject to the same resale provisions as any other purchaser that acquires under an exemption. The commenters argue that different re-sale treatment for underwriters will adversely affect their willingness to participate in private placements, which will diminish financing opportunities for issuers. Underwriters will be less willing to acquire excess securities not taken up in an offering (either to keep for themselves or to sell to their clients) and any compensation securities will be less attractive if they are deemed to be acquired while acting as underwriter.	We have removed section 1.5 from Regulation 45-106 and in its place have provided guidance in the Policy Statement at section 1.8 on the proper use of the accredited investor exemption by a person acting as an underwriter. The guidance addresses our policy concerns with respect to underwriters purchasing securities under an exemption with a view to distribution. Deletion of section 1.5 will effectively allow underwriters to acquire securities by way of their status as accredited investors where they purchase the securities without a view to distribution. As accredited investors they will be subject to a 4-month restricted period on resale.
28.	Section 1.6 Definition of "trade" - paragraph (e)	One commenter notes that a paragraph similar to paragraph (e) under the definition of "trade" exists in certain western provinces. Where this is the case, a prospectus and registration exemption is provided for the purpose of allowing transactions involving certain investors. We question the introduction of this concept in Québec in light of the lack of a clearly identified prospectus and registration exemption. The same commenter points out that paragraph (g), as proposed, would be unique to the definition of "trade" in Québec. The commenter believes that the use of a new expression that is not defined, is drafted in broad terms and whose scope is not determined in a policy statement will cause uncertainty. In order to maximize the harmonization of Québec rules with those of the other provinces, the commenter suggests deleting this paragraph.	Given that some derivatives fall within the scope of security, we do not think it is necessary to have a specific exemption for derivatives. Where applicable, other exemptions can be used to trade derivatives. In regard to the second comment, paragraph (g) has been removed.
29.	Section 2.1 Rights offering	One commenter is concerned that the wording of the rights offering exemption in section 2.1 may be too broad. One possible interpretation of the language is that the exemption would extend to a trade by an issuer of any right to purchase securities of its own issue. This might include trading in puts, calls futures and other derivative rights relating to the purchase of the issuer's securities. The current rights offering exemption only applies to a trade by an issuer in a right *it has granted* to purchase additional securities of its own issue. The commenter believes that a rights offering exemption is appropriately limited to trades in rights to purchase additional securities that are granted by the issuer..	We agree. We added the words "that was granted by the issuer" in the opening paragraph of section 2.1(1) after the words "in a right".
30.	Section 2.2(3) Reinvestment plan	One commenter states that the words "in Canada" should be added after "every security holder".	We agree. We added "in Canada" to avoid applications for exemptive relief for plans that do not permit distributions to foreign security holders. It is our understanding that some issuers have reinvestment plans that, while available to Canadian security holders, are not available to foreign security holders.
31.	Section 2.3(4) Accredited investor	One commenter questions the rationale for subsection (4) of section 2.3.	Prince Edward Island does not have comparable provincial trust and loan corporation legislation.
32.	Section 2.3(6)	Two commenters note that section 2.3(6) provides that the accredited investor exemption is not available if the "accredited investor" is "created" or "used primarily" to purchase securities under this exemption. One commenter notes that similar wording is used to restrict the minimum amount exemption. The commenter is concerned that this wording is extremely broad and has the potential to create uncertainty for investment vehicles seeking to rely on such exemptions in the future. Such wording is not currently contained in the accredited investor	We have re-drafted the restriction in response to comments that the initial wording was too broad. The re-drafted restriction will refer to persons created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in section 1.1. The corresponding drafting changes will be made to section 2.9(5), 2.10(3) and to paragraph (b)(ii) of the definition of "private issuer".

		Summary of Comment	CSA Response
		exemption. The commenter states that clear language needs to be adopted or guidance provided in the Policy Statement as to the intent of this language. The commenter suggests the condition be deleted, or in the alternative, be replaced with a condition that states that the exemptions are not available in respect of a person "created solely for the purpose of becoming eligible to purchase securities in reliance on an exemption…". One commenter also states that if the restrictions are not removed, the reference in section 2.3(6)(b) to "these exemptions" should be limited to the section 2.3 exemption.	
33.	Section 2.4 - Private issuer	Three commenters strongly support the reinstatement of this exemption.	We acknowledge the comments.
34.	Section 2.4 -Private issuer	Two commenters note that the re-introduction of the private issuer exemption in Ontario is an improvement because of the specified list of who are "non-public" purchasers, which will increase certainty.	We acknowledge the comments.
35.	Section 2.4 -Private issuer	One commenter objects to the requirement to include shareholders, beneficiaries or partners of a company, trust or partnership in the calculation of the 50 shareholders. The commenter prefers the MI 45-103definition.	The purpose of this restriction in the definition is to ensure that the private issuer exemption is not abused through the creation or use of a pyramid of entities.
36.	Section 2.4 - resale for closely-held issuers	Three commenters ask what will happen from a resale perspective to persons who acquired under the closely-held issuer exemption? Two of the commenters believe that issuers that are now closely-held issuers should be deemed to be private issuers as at the date the new rule comes into force. For Ontario the private issuer definition does not include a category for existing shareholders of closely held issuers. There will be many Ontario issuers who have used the closely held issuer exemption and issued securities to purchasers who do not fit into the categories listed in subsection 2.4 (1) (a) to (j) and who are arguably members of the public.	A provision has been inserted into part 8 of Regulation 45-106 to facilitate the resale of securities previously acquired pursuant to the closely-held issuer exemption. Upon the coming into force of Regulation 45-106 a security holder who acquired its securities pursuant to the closely-held issuer exemption will be able to resell its securities in the same manner as a security holder who acquired its securities pursuant to the private issuer exemption. Upon the coming into force of Regulation 45-106, an issuer who is currently a closely-held issuer will be able to avail itself of the private issuer exemption provided that (i) the issuer's security holders consist of only those persons set out in paragraphs 2.4(2)(a-k) (formerly 2.4(1)) of Regulation 45-106, and (ii) the issuer's securities (other than non-convertible debt securities) are beneficially owned by less than 50 security holders exclusive of employees and former employees of the issuer or its affiliates. We note that, upon the coming into force of Regulation 45-106, a number of closely-held issuers will not be able to use the private issuer exemption. The private issuer exemption facilitates capital raising from persons that (i) are familiar with the issuer and, as such, do not require the disclosure and protections provided under a prospectus, or (ii) are accredited investors. Having made the policy decision to adopt the private issuer exemption in Ontario, it would be incongruous to deem all closely-held issuers, including those closely-held issuers who have distributed securities to the public, to be private issuers. A closely-held issuer who cannot avail itself of the private issuer exemption will nonetheless be able to avail itself of a number of other exemptions including the accredited investor exemption, the minimum amount exemption and the founder, control person and family – Ontario exemption.
37.	Section 2.4 - restrictions in constating documents for private issuers	One commenter suggests that the private issuer exemption be amended to remove the requirement that a private issuer have restrictions on the transfer of its securities contained in its constating documents or a security holders' agreement. While the restriction is common for Canadian private companies, many foreign private companies do not have similar restrictions in their constating documents as such restrictions may not be necessary in their domicile.	We are not prepared to make this change to accommodate foreign issuers as part of Regulation 45-106. While an issuer that is not a "private issuer" will not have access to the private issuer exemption, it will have other similar exemptions available to it to raise capital (sections. 2.3, 2.5 and 2.7). These exemptions are slightly different than the private issuer exemption in that they require

		Summary of Comment	CSA Response
		Foreign issuers may be required to include such a provision (which is unusual for their jurisdiction of incorporation) for the sole purpose of meeting the requirements of Canadian securities laws. To recognize the global nature of capital raising and to facilitate private placements by foreign issuers, the commenter suggests that this requirement be deleted or restricted to Canadian issuers.	the filing of a report and payment of a fee.
38.	Section 2.4 - expansion of family members to include in-laws	One commenter proposes that the definition of family members in paragraphs (b), (c) and (f) of section 2.4(1) be expanded to include in-laws. The commenter notes that this was the approach taken by the CSA in drafting the definition of immediate family member contained in *Regulation 52-110 respecting Audit Committees*.	In-laws are included in paragraphs (c) and (f).
39.	Section 2.4 - registered verses beneficial ownership	Two commenters propose that in determining whether there are 50 shareholders or less of the issuer, the references should be to registered rather than beneficial ownership. Determining beneficial ownership, especially in the case of a sale by a shareholder as opposed to a treasury issue, may be difficult. The commenter notes that the definition of private company contained in the *Securities Act* (Ontario) allows determination of the number of shareholders by reference to registered ownership.	We are of the view that for the purpose of accessing the private issuer exemption, private issuers are responsible for knowing who their beneficial owners are.
40.	Section 2.4(3) [now 2.4(4)] Private issuer	One commenter asks whether paragraphs (i) or (j) of section 2.4(1) as they relate to paragraph (h) should also be covered in section 2.4(3).	An entity described in paragraphs (i) and (j) is covered by section 2.4(3) if it meets the definition of "accredited investor".
41.	Section 2.5 -Family, friends and business associates, Section 2.7 - Founder, control person and family	Several commenters are concerned with the OSC's decision not to participate in the family, friends and business associates exemption in section 2.5. Some of the commenters believe this is unfair to Ontario issuers and investors. Three commenters believe the exemptions in sections 2.5 and 2.7 should be reconciled to provide harmonization of the exemption. One of the commenters, while expressing a preference for the Ontario exemption in section 2.7, submits that in the interests of harmonization Ontario should consider adopting the broader exemption in section 2.5.	The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one regulation and to harmonize them to the extent possible within an ambitious time frame. We recognize however, that regional differences do exist and those differences must be accommodated. Each jurisdiction has considered the merits of this exemption and made a decision on whether or not to adopt it based on what is appropriate for the capital markets in their jurisdiction.
42.	Section 2.5 - Family, friends and business associates	One commenter states that it may be useful to highlight to the investor that the exemption in section 2.5 is premised solely on the relationship of the investor with the issuer's principal. The commenter suggests requiring each investor to sign a certificate to the effect that the investor is a close personal friend or close business associate of the principal and *has known the person for a sufficient period of time to assess the capabilities and trustworthiness*. Such a certificate may help to focus the investors awareness that the exempt trade is reliant on the relationship between the parties.	Jurisdictions that do not require a risk acknowledgement have concluded that the costs of such a requirement exceed the benefits.
43.	Section 2.6(2) Family, friends and business associates - Saskatchewan Section 2.9(14) Offering memorandum	One commenter stated that the requirement to maintain a signed risk acknowledgement for a period of eight years after a distribution or trade is unnecessarily burdensome.	The FFSC does not believe maintaining a document for 8 years is unnecessarily burdensome.
44.	Section 2.9 Offering memorandum	One commenter states that the minimum disclosure requirements in the offering memorandum exemption should address any regulatory concerns in regard to ensuring that investors receive sufficient information on which to make their investment decision. At the same time the exemption allows the issuer to avoid the significant costs of filing a prospectus and becoming a reporting issuer.	We acknowledge the comment.
45.	Section 2.9 Offering memorandum	Two commenters want the CSA to develop a form of offering memorandum specific to investment funds, as there are considerable differences between what is relevant to an investor in an investment fund and what is relevant to an investor in other types of issuers.	We will consider developing a form of offering memorandum specific to investment funds in the future.
46.	Section 2.9 Offering memorandum	Four commenters expressed disappointment that the OSC chose not to adopt the offering memorandum exemption that is otherwise available in the other Canadian provinces. One commenter seeks	The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one regulation and to

		Summary of Comment	CSA Response
		clarification from the OSC on why investors in Ontario are being treated differently than investors in the other CSA jurisdictions. One commenter agrees with the OSCs decision not to adopt the offering memorandum exemption in Ontario. The commenter believes that the extensive prescribed disclosure for the offering memorandum merely serves to create a simplified prospectus regime alongside the existing prospectus regime. The exemption introduces additional unnecessary complexity and, given the differences in application between the participating jurisdictions, confusion into the securities laws of Canada. This is inconsistent with the goal of creating a harmonized securities regime.	harmonize them to the extent possible within an ambitious time frame. We recognize however, that regional differences do exist and those differences must be accommodated. Each jurisdiction has considered the merits of this exemption and made a decision on whether or not to adopt it based on what is appropriate for the capital markets in their jurisdiction.
47.	Section 2.9 Offering memorandum	Three commenters expressed disappointment over the continuation of two different offering memorandum exemptions and urged the CSA to uniformly adopt the exemption in section 2.9(1). One commenter notes that the liberal approach is so wide open that it would be attractive for many significant issuers to use the exemption and bypass the prospectus regulatory process in circumstances where they would be perfectly able to comply. The commenter also notes that it may also be an avenue for unscrupulous issuers to raise money from unsuspecting investors. The commenter recommends that the CSA uniformly adopt the less liberal approach for two reasons: (i) the amount that an investor could lose would be limited; and (ii) investors would have to have significant assets in order to qualify as an "eligible investor". One commenter questions why the OM exemption is not available in some jurisdictions and what type of mutual funds qualify under the current wording of section 2.9(2)(d). One commenter seeks clarification why clause 2.9(2)(d)(ii)(B) only provides the exemption for mutual funds in Manitoba, Saskatchewan and Québec that are listed for trading on an exchange or quoted on an over-the-counter market. The commenter notes that very few mutual funds are traded in the secondary market, and therefore, it is unclear why this restriction was imposed in these three provinces.	The CSA worked diligently to achieve a single harmonized offering memorandum exemption, however, after considerable discussion and debate differences remain. The differences between the two versions of the exemption and the different treatment of investment funds reflect fundamental policy concerns regarding the availability and use of this exemption across the jurisdictions. Participating jurisdictions will monitor the use of this exemption and continue to work toward harmonization.
48.	Section 2.9 Offering memorandum	One commenter notes that Yukon is not included in the list of jurisdictions in which the exemption applies and queried if and when issuers and dealers would be able to rely on the exemption in Yukon.	Section 1.2 of the Policy Statement provides guidance for the availability of exemption in Yukon.
49.	Section 2.9(13) Offering memorandum	One commenter objects to the requirement for the subscriber to re-sign the subscription agreement each time there is an amendment to the offering memorandum. The process should be amended to conform with the prospectus requirement to send a copy of the amendment to subscribers and have a 2-day right of rescission.	We do not think that re-signing the subscription agreement is overly burdensome in the context of the offering memorandum exemption, which is significantly different than a prospectus offering.
50.	Section 2.9 Offering memorandum - Forms F3 and F4	One commenter suggests that the reference in the form to "promoter" be changed to "founder". The certificate should be signed by a person "actively engaged in the issuer's business."	The term "promoter" is a broader than "founder" and for the purposes of the Forms, we require the signature of a "promoter".
51.	Section 2.10 Minimum amount investment	One commenter notes that the exemption in section 2.10 is less flexible than the previous minimum amount exemption available in Ontario because section 2.10 requires the purchase price to be paid in cash. The commenter states that the exemption in Ontario allows securities to be issued for a *bona fide* future obligation, for example a promissory note. The commenter recommends maintaining this flexibility in section 2.10.	After considerable discussion among the jurisdictions it was decided to require payment in cash to address potential abuses of the exemption. In particular, we are aware of pooled funds that were being sold to retail investors without a prospectus based on this exemption for as little as an initial investment of $5,000 coupled with the acceptance by the investor of a future obligation to the fund of $145,000. We do not believe that exempt products should be sold to retail investors under this type of arrangement.
52.	Section 2.10 Minimum amount investment	One commenter supports the reintroduction in Ontario of the prescribed minimum amount exemption. However, the commenter submits that it would be prudent to clarify the exemption by incorporating the concept of "aggregate acquisition	In harmonizing this exemption we determined that the best approach was to require payment in cash at the time of the trade and provide some guidance in the Policy Statement. While we realize that some jurisdictions had the

		Summary of Comment	CSA Response
		cost" rather than rely on the explanation in the Policy Statement.	concept of "aggregate acquisition cost", we specifically declined to use that approach for Regulation 45-106.
53.	Section 2.10 Minimum amount investment	Two commenters request that the CSA expand the minimum amount exemption to include *in specie* contributions that have a fair value of $150,000. The commenters note that if there is a concern about the valuation of an *in specie* payment, delivery and settlement conditions similar to those found in section 9.4 of *Regulation 81-102 Mutual Funds* could be included. One commenter notes that requiring the cash requirement may cause unnecessary transaction costs by requiring the liquidation of securities.	We have included an asset acquisition exemption that is available to issuers in section 2.12. We are not prepared to expand the minimum amount investment exemption to anything other than cash for the reasons stated above.
54.	Section 2.10 Minimum amount investment	Three commenters applaud the CSA for harmonizing the minimum amount exemption across Canada, along with making it available to mutual funds and non-redeemable investment funds.	We acknowledge the comment.
55.	Section 2.10 Minimum amount investment	Two commenters ask that the CSA consider allowing the $150,000 minimum amount to be contributed among all of the investment funds managed by the same entity. They believed that the same rationale which deems a person who has $150,000 to invest in a single investment to be sophisticated enough to not require a prospectus and not require a registered dealer, should also be applied to an investor who invests in two or more funds managed by the same manager.	We believe it is inaccurate to suggest that two funds are the same because they have the same manager. Each fund is different, has differing risk profiles and may be managed by sub-managers with different management styles. It is no different than buying securities of two different issuers and being allowed to pool, which is something we do not allow.
56.	Section 2.10 Minimum amount investment	One commenter notes that the requirement to pay the minimum amount "in cash at the time of the trade" does not appear to permit any time for settlement.	We expect issuers to deal with this issue based on the usual terms for settling private placements.
57.	Section 2.10 Minimum amount investment	One commenter suggests that the CSA make it permissible for related accounts to invest $150,000. For example, if two spouses invested $150,000 between them that should be sufficient to entitle them to use this exemption. Similarly, an individual and his or her RRSP, a parent or parents and children who share the same residence and/or "in trust for" accounts should be permitted to be considered as one investor for this purpose.	We have not expanded this exemption in the manner suggested by the commenter. We do not think that association with an accredited investor should make a person an accredited investor. Paragraph (k) of the definition of accredited investor does permit spousal incomes to be combined, but it requires the combined income to be $100,000 more than the individual income threshold.
58.	Section 2.10 Minimum amount investment	One commenter believes it is advisable to insert an additional investment mechanism in section 2.10 similar to that provided for investment funds in section 2.19.	Consideration of an expansion as suggested by the commenter will require significant policy analysis. Accordingly, at this time, we do not believe that an additional investment mechanism is appropriate for securities other than investment funds.
59.	Section 2.10(3) Minimum amount investment	One commenter states that paragraph (b) of section 2.10(3) should be deleted and that paragraph (a), if it should remain, should refer to section 2.10 (see argument raised above re section 2.3(6)).	We have changed the wording of this restriction so that it applies to persons created or used "solely" (rather than "primarily") to access the exemption.
60.	Section 2.10(3) Minimum amount investment	One commenter believes that the requirement in section 2.10 for a cash payment to use the $150,000 exemption should not require any more than $150,000 cash to be paid, at the time of usage. An investor should be able to invest $400,000 represented by $150,000 in cash and $250,000 via a commitment.	If a minimum of $150,000 in cash is invested, we believe that the current exemption would permit a commitment as in the example provided by the commenter, provided the commitment is part of the same transaction.
61.	Section 2.11(1)(b)(i) Business combination and reorganization	One commenter advises that section 2.11(1)(b)(i) needs to reflect the possibility of an accidental failure to deliver to every security holder, for whatever reason. Also, no particular security holders' approval is typically required, just the class, so the wording may be inaccurate.	This exemption has been in place for some time in British Columbia and problems of the nature mentioned by the commenter have not arisen. The onus is on the issuer, when proceeding outside of a statutory procedure, to determine when shareholder approval has been obtained. Most Canadian jurisdictions, through securities legislation or Interpretations Acts, have provisions that deal with delivery of documents. Most of these provisions make it clear that "actual" delivery is not required, but rather, reasonable steps such as posting by mail must be taken. We do not believe that accidental failure to deliver to one shareholder would prevent the use of the exemption.
62.	Section 2.11 - Business combination and reorganization	One commenter states that the requirement to have disclosure and shareholder approval is too restrictive. Corporate requirements are often not as strict and cost of compliance may be too great for smaller private companies. Also, section (1)(b)(ii) suggests	We do not believe the shareholder approval requirement is too restrictive. Shareholder approval is a reasonable requirement in exchange for allowing securities to be traded in circumstances where issuers are being

		Summary of Comment	CSA Response
		that unanimous shareholder approval is required and it is not clear whether all shareholders have to vote, even shareholders with non-voting shares. The preferred form of this exemption is found in AB, MB, SK, and ON -it's less restrictive.	reorganized by way of a non-statutory merger, arrangement or amalgamation. Subsection (1)(b)(ii) does not mandate unanimous shareholder approval.
63.	Section 2.12(1) Asset acquisition	One commenter asks whether section 2.12(1) should also refer to securities or other property, including cash.	As noted in section 4.3 of the Policy Statement, assets may include cash in the form of working capital.
64.	Sections 2.12 Asset Acquisition 2.13 Petroleum, natural gas and mining properties	One commenter notes that the technology sector should have an exemption for asset acquisition that does not tie issuers to the $150 000 asset value minimum or require them to use the "shares for debt" exemption. The commenter notes that the junior mining exploration industry has a special regime for raising capital.	We have not expanded the "special" capital raising exemptions available to junior mining companies to other industries. Expansion of this type of exemption to other industries would require further consultation and study and is beyond the scope of this project.
65.	Section 2.14 Securities for debt	One commenter supports the introduction of this new exemption and the guidance included in the Policy Statement.	We acknowledge the comment.
66.	Section 2.16 Take-over bid and issuer bid	Two commenters are concerned that the language in section 2.16, "…a trade in a security under a take-over bid…", may be interpreted as being limited to trades by shareholders of the offeree issuer to the offeror. To clarify that the exemption is available in connection with share consideration provided by an offeror, the commenter proposes amending the language to read, "…a trade in a security in connection with a take-over bid…".	We have substituted "in connection with" for "under".
67.	Section 2.16 Take-over bid and issuer bid	One commenter suggests adding the phrase "by or to the bidder" after the word security in section 2.16(1). The commenter notes that the exemption is meant to provide exemptions for both the trade by a security holder to a bidder and securities issued by the bidder.	We have used the broader language of "in connection with" to cover all trades.
68.	Section 2.16 Take-over bid and issuer bid	One commenter notes that Section 2.16 does not clearly apply to both the tender to a take-over bid by a target shareholder, and the issuance of securities by a bidder in exchange in securities exchange bids. The commenter believes that the wording of section 2.16 suggests that the tender process is not covered for a take-over bid (i.e. issuer bids are treated differently for some reason).	We changed the word "under" in section 2.16 to "in connection with" to make it clear that we intend for section 2.16 to apply to both the tender to a take-over bid by target shareholders, and the issuance of securities by a bidder in the context of an securities exchange bid. The tender process is covered for both take-over bids and issuer bids. A trade to an issuer of its own securities is also covered in section 2.15 because not all trades to an issuer of its own securities is an issuer bid.
69.	Section 2.17 Offer to acquire to security holder outside local jurisdiction	Three commenters point out that the wording of section 2.17 may or does not apply to the trade by a bidder of its securities to target shareholders. One commenter notes that the wording of this section provides for an exemption in one jurisdiction to permit a security holder in another jurisdiction to trade its securities to a bidder in the first jurisdiction, but it does not provide an exemption for the issuance of securities from a bidder in the second jurisdiction to a security holder in the first jurisdiction. The commenter suggests the following alternative wording for 2.17(1) "The dealer registration requirement does not apply to a trade in a security by or to the bidder in connection with a transaction that would have been a take-over bid or an issuer bid in the local jurisdiction if the security holder were in such jurisdiction." One commenter suggests that section 2.17 should be expanded to also include trades currently covered in sections 72(1)(j) and (k) of the *Securities Act* (Ontario).	We have not expanded the exemption at this time to accommodate distributions outside the local jurisdiction. To the extent that these trades are distributions, issuers will have to look to local provisions dealing with distributions out of the jurisdiction, find another exemption or seek discretionary relief.
70.	Sections 2.18 and 2.19 Investment fund reinvestments	Five commenters suggest that the proposed investment fund reinvestment exemptions are too restrictive. The commenters request that the CSA consider expanding the exemptions in sections 2.18 and 2.19 to permit an investment fund which has more than one class and series of units, where the value of the units of each is based on the same pool of portfolio assets, the flexibility to permit re-investment and additional investment in classes or series of the same investment fund other than the class or series originally purchased by the investor.	The rationale behind the exemption is that the investor is "getting more of the same" so there is no new investment decision and therefore no need for a prospectus or a registrant. Any change to the investment, including a change in the fee structure would be inconsistent with the rationale for the exemption.

		Summary of Comment	CSA Response
		The linkage would provide flexibility to investors, without requiring them to reinvest or make additional investments in another investment portfolio of the same fund. It would also permit investor to switch between classes/series without being required to satisfy the minimum investment amount at the time of the switch and permit investors to direct reinvestments of distributions into a different series/class of the same fund. One commenter suggests that the expansion to other series and classes be extended to the exemption in section 2.19 (additional investment in investment funds).	
71.	Section 2.18 - Investment fund reinvestment	Two commenters recommend changing the language of this exemption. Many mutual funds provide that distributions are automatically reinvested unless unit holders request to be paid in cash. The language "where the security holder directs that dividends or distributions .." should be changed to the plan "permitting or requiring that dividends or distributions … be reinvested …"	We agree. We have change the language-will be changed to accommodate plans that require reinvestments.
72.	Section 2.18 Investment fund reinvestment	One commenter suggests that subsection 2.18(5) should be expanded to include the option of including the required disclosure in a fund's financial statements as well as its prospectus, since an investor is only required to receive a fund's prospectus when the fund is purchased, but will generally receive the financial statements each time they are filed.	We believe that it is sufficient if investors receive, at minimum, the required disclosure at the time of purchase. For that reason, we required that the disclosure be contained in the prospectus of the investment fund if one is prepared. An issuer can choose to also provide the information on an on-going basis in the financial statements if it wishes to provide regular reminders to investors. However, under the new approach in *Regulation 81-106 respecting Investment Fund Continuous Disclosure* that requires investors to request that financial statements be sent to them, we expect that most investors will not choose to receive the financial statements each time they are filed.
73.	Section 2.19 Additional investment in investment funds	One commenter suggested deleting the words "that initially acquired securities as principal for an acquisition cost of not less than $150,000 paid in cash at the time of the trade". The commenter suggested that it should not matter how the security holder acquired the securities of the investment fund that have the value of $150,000 as required in clause (b).	This exemption is an extension of the minimum amount exemption. Access to this exemption is permitted only if securities in the investment fund have been acquired under the minimum amount exemption, which is a proxy for sophistication. In addition, the investor must continue to hold securities of the investment fund that were originally acquired for the minimum amount (regardless of their current value) or securities that have a net asset value in excess of the minimum amount.
74.	Section 2.22 use of "executive officer" definition in division 4	One commenter notes that for the exemption in section 2.22 the concept of "executive officer" is introduced and is broader than the concept of "senior officer", which is used in Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors and Consultants*. The commenter suggests that in order to avoid confusion, it may be prudent to clarify that the portion of the definition of "executive officer" that includes an individual who performs a policy-making function in respect of the issuer should be limited to performing a policy-making function for the principal or core business of the issuer.	The language chosen parallels the language used in *Regulation 51-102 respecting Continuous Disclosure Obligations*. Section 2.2 of the Policy Statement provides clarification of the meaning of this term.
75.	Section 2.22 - definition of "listed issuer"	One commenter noted that the CNQ should be included in the list in the definition of "listed issuer".	We have not expanded the list to include CNQ. We will consider including the CNQ in the list after we have had sufficient time to examine its applicable rules and policies.
76.	Section 2.23 Interpretation - control	One commenter asks if the wording of section 2.23 suggests that a single trustee of an income trust or other similar issuer, which has several trustees, controls the trust. If so, the commenter states that the provision should be adjusted.	The question of whether a single trustee controls a trust will depend on whether such trustee has the "power to direct the management and policies of the trust". This is a question of fact and we do not see that the provision requires adjusting.
77.	Section 2.24(4) Employee, executive officer, director and consultant	One commenter asks whether subsection (4) of section 2.24 should also refer to subsections (2) and (3) of section 2.24.	Subsection (2) is, by virtue of its wording, caught by subsection (4). Subsection (3) does not refer to a distribution so a reference in subsection (4) is not necessary.
78.	Section 2.30 Incorporation or organization	Five commenters gave their opinion on whether of not this exemption should be retained.	We have deleted this exemption given the availability of the exemptions in sections 2.4 [Private issuer exemption], 2.5 [Family,

		Summary of Comment	CSA Response
		Three commenters agree that, due to the availability of other exemptions, the exemption contemplated by section 2.30 is unnecessary and need not be included in the final regulation. One commenter suggests that this is only a useful exemption if the cap on five investors is removed. One commenter requests that the exemption be retained. The commenter points out that much time and expense has been wasted in determining available exemptions in intra-corporate family situations over the past few years in Ontario, and this exemption is used frequently in the formation stage of companies. The commenter believes it would be a shame to lose another exemption that has no investor protection effects.	friends and business associates exemptions], 2.7 [Control person, founder and family exemption] and 2.24 [Employee exemption].
79.	Section 2.31(2) Dividends	One commenter questions whether the word "dividend" in section 2.31(2) should say "dividend or distribution", to cover non-corporate issuers and to be consistent with paragraph (1).	we have added "distributions" to this exemption to permit non-corporate entities to make dividend-like distributions. We also clarified in subsection (2) that the distribution must "out of earnings or surplus".
80.	Section 2.33 Acting as underwriter	Two commenters noted that underwriters acquiring securities under this exemption could not sell their securities without a prospectus or exemption. One commenter presumes that this is intended because securities being sold by an underwriter should be sold under a prospectus or an available exemption. The other commenter submits that that there is no harm to the marketplace and no abuse of the resale provisions as long as the underwriters are required to hold as principal for the 4-month period and meet the other requirements of Regulation 45-102.	We have removed section 1.5 from Regulation 45-106 and in its place have provided guidance in the Policy Statement at section 1.8 on the proper use of the accredited investor exemption by a person acting as an underwriter. The guidance addresses our policy concerns with respect to underwriters purchasing securities under an exemption with a view to distribution. Deletion of section 1.5 will effectively allow underwriters to acquire securities by way of their status as accredited investors where they purchase the securities without a view to distribution. As accredited investors they will be subject to a 4-month restricted period on resale.
81.	Section 2.34 Guaranteed debt	One commenter questions whether it is appropriate from either an investor protection or foreign relations perspective (including international treaty obligations) to require foreign government debt, but not Canadian government debt, to be rated.	We are comfortable allowing Canadian government debt to be free-trading and at the same time requiring that foreign debt be rated. We understand Canadian government debt and recognize that foreign debt may vary widely in terms of quality and risk. We note that in some jurisdictions the current version of this exemption requires that the foreign government issuer be recognized by the regulatory authority.
82.	Section 2.34(2) Guaranteed debt	The Ontario Strategic Infrastructure Financing Authority requests a registration and prospectus exemption for debt securities issued by it. They are not included in the exemptions in s. 2.34(2)(c) and (e).	The OSC has an exemption for the Ontario Strategic Infrastructure Financing Authority entity's securities in its regulations. The other jurisdictions are not prepared, at this time, to add this entity to the list of entities whose securities can be traded without a prospectus or registrant.
83.	Section 2.36 Mortgages	Several commenters involved in the business of originating, funding, purchasing, selling and servicing mortgage investments expressed concern that syndicated mortgages were not included in the exemption in section 2.36 [mortgage exemption]. The commenters make the following points: 1) Mortgage broker legislation should regulate all aspects of the mortgage industry, including syndicated mortgages. 2) Any attempt to improve the protection of investors should be achieved in consultation with the mortgage brokerage industry and should allow time for further study. 3) If syndicated mortgages are governed by securities legislation, a dual registration regime would be created resulting in increased costs. 4) A syndicated mortgage is no more complex than a mortgage held by a single private individual as the underlying investment is the same.	We have amended section 2.36(2) in order to maintain the status quo regarding syndicated mortgages while we study this issue further. As a result, the exemption for syndicated mortgages will be available in all jurisdictions except British Columbia, Manitoba, Québec and Saskatchewan.

		Summary of Comment	CSA Response
		5) Investors in syndicated mortgages often hold a significant portion of their assets in such regulations as this is where their area of expertise lies. Such investors should not be excluded from investing in syndicated mortgages because they do not qualify as "accredited investors". 6) Carving out syndicated mortgages will decrease the ability of investors to diversify their portfolios and will decrease capital available to borrowers. One commenter submits that if the exclusion of syndicated mortgages from the mortgage exemption is maintained, the following changes should be made to accommodate syndicated mortgages: 1) Rather than an offering memorandum, mortgage brokers should be allowed to use existing disclosure documents such as the Form 1(under the *Mortgage Brokers Act*) in Ontario, which do not carry statutory rights of action. 2) Reports of exempt distribution should not be required for syndicated mortgages. 3) In Ontario and Newfoundland, there should be a grace period of 4 months for registration as a limited market dealer. 4) Exemptions similar to the private issuer exemption in section 2.4 and the family, founder control person exemption in section 2.7 should be created for syndicated mortgages. In each case the term "mortgage broker" could be substituted for the term "issuer". There may be other exemptions that could be adapted in this way to provide exemptions that are better tailored to meet the requirements of syndicated mortgages.	
84.	Section 2.39 Variable insurance contract	One commenter requested that the CSA consider whether it should exempt trades in variable insurance contracts issued by insurance companies rather than trades in variable insurance contracts by insurance companies. The commenter noted that this change would facilitate the trade of variable insurance contracts by licensed insurance agents.	We have not changed the wording as suggested by the commenter. In our view, the exemption does not restrict trades by agents of an insurance company.
85.	Section 2.41 - Schedule III Banks	One commenter suggests that the exemptions for evidences of deposit should be extended to all "Canadian financial institutions" as defined in Regulation 45-106.	It is not necessary to provide an exemption for evidences of deposit issued by all Canadian financial institutions because in most jurisdictions such evidences of deposit are excluded from the definition of "security" under securities legislation. Jurisdictions that do not have the exclusion provide a local exemption.
86.	Section 2.42 Conversion, exchange, or exercise	One commenter advises that the wording of section 2.42(1)(b) in conjunction with section 2.42(2) could be misconstrued as requiring an issuer to provide notice to regulators in the case of trades of both securities of another issuer that is a reporting issuer and securities of its own issue where the issuer is, itself, a reporting issuer. The commenter recommends clarifying the wording in section 2.42(1)(b) to read as follows, "subject to subsection (2), the issuer trades a security of a reporting issuer held by it to an existing security holder in accordance with the terms and conditions of a security previously issued by that issuer".	We agree. We have added additional wording to clarify.
87.	Section 2.42 Conversion, exchange, or exercise	One commenter recommends adding the words "of the issuer" after "existing security holder" in section 2.42(1)(b). The same commenter also requests that the Policy Statement give some guidance as to what is required under section 2.42(2)(b) to satisfy a regulator.	We agree. Additional wording has been added. Regarding the second comment, this wording has been in place for some time in provincial securities laws and we are not inclined to add guidance in the Policy Statement because the information that is required will depend on the nature of the particular offering.
88.	Section 2.43 Removal of exemptions - market intermediaries	One commenter questions the connection between section 2.43(1) of the regulation with section 3.2 of the Policy Statement. Subsection 2.43(1) of the	We have added Newfoundland and Labrador to section 2.43(1).

		Summary of Comment	CSA Response
		regulation lists the exemptions that are unavailable in Ontario to Market Intermediaries and section 3.2 of the Policy Statement states that the exemption listed in subsection 2.44(1) are unavailable to market intermediaries in Newfoundland and Labrador, as well as Ontario.	
89.	Section 3.6(1) Small security holder	One commenter observes that CNQ and other marketplaces are not included in section 3.6(1). The commenter also questions the need for an exchange's rules to be "substantially similar". The commenter argues that the rules could be different and still be acceptable.	We have not expanded the list to include the CNQ (see comment # 75). We believe "substantively similar" is an adequate test. If an exchange's rules are different but the exchange believes they are acceptable, then the appropriate course of action would be for the exchange to apply for designation for the purposes of Regulation 45-106.
90.	Section 3.7 Adviser	One commenter believes section 3.7(b) is too limiting and does not accord with what occurs in practice. Many commentators, including representatives of registered dealers or advisers, comment in newspapers without falling into these narrow exemptions. They may not give advise solely through such media, they may give advise through radio or TV or the emerging free newspapers, or in books, etc. The legitimate investor protection issue is presumably unqualified and unregistered people pushing securities for compensation from the issuer (or a broker), and that should be addressed without unduly restricting freedom of expression and without discouraging educational an informative discussions.	This exemption has been deliberately limited to written publications that are subscribed for. These publications may, under the current wording of the exemption, be delivered electronically. We are not prepared at this time to expand this exemption to include other forms of media such as television because that would require policy analysis that is beyond the scope of this project. We note that section 3.7(a)(v) provides an exemption for registered dealers while registered advisers do not require an exemption.
91.	Section 4.1 Control block distributions	One commenter suggests replacing the language of section 4.1(3)(a)(i) with "has filed the reports required under the early warning requirements or files the reports required under Part 4 of Regulation 62-103", in order to clarify that an eligible institutional investor can avail itself of the exemption even if it does not participate in the alternative monthly reporting regime. The commenter also points out a typo in section 4.1(4), which should be corrected by deleting "of" and replacing it with "in".	We agree. We have made the suggested changes.
92.	Section 4.2 Trade by control person after take-over bid	One commenter notes that the exemption applies to a "take-over bid" as opposed to the current exemption in OSC Rule 45-501 that applies to a "formal bid".	The exemption has its roots in Ontario securities legislation and was originally restricted to "formal bids", i.e., bids for which, among other things, a take-over bid circular is issued and filed. However, Québec does not have the concept of a "formal bid". As a result, the exemption refers to a "take-over bid". We have clarified in the introductory sentence of subsection 4.2(1) that the exemption is only available if the take-over bid or the competing take-over bid, as the case may be, was a bid for which a take-over bid circular was issued and filed.
93.	Section 4.2 Trade by control person after take-over bid	One commenter advises that section 4.2(2) should also exclude the need to comply with section 4.2(1)(c).	Exclusion of the need to comply with section 4.2(1)(c) would make the exemption available for an indeterminate period whereas a 20-day period of availability is appropriate.
94.	Part 5 - Offerings by TSX Venture Exchange	Two commenters were disappointed that the OSC chose not to adopt this exemption. One commenter raised the concern that if the exemption is unavailable in Ontario it will result in a significant subset of TSX Venture Exchange issuers being disadvantaged in their ability to raise funds in Ontario. The other commenter noted that, as with the omission of the offering memorandum exemption, this will actually reduce disclosure and director liability as issuers use exemptions requiring no disclosure document or certification of disclosure.	The mandate of this project was to consolidate existing prospectus and registration exemptions available in 13 jurisdictions into one regulation and to harmonize them to the extent possible within an ambitious time frame. We see the implementation of Regulation 45-106 as an important first step toward further harmonization of the prospectus and registration exemptions across Canada. We believe the carve-outs and differences that are contained in Regulation 45-106 are only present where jurisdictions have made compelling arguments to maintain those carve-outs and differences. In particular, the OSC is of the view that proposed changes to National Instrument 44-101 Alternative Forms of Prospectus will make this exemption unnecessary for market participants in Ontario.

		Summary of Comment	CSA Response
95.	Section 5.2 TSX Venture Exchange Offering	One Commenter agrees that the exemption in section 5.2 is not necessary for the Ontario market.	We acknowledge the comment.
96.	Part 6: Reporting Requirements s. 6.1 Report of exempt distribution	One commenter questioned the need for filing reports in connection with private placements. The commenter noted that securities issued pursuant to other exemptions do not require reports to be filed and was uncertain why there was a distinction. The commenter suggested that in lieu of filing a report of exempt distribution issuers of exempt securities could be required to maintain records of such issuance including evidence of compliance for a specified period of time.	We have not removed any filing requirements as we consider this information necessary for the proper regulation of the capital markets.
97.	Part 6: Reporting Requirements	One commenter urged the CSA to reconsider the requirement to provide names and personal information of purchaser of securities issued under exemptions. With the advent of privacy laws, the commenter did not see a continued regulatory need for publicly naming purchasers of exempt securities. As an alternative issuers could be required to maintain this information on their own books and records only.	The information provided in Schedule I of Form 45-106 F1, *Report of Exempt Distribution* requires disclosure of personal information regarding purchasers. However, this information is not made available to the public and this is indicated on the form.
98.	Part 6: Reporting Requirements	One commenter suggests that the CSA does not need to continue to publish summaries of the reports of exempt distributions. The commenter questions the need for giving notice to the public of any private placement and especially private placements in non-reporting issuers. For reporting issuers the disclosure should be dealt with under the timely and continuous disclosure obligations.	Not all jurisdictions publish summaries of reports of exempt distributions. But those that do believe notice to the public regarding certain private placements is beneficial while not harming issuers who are able to take advantage of a wide variety of available exemptions. We note that private issuers using the private issuer exemption are not required to file reports of trades.
99.	Part 6: Reporting Requirements	One commenter states that there is a discrepancy between the requirement in section 6.1 to file a report in the local jurisdiction in which the distribution takes place and section 1.4 of the Policy Statement which states that a distribution can occur in more than one jurisdiction. The commenter requests that the CSA clarify the situation and state that a report need only be filed in the jurisdiction where the purchaser resides.	We do not believe there is a discrepancy. We have added guidance in section 5.1 of the Policy Statement to clarify when a report of exempt distribution must be filed. Harmonization across jurisdictions on the question of where trades and distributions occur is beyond the scope of this project.
100.	Section 8.1 Transitional	One commenter asks whether section 8.1(1)(a) should be clarified to state that the securities referred to are the initially acquired securities.	We agree. We have made the suggested change.
101.	Form 45-106F1	One commenter asks whether additional industries need to be specified in this form, such as retail sales businesses and food service businesses. Also, the commenter asks whether explicit privacy consent is necessary if disclosure is required by law.	We have not added more categories because we have general categories and an "other" category. Privacy legislation in Ontario requires the OSC to obtain consent when it is indirectly collecting personal information. In this case, the OSC is requiring an issuer to collect the personal information of purchasers on behalf of the OSC.
102.	Form 45-106F1	One commenter noted that the Form requires disclosure of purchasers in all foreign jurisdictions in addition to each local jurisdiction, and that this requirement will be new in Ontario. The commenter also submitted that there is no need for issuers to file these details (identity, address and phone number for non-Canadian purchasers).	Disclosure of purchasers in all jurisdictions is not a new requirement for most jurisdictions. If a distribution occurs in a jurisdiction of Canada under these exemptions disclosure of this information is required. We believe that disclosure of this information is necessary to protect the integrity of our markets. We also note that information disclosed in Schedule 1 is not publicly available.
103.	Policy Statement 1.4	Two commenters seek clarification on the issue of where trades or distributions occur. One commenter believes that the effect of section 1.4 is to unnecessarily restrict Ontario-based issuers from using exemptions. The provision will hurt capital-raising competitiveness vis-à-vis non-Ontario competitors without in any way being relevant to investor protection. The commenter cannot see why, as a policy or constitutional matter any jurisdiction should seek to regulate the raising of capital by companies in its territory from investors in other Canadian jurisdictions. A better approach than section 1.4 would be for each jurisdiction to either confirm the interpretation that the place of residence of the investor determines the exemptions available, or alternatively if they are worried about capital-	Harmonization across jurisdictions on the question of where trades and distributions occur is beyond the scope of this project.

