



Get in the game

Do you know what it takes to get your team up and running and over the initial hurdle of startup? Wayne Egan and Ian Mitchell help you find out by testing your knowledge with this simple quiz.

Ted and William have decided to establish a new hockey club in Toronto, on an amateur basis but with the hope that it will be ready when the NHL decides to add a second professional team in Toronto. In order to get the hockey club underway, Ted and William need to raise some money and have a few questions about that process.

1 Ted and William have approached a number of their friends who are interested in amateur hockey to put money into the new club. They have been advised that they can only raise the money from accredited investors.

- a) True
- b) False

2 After raising the initial round of funds, Ted and William need more money to expand the club, and have been approached by Anna with a proposal to find investors for their hockey club. They enter into an agreement with Anna, and are told by her that she does not need to be registered in Ontario as a dealer to raise money on behalf of the hockey club.

- a) True
- b) False

3 Once Ted and William find out the situation regarding Anna, they determine that they are going to proceed on their own to raise further funds for the hockey club. However, the hockey club at this point has flourished and is well on its way to making money. As a result, they offer the new investors the opportunity to share in future profits of the hockey club. What exemptions are available to Ted and William to raise further funds for the hockey club?

- a) Accredited investor
- b) Minimum of \$150,000 cash purchase of a security in one transaction
- c) Private issuer
- d) To employees of the hockey club
- e) Not-for-profit issuer

4 Ted and William have determined to build condominiums in the area surrounding the hockey club's rink. They decide to sell interests in the company that is building the condominiums, and have been advised that since the condominium is involved in real estate, the Securities Act (Ontario) does not apply.

- a) True
- b) False

5 Ted and William proceed to sell shares in the new company which is developing the condominium building. They are able to sell those shares on the following basis:

- a) Through employees of the condominium company
- b) Through any individual that is registered to sell securities under the act
- c) Through a transaction that is exempt from the registration requirements under the act
- d) All of the above

QUIZ ANSWERS

1 FALSE
 If the new amateur hockey club is organized only for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, then Ted and William may sell securities in the club to investors, provided the club meets the definition of a “not-for-profit” issuer. As long as the club is not established for purposes of earning a profit and no part of any net earnings benefit any of its security holders, then the prospectus exemption in Section 2.38 of National Instrument 45-106 (NI 45-106) will be available. However, if Ted and William utilize the prospectus exemption in Section 2.38 of NI 45-106, they may not pay a commission to anyone in connection with the sale of securities of the club.

2 FALSE
 While there is a dealer registration exemption for a “not-for-profit” issuer in Section 3.38 of NI 45-106, it applies only if no commission is paid in connection with the sale of the security. Assuming that Anna’s agreement provides she gets paid for finding investors, the registration exemption would not apply and Anna would need to be registered before selling securities on behalf of the club.

3 ONLY (E) IS INCORRECT
 All of the other listed prospectus exemptions apply to new investors, provided they are fully complied with by the club. In a) (accredited investor), each investor must complete a form to confirm he or she meets the definition of accredited investor under Section 2.3 of NI 45-106. In b) (minimum investment amount), the investor must purchase the shares as principal at a cost of not less than \$150,000 paid in cash when the shares are issued. In c), the private issuer exemption in Section 2.4 of NI 45-106 is available, provided constating documents of the club restrict share transfers. In addition, the number of shareholders must not exceed 50, excluding employees and former employees of the club. Further, share recipients must fall within the list of eligible persons set out in subsection 2.4(2) of NI 45-106 to qualify as purchasers of shares of a private issuer. In d), Ted and William may issue shares to employees of the club under Section 2.24 of NI 45-106, provided the share purchases are voluntary. Finally, e) is not available, as the club is offering its securities on a for-profit basis, eliminating the not-for-profit issuer exemption in Section 2.38 of NI 45-106.

There is a registration exemption available for each of the



prospectus exemptions in a) to d), provided the club itself is undertaking distribution of the shares.

4 FALSE
 While the subject matter of the business is real estate, Ted and William are selling shares in the company that holds the condominium business. Since the shares of the company are considered securities under the act, Ted and William must comply with the act in order to sell the shares. This will involve locating an exemption from both the prospectus and registration requirements under the act in order to offer the shares without a prospectus through a registered dealer.

5 (D)
 Each of the methods described in a), b), and c) is available to Ted and William, as they are in compliance with the registration requirements or applicable registration exemptions under the act for purposes of selling securities.

YOUR RANKING?

- **One or fewer correct:** *Might be time to brush up.*
- **Two or three correct:** *Not bad, but some further work needed.*
- **Four correct:** *Very well done, but not perfect.*
- **Five correct:** *Impressive.*

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