1. The investments in Alexis’s business could come in many forms, such as shares in her company, a loan or some kind of profit sharing or partnership arrangement. No matter of type of investment it is, it is most likely going to be a form of security that she is selling to her friends and family. The sale of an investment by Alexis would constitute both a trade and a distribution of securities under the securities Act, meaning that she would need a broker to sell the investment (the registration requirement under s. 75 of the Act) and would have to file a prospectus (the prospectus requirement under s. 110 of the Act) unless she can rely on an exemption from those requirements. Because she is only going to get investment money from a close knit group of people, she should be able to rely on the “private issuer” exemption provided for in Multilateral Instrument 45-103. This provides both a registration exemption and a prospectus exemption. For her business (which would probably be set up thorough a company) to qualify for the exemption it must meet the definition of a “private issuer” which requires:

   a) it is not a reporting issuer or mutual fund (or non-redeemable investment fund);
   b) its “designated securities”:
      i) are subject to transfer restrictions set out in the issuer’s constating documents (e.g. article of incorporation); and
      ii) are beneficially owned by not more than 50 people, exclusive of employees and former employees; and
   c) its designated securities are only issued to certain designated people, as set out in s. 2.1(1) of MI 45-103.

The list of permitted investors includes certain family members (spouse, parent, grandparent, brother, sister, and child) and closes friends. So it seems that her proposed list of investors would fit within that group.

While the list of relatives that can invest under this exemption is well defined, the concept of “close friend” is less certain. The Companion Policy to MI 45-103 provides some guidance by describing a close friend as a person that has known the director or senior officer for a sufficient period of time to be in a position to assesse the capabilities and trustworthiness of the director or senior officer, and also references the “common bonds” and “need to know” tests that have been developed in the case law for identifying who is considered to be the “public”. However, it still remains an area where there can be uncertainty over whether a given individual would fit the definition, and Alexis should be advised to proceed with caution and not accept investments from too many people or from people where there may be doubt about the closeness of the relationship.
There are no filing requirements with the Alberta Securities Commission for this exemption (as long the business remains a private issuer), so Alexis would not have to deal with the Securities Commission at all if she used this exemption.

(The definition of “designated securities” excludes straight non-convertible debt, so if some of the investors invested as straight lenders, they would not be counted for the purposes of determining how many holders of designated securities there were.

Alexis could also consider using the Close Friends exemption set out in Part 3 of MI 45-103. The list of permitted investors under that exemption is similar to the private issuer exemption, and would likely cover the persons that she is anticipating to invest. In addition, this exemption does not have a limit on the number of investors (although issuing shares to an excessive number of people would suggest that they are not all really close friends or close business associates). However, the use of that exemption requires a report of trade to be filed with the Alberta Securities Commission. So, at this stage, the private issuer exemption would seem like the better exemption for Alexis to use.

The securities issued to the investors would be subject to seasoning period (if the private issuer exemption is used) or a restricted period (for the close friends exemption), which would amount to the same thing because the company is not yet a reporting issuer.

2. The fact that Woody’s catering will be issuing shares to employees is significant for two reasons. Firstly, employees are included in the list of permitted investors under s. 2.1(1) of MI 45-103, so the company can issue shares to the employees in reliance on the private issuer exemption in that instrument. Secondly, as set out in part (b)(ii) of the definition of “private issuer”, employees and former employees are excluded when counting the number of holders of designation securities (which would include common shares). As a result, even though she would have more than 50 shareholders (holders of designated securities) in total, in calculating if the company has less than 50 shareholders for the purposes of determining if it is a private issuer the employees would not be counted. This means that the company can issue common shares to its employees, regardless of how many employees it has, and still remain a private issuer, so its status under the securities rules will not have changed. (It will not matter if some of here employees quit [or are fired] and still remain shareholders because former employees are also excluded form the count.)

3. A private placement (or exempt financing) means a distribution (or financing) that is done in reliance on one of the exemptions from the prospectus requirement, instead of filing a prospectus. It must be remembered that a distribution will also be a “trade” so a registration exemption will also have to be relied upon, unless the sale is done through a registered stockbroker (which may be the case here as Alexis has been talking to a broker). There are a number of prospectus exemptions set out in the Securities Act and the rules, but there are only a few that would likely be of use to Woody’s Catering in this
case. There are four exemptions that I think Alexis should consider using (she could use a combination of these). These, in no particular order, are outlined as follows:

a) Part 3 of MI 45-103 provides both a registration and prospectus exemption for trades to certain people with a sufficiently close group of people, as set out in s. 3.1 of MI 45-103, which includes, among other people, directors, senior officers and control persons (20% shareholders), immediate family members of directors, senior officers and control persons and close personal friend and close business associates of directors, senior officers and control persons. This is very similar to the list of permitted investors under the private issuer exemption (part 2 of MI 45-103), but does not require the restriction on transfers of designated securities, and does not set a limit of 50 holders of designated securities, so the company could use this exemption to go over 50 shareholders. The use of this exemption does not require the company to prepare an offering memorandum or similar document. There is no limit on the number of persons that can participate under this exemption but, as s. 3.2 of Companion Policy 45-103 suggests, if it is used to sell securities to a large number of people, this may create the presumption that they are not all immediate family or close friends or close business associates.

b) Part 5 of MI 45-103 provides both a registration and prospectus exemption for trades to “accredited investors”. An “accredited investor” (sometimes also called a high net worth investor or individual) is a person or company that meets the definition of accredited investor set out in s. 1.2 of MI 45-103. That definition includes a number of “institutional” types of investors, such as stockbrokers and pension funds, as well as individuals that meet certain financial criteria. An individual will be an accredited investor if they have either “financial assets”, net of related liabilities, of at least $1,000,000 or have an annual income of at least $200,000 (or a combined annual income with their spouse of $300,000). The term financial assets means cash and securities. There is no limit on the number of accredited investors that can participate, and there is no requirement to prepare an offering memorandum or similar document.

c) Section 131(1)(d) of the Securities Act provides a prospectus exemption for trades that have an aggregate acquisition cost to the purchaser (each purchaser) of at least $97,000 [the amount is designated in s.122.1(1) of the Rules (regulations)]. The corresponding registration exemption is found in s. 86(1)(e) of the Act [with the amount designated in s. 66.1(1) of the Rules]. Each individual purchaser would have to invest at least $97,00 for this exemption to be available. As with the above exemptions, there is no limit on the number of investors and no requirement for an offering memorandum or similar document. (However, if an offering document is prepared to show to investors, it would have to comply with some of the offering memorandum requirements.)
d) The final exemption that I think Alexis should consider is the offering memorandum exemption found in part 4 of MI 45-103 (like the other exemptions in MI 45-103 this provides both a registration and a prospectus exemption). Under this exemption the company can issue shares to anybody provided that it prepares, and delivers to the investors, an offering memorandum in the form prescribed by the Instrument. Investors are required to complete a risk acknowledgement form. There is no limit on the number of investors and the investors do not have to meet an financial or other criteria (except as noted below), and do not have to invest any minimum amount of money. Accordingly, this exemption would allow the company to go to the largest and broadest group of potential investors. However, on the downside, it does require the company to prepare an offering memorandum, which is a disclosure document providing information about the company and its business, and which would have to include audited financial statements (and possibly more recent unaudited financial statements). In addition to the extra work and expense of preparing the offering memorandum, there would be potential liability if the offering memorandum contained a misrepresentation. Although there is no minimum or a maximum investment amount required or permitted under this exemption, if an investor is going to invest more than $10,000, they must meet the definition of “eligible investors”, which requires them to either have net assets (a net worth) of $400,000 (alone or with a spouse) or an annual income of $75,000 (or $125,000 combined with their spouse), or get advice from a registered broker.

All of the above exemptions would require the company to file a report of trade (Form 45-103F4) with the securities commission, and would give rise to a restricted (hold) period under MI 45-102.

4. a) The Ontario prospectus rules require a preliminary prospectus to include the audited financial statements for the three most recently completed fiscal (financial) year that ended more than 90 days before the date of the prospectus and, if applicable, unaudited financial statements, together with the comparative figures for the interim period in the previous year (except for the balance sheet), for most recently completed interim (quarterly) period that ended more than 60 days ago. As a result, Woody’s Catering would have to include audited financial statements for the years ended November 30, 2001, 2002 and 2003 (assuming that it has been around that long, if not, then only as far back as the company has existed), and for the interim period (first quarter) ended February 29, 2004 (with comparative figures for the same period in the previous year). Although the May 30, 2004 interim period will have been completed by the time that the prospectus is filed, it will not have ended more than 60 days ago, so would not have to be included. The auditors would have to provide an audit report for the audited financials statements (together with a consent letter respecting their inclusion
in the prospectus) and would have to provide a comfort letter [negative assurance letter] with respect to the unaudited interim statements. In the preliminary prospectus the audit report could be left unsigned, in which case the auditors would have to provide an comfort letter respecting those the year end statements.

If the expansion was being done by the acquisition of existing business, then such acquisitions might be considered to be significant acquisitions, giving rise to requirements to include financial statements with respect to the business(es) acquired, or to be acquired.

b) Once a receipt is issued for the final prospectus of Woody’s Catering, the company will be a “reporting issuer” under the Securities Act, and will become subject to the continuous disclosure requirements under National Instrument 51-102, which include requirements to file annual and interim (quarterly) financial statements. Because the company will be listed on the Toronto Stock Exchange it will not be a “venture issuer” as that term is defined in NI 510-102, which will impact the filing deadlines for its financial statements. Section 4.1 of NI 51-102 requires the company to file audited financial statements for each financial year, including comparative figures for the immediately preceding year and, under s. 4.2(a) of the Instrument, these annual financial statements must be filed within 90 days of the end of each financial year. For a November 30 year end, this means that the year end financial statements would have to be filed by February 26 of each following year.

Section 4.3 of NI 51-102 will require the company to file interim (quarterly) financial statements for each of its first, second and third quarters (with comparative figures). The second and third quarters will show the financial results for both the quarter then ended and the year to date (with comparative figures). The comparative figures for the balance sheet are to be for the end of the last fiscal year. These statements do not need to be audited (but the company must disclose if they have not been reviewed by the company’s auditors). Section 4.4 of the Instruments requires the interim statements to be filed within 45 days of each quarter end. In the case of Woody’s Catering the statements and the applicable deadlines would be as follows:

<table>
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<th>Quarter</th>
<th>Ended</th>
<th>Deadline</th>
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<tr>
<td>First</td>
<td>February 28 (or 29)</td>
<td>April 14</td>
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<tr>
<td>Second</td>
<td>May 30</td>
<td>July 15</td>
</tr>
<tr>
<td>Third</td>
<td>August 31</td>
<td>October 15</td>
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The financial statements are to be delivered to those shareholders that have requested to have them sent, and are to be sent together with the Management Discussion and Analysis (MD&A) for the period.

5. There are a number of issues that arise in relation to Alexis’s purchases and sales of shares of Woody’s Catering. All of the outstanding shares of the company when it
becomes a public company would be subject to either a restricted period or a seasoning period, depending upon which exemption they were issued under. The distinction between the two is irrelevant in this case because in either event the result is the same: the restricted period or seasoning period will end 4 months after the company becomes a reporting issuer. So Alexis could not sell any of her existing shares until the 4 month hold period (or seasoning period) had expired. Shares that she purchases through the market would not be subject to the same hold period, but would be subject to a similar restriction under the control person restrictions, described below.

Another issue arises due to Alexis’s status as an insider of the corporation. She is an insider of the corporation by virtue of being a senior officer (president) of the corporation and also by virtue of owning more than 10% of the outstanding shares of the corporation (she is probably also a director of the corporation, but that is not stated, and is not significant because she is an insider anyway by virtue of the other factors). As an insider of a reporting issuer Alexis is required to file an insider trading report every time she either buys or sell shares of the corporation (or undergoes some other change in her holdings of securities of the corporation). An insider report is required to be filed within 10 days of every purchase or sale (except where that deadline is shortened, as noted below). The insider report is filed electronically through the SEDI filing system, established under NI 55-102.

As an insider of the company, as part of the prospectus process Alexis would be required to deposit her shares in escrow. As a Toronto Stock Exchange company the escrow period would be 18 months, with partial release beginning immediately. Alexis could not sell shares until they were release from escrow. Because some of the shares would be released immediately, the escrow restrictions would not likely interfere with her plans. Of course, shares that are release within 4 months would still be subject to the balance of the hold period.

Two other issues arise because of Alexis’s status as a “control person”. She would be considered to be a control person by virtue of owning more than 20% of the outstanding shares of the corporation (since she also owns more than 50% of the outstanding shares it would be difficult to provide evidence that she did not materially affect control of the corporation). This status will impact both her proposed purchases and sales. Firstly, sales of securities from the holdings of a control person are deemed to be distributions (by virtue of the definition of “distribution”), which would mean that if she wishes to sell shares from her holdings she must either file a prospectus or sell shares through one of the prospectus exemptions. For example, she could sell shares to an accredited investor. If she were to use an exemption she would have to file a report of trade (form 45-103F4) and the purchaser would be subject to the applicable hold period or seasoning period (depending on the exemption that is used). However, MI 45-102 does provide a procedure for a control person to sell securities without a prospectus and without having to rely on an exemption that has a hold or seasoning period. Section 2.8 provides a distribution exemption where the control person complies with the prescribed requirements. Firstly, the control person cannot sell the securities (shares) unless they have held them for at least four months. In addition, the corporation must have been a
reporting issuer for at least four months. (So Alexis would have to wait until at least 4 months after the corporation gets a receipt for its final prospectus before she could start selling shares using this procedure.) Then, before starting to sell any shares Alexis would have to file a notice of intention to distribute (Form 45-102F3); this form must be filed not less than 7 and not more than 14 days before she begins selling shares (the form is required to be filed within one business day of when it is signed). The form would include information about how many shares she wanted to sell and how she was going to sell them (e.g., through the stock market). If she does not sell all the shares within 60 days, she must file a renewal form 45-102F3 in order to continue selling shares, and each renewal form is only good for 28 days (i.e., a further renewal would have to be filed within 28 days after the previous one, and so on). A renewal does not have to be filed if she sells all the shares that she said she would sell or if she files a notice that she has discontinued selling. Since she plans to potentially keep selling over an extended time (every time the shares trade over $1.55) she will probably be renewing the filing on a regular basis. When she sells shares using this procedure, then the insider report that she is required to sell must be filed within 3 of the sale, instead of the usual 10 days.

The other issue that arises for Alexis, due to her status as a control person, relates to here potential purchases of shares of the corporation. Because she already owns more than 20% of the outstanding shares of the corporation, any further purchases would be considered to be a takeover bid (under the definition of takeover bid in s. 1158(1)(r) of the Act a takeover bid is any offer to purchase securities that would result in the offeror holding, including their previous holdings, 20% or more of the outstanding securities of that class). This means that if Alexis wanted to buy more shares she would have to make a formal takeover bid to all shareholders, unless she could rely on one of the exemptions from the takeover bid requirements. Since she will be making the purchases through the open market (they would not be private transactions) the only exemption that would appear to be available would be the “normal course” purchases exemption provided for in s. 161(1)(b) of the Act. That would permit her to purchase up to 5% of the outstanding shares over a 12 month period, provided that she did not pay above the prevailing market price at the time of the purchase (plus reasonable brokerage fees or commissions). She would have to carefully keep track of her purchases to make sure her total purchases over any 12 month period did not exceed that 5% limit. (She would, of course, have to file insider reports after each purchase, within the normal 10 day deadline.)

Of course, Alexis would be prohibited from trading while she is in possession of undisclosed material information (inside information). She should make sure that she instructs her broker to stop any trading activity whenever she is in possession of inside information. She is something she should be particularly alert about if she has given her broker standing orders to buy or sell at certain prices.

6. a) It is a violation of section 147 of the Act to either trade in the securities of that company (subsection 2) with knowledge of a material fact or material change that has not been generally disclosed or to inform others (subsection 3) of such information. A material change or material fact is one that would reasonably be expected to have a
significant effect on the market price or value of the securities of the issuer. These sections apply to persons in a “special relationship” with the company, which includes directors, officers and employees (s. 9). There are three types of potential consequences of violating these provisions of the Act. Section 194 of the Act imposes possible penal sanctions for a violation of this provision of the Act, which are up to 5 years less a day in jail, a fine, or both. Although the maximum fine is usually $1,000,000, in the case of insider trading (s. 147) the maximum fine is up to three times the profit realized from the transaction (the profit is calculated based on the highest price at which the shares were sold, or the lowest price at which they were bought, which might result in a deemed profit calculation higher than the profit you actually realized). In addition, in the case of insider trading the minimum fine is to be equal to no less than the profit realized from the transaction. Sections 198 and 199 set out possible administrative sanctions that could be imposed by the Securities Commission for insider trading. Under s. 198 they can impose a cease trade order or can prohibit a person from being a director or officer of any company (whether public or not). To impose these sanction they do not have to find that the Act has been violated, they just have to consider that it is in the public interest to impose such a sanction. Then, under s. 199, if there has been a violation of the Act, they can impose an administrative penalty of up to $100,000 for individuals or up to $500,000 for no-individuals (e.g. corporations). Finally, there is potential civil liability for insider trading. Subsection 207(1) makes the offending party liable to compensate any person that they bought or sold shares with while they had knowledge of the insider information. They are liable to compensate the purchaser or seller for damages that they suffer from the offence (which would typically be measured by the difference between the sale price and the market price after the material fact or change has been announced). In addition, because the person in question is an insider of the company (by virtue of being a director) under subsection 207(5) of the Act they would also be accountable to the company for any benefit they receive from the insider trading or informing. If the company failed to take action to enforce this obligation, then the securities commission or a shareholder could take proceedings to enforce the obligation (similar to a derivative action under the Business Corporations Act).

b) Section 147(5)(e) (with respect to penal and administrative sanction) and s. 207(2)(e) (with respect to civil liability) provide, inter alia, a defence where the person purchased the shares under an automatic purchase plan that was entered into at a time when the person did not have inside information. As a result, the director/employee does not have to withdraw from the employee share purchase plan just because they have knowledge of undisclosed material information.

7. In calling a shareholder meeting the company will have to be aware of the requirements under the Alberta Business Corporations Act (ABCA), as well as the securities law requirements, which are set out in National Instrument 54-101. The ABCA requirements are, for the most part, covered by the procedures under 54-101.
The first thing that the company has to do is set the dates for the meeting. A date for the actual meeting must be set, and a record date for the purposes of determining the shareholders entitled to receive notice of and to vote at the meeting must be set. The record date must be at least 30 days before the meeting date; NI 54-101 permits the record date to be up to 60 days before the meeting date, but the ABCA only permits a maximum of 50 days. The company must provide a notice to the Securities Commission at least 25 days before the record date (this results in a minimum advance notice time of at not less than 55 days before the meeting date). By that same 25 day date the company must also notify depositories that are holding the company's shares on behalf of brokerage firms (intermediaries or participants). The depository has two business days to respond with a list of the intermediaries. The company must then send a notice (search card) to the intermediaries (brokers) at least 20 days before the record date. The notice will indicate whether the company wants to send the meeting material directly or indirectly to the NOBOs (non-objecting beneficial owners); the material will always be sent to OBOs (objecting beneficial owners) indirectly. Within 3 business days the intermediaries are to notify the company how many NOBOs and OBOs they represent (so he the company knows how many sets of shareholder meeting material they will require. If the company is sending the material directly to the NOBOs, then he intermediaries are to send the list of NOBOs to the company within 3 business days of the record date. The ABCA requires a newspaper ad to be published at least 7 days before the record date, which will be handled by the depository (CDS Inc.). Then after the record date the company send the meeting material to its registered and beneficial shareholders, as follows:

i) For material that is being sent indirectly (to OBOs and also to NOBOs if the company elects to send indirectly to them), it is to be sent to the intermediaries at least 21 days plus 4 business days before the meeting date. (The intermediaries are then required to send it to their clients at least 21 days before the meeting date).

ii) For material that is being sent directly, including both registered shareholders and NOBOs (if the company elects to send to them directly) the material is to be sent at least 21 days before the meeting date (the ABCA requires the material to be sent to registered shareholders at least 21 days before the meeting date).

The material that is sent to shareholders will include the Information Circular and Instrument of Proxy, as mandated by NI 51-102.

In order for the company to hold a meeting on July 15, 2004, the first step in the process (the notice to the Securities Commission and the depositories) must be commenced not later than May 21, 2004.