		Summary of Comment	CSA Response
		raising outside Canada, to grant an exemption to issuers based in their jurisdiction in respect of capital-raising in other Canadian jurisdictions. In any event, the "coming to rest" analysis in Interpretation Note 1 should be referred to for Ontario purposes. This applies to other provinces that diverge from the national approach. See also section 3.2 in CP 45-501 in Ontario. One commenter notes that this section is inconsistent with OSC Interpretation Note 1 and asks that the CSA clarify that a distribution only occurs in the jurisdiction where the purchaser resides. The commenter noted that they do not believe that there is any policy reason to take the position that there must be compliance with the legislation of both the jurisdiction of the issuer and that of the purchaser. As the purpose of the legislation is to protect investors, the commenter suggested that there should be dealer registration and prospectus exemptions in the jurisdiction of the seller, if the trade is compliance with the laws of the purchaser.	
104.	Policy Statement s. 1.7	One commenter notes that section 1.7 of the Policy Statement has historically (Policy 45-103CP *Capital Raising Exemptions*) had the effect of preventing a seller or its agent in connection with a trade that is exempt from the dealer registration requirements from giving advice that would be incidental to a trade. The commenter states that this provision should not be interpreted to prevent an unregistered dealer from providing the same type of advice with respect to an exempt trade that a registered dealer could give in connection with a trade. The commenter suggests adding an exemption: "The adviser registration requirement does not apply to a person if the advice given is incidental to a trade that is exempt from the dealer registration requirement".	The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis. The suggestion is properly dealt with under the registration reform project and is not within the scope of Regulation 45-106.
105.	Policy Statement Section 1.8	One commenter believes that section 1.8 should be restricted to the $150,000 exemption.	We believe syndication is a concern in other contexts as well (for example the private issuer exemption).
106.	Policy Statement Section. 1.9	One commenter suggests that the wording of section 1.9 be changed to read: "An issuer should request that the purchaser indicate within which branch of the accredited investor definition the purchaser fits." The change would make it clear that it is adequate to follow the current practice of requiring the investor to initial or check a box opposite one of the clauses that make up the definition.	Generally, we believe that anyone relying on an exemption is responsible for determining that a particular exemption is available for the trade they intend to conduct. There may be a range of methods available to make such a determination and it is not appropriate for us to limit those methods. For accredited investors, we believe sellers should determine the appropriate mechanism for satisfying themselves that purchasers are accredited investors. We have added guidance to section 1.10 of the Policy Statement to help issuers ensure that they are using the accredited investor exemption appropriately.
107.	Policy Statement Section 3.9(2)	The conditions applicable to the use of the offering memorandum exemption by investment funds as set out in section 3.9(2) of the Policy Statement do not seem to fully reflect the conditions stipulated in subsection 2.9(2) of Regulation 45-106.	We have clarified the wording in the Policy Statement.
108.	Policy Statement Section 4.2	One commenter advises that section 4.2 should refer to the *Bankruptcy and Insolvency Act.*	The reference in section 4.2 provides an example and we do not believe that the example requires expansion.
109.	National Policy 48	One commenter states that the National Policy 48 should be clarified, hopefully by confirming that it is of no force and effect with respect to any of the exemptions in Regulation 45-106.	NP 48 is currently being reformulated and this matter will be dealt with in a separate initiative.
110.	Limited Market Dealers	Six commenters noted that despite the attempt by the CSA to develop a harmonized prospectus and registration exemption regime, both Ontario and Newfoundland and Labrador continue to require certain market intermediaries who participate in a private placement of securities to be registered as limited market dealers. The commenters questioned the policy, or regulatory, goal of such registration in light of the lack of proficiency, capital and insurance requirements, which are imposed on such market intermediaries. These commenters also suggested that Ontario and Newfoundland and Labrador revisit whether universal registration is appropriate.	The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis. The limited market dealer category will be considered and public comment will be requested in the context of that project.

		Summary of Comment	CSA Response
		One of the commenters also noted that this category of registration creates additional confusion in the marketplace and makes it difficult for an issuer to have a unified marketing and distribution plan for all of Canada.	
111.	Sale of pooled funds and other exempt products	One commenter states that it is unreasonable that mutual fund dealers can sell pooled funds and other exempt products in some jurisdictions and yet are prohibited from selling them in others. The commenter also noted that it is imperative that a uniform Canadian standard be established regarding what mutual fund dealers can and cannot sell.	The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis.
112.	Trades in mutual fund securities to corporate sponsored plans	One commenter strongly urges the CSA to consider including mutual fund exemptions similar to those found in OSC Rule 32-503 in Regulation 45-106, so that they are available for the benefit of participants in capital accumulation plans established in all jurisdictions of Canada. The commenter notes that the concerns regarding availability of these exemptions outside of Ontario are not addressed by the proposed exemptions for trades of mutual fund securities to capital accumulation plans set out in CSA Notice 81-405, *Proposed Exemptions for Certain Capital Accumulation Plans.*	We do not currently intend to incorporate OSC Rule 32-503 into Regulation 45-106.
113.	Capital accumulation plan	Two commenters suggest that the Capital Accumulation Plan exemption should have also been integrated into Regulation 45-106, as this regulation should harmonize all exemptions in one regulation.	We intend to incorporate the Capital Accumulation Plan exemption into Regulation 45-106 at a later date.
114.	British Columbia's Bonus and Finder's fee exemption	One commenter notes that Regulation 45-106 does not incorporate the British Columbia exemption for bonuses and finder's fees. The B.C. exemption is useful for TSX Venture issuers to issue securities to non-insiders for services performed in connection with arranging a loan, acquiring or disposing of an asset, or making various other distributions. The commenter suggests that the CSA should adopt this exemption, but without any residency requirements.	Jurisdictions outside B.C. are not prepared to adopt this exemption at this time, but will consider adopting it in the future. We note that many of those who might use this exemption may be able to use the "consultant" exemption in section 2.24 of Regulation 45-106. The BCSC intends to continue to offer this exemption and will consider deleting the residency restrictions that currently exist.
115.	Foreign Advisers	One commenter suggests that a registration exemption should be added for foreign advisers similar to OSC Rule 35-502 *Non-Resident Advisers*. The commenter notes that the OSC is the only commission with a rule on this point, the other CSA jurisdictions routinely grant foreign advisers exemptive relief from the registration requirements. The commenter recommends the CSA adopt this nationally in the interests of uniformity and in order to provide for greater clarity of the regime as it applies to advisers wishing to do business in the other provinces and territories.	The CSA, along with the IDA, the MFDA and industry participants, is working on a registration reform project and intends to harmonize, modernize and streamline the registration regime on a national basis. The issue of non-resident advisers will be discussed in the context of that project.