

The Ontario Securities Commission

**MULTILATERAL CSA NOTICE OF AMENDMENTS TO  
NATIONAL INSTRUMENT 45-106  
*PROSPECTUS EXEMPTIONS* RELATING TO  
THE OFFERING MEMORANDUM EXEMPTION**

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# MULTILATERAL CSA NOTICE OF AMENDMENTS TO NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS* RELATING TO THE OFFERING MEMORANDUM EXEMPTION

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# MULTILATERAL CSA NOTICE OF AMENDMENTS TO NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS* RELATING TO THE OFFERING MEMORANDUM EXEMPTION



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

## Multilateral CSA Notice of Amendments to National Instrument 45-106 *Prospectus Exemptions* Relating to the Offering Memorandum Exemption

October 29, 2015

### Introduction

The securities regulatory authorities in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan (collectively, the **participating jurisdictions** or **we**) are amending National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) in respect of the offering memorandum exemption in section 2.9 of NI 45-106 (the **OM exemption**). We are also making changes to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) and certain consequential amendments to other rules and one policy.

The participating jurisdictions have coordinated their efforts in finalizing the NI 45-106 amendments, related policy changes and other consequential rule amendments (collectively, the **final amendments**). The final amendments are made or proposed by each participating jurisdiction. In some jurisdictions, ministerial approvals are required for these changes.

Provided all necessary ministerial approvals are obtained, the final amendments will come into force in Ontario on January 13, 2016 and in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan on April 30, 2016.

### Substance and purpose of the final amendments

The final amendments modify the existing OM exemption in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan and introduce an OM exemption in Ontario. The final amendments do not modify the OM exemption that exists in any CSA jurisdiction other than the participating jurisdictions.

In Ontario, the introduction of the OM exemption will allow business enterprises, particularly small and medium sized enterprises (**SMEs**), to benefit from greater access to capital from investors than has been previously permitted under Ontario securities law. We believe the OM exemption will provide business enterprises with a cost-effective way to raise capital by allowing them to distribute securities under an offering memorandum, while maintaining an appropriate level of investor protection.

In Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, the modifications to the existing OM exemption will introduce new investor protection measures to address concerns observed with the use of the OM exemption in certain of these jurisdictions.

### Regulatory framework

#### *The prospectus requirement*

Generally, when distributing securities, an issuer must provide investors with a prospectus containing full, true and plain disclosure of all material facts relating to the securities to be issued. Issuers that become reporting issuers are also required to provide prescribed periodic and timely disclosure. This disclosure is intended to provide both existing and potential new investors with the information necessary to make an informed decision regarding whether to buy, sell or hold the security. Due to the availability of ongoing material information, coupled with the initial disclosure provided through the prospectus, the outstanding securities are generally permitted to be freely tradeable. This combination of material information and free-trading securities then allows a market in the securities to develop.

### *Exemptions from the prospectus requirement*

Prospectus exemptions are provided in circumstances where it is determined that the protections of a prospectus are not necessary. For example, certain prospectus exemptions, such as the accredited investor exemption and the family, friends and business associates exemption are based on factors such as:

- investor attributes, such as the investor having a certain level of sophistication, the ability to withstand financial loss and the financial resources to obtain expert advice, and
- the investor's relationship with certain principals of the issuer.

Investors who purchase securities of non-reporting issuers through prospectus exemptions do not generally have the benefits afforded by ongoing disclosure and free-trading securities.

### **The OM exemption**

The OM exemption was designed to facilitate capital-raising by allowing issuers to solicit investments from a wider range of investors than they would be able to under other prospectus exemptions, provided that certain conditions are met. Some of these investors may not have the same level of sophistication, ability to withstand loss or relationship with management as those who qualify to purchase securities under other commonly used capital-raising exemptions, such as the accredited investor exemption or the family, friends and business associates exemption.

In the jurisdictions that currently have an OM exemption, investors are provided with a disclosure document at the point of sale (an offering memorandum), as well as a risk acknowledgement form in respect of their initial investment. However, under the OM exemption, less disclosure is required to be provided to investors by issuers at the point of sale relative to what is required to be included in a prospectus, and currently, no disclosure is required to be provided to investors under securities law by non-reporting issuers on an ongoing basis. In addition, securities acquired under the OM exemption are not freely tradeable. Together, these features of the OM exemption represent potential risks.

In light of the particular risks associated with the OM exemption and based on the experience of certain participating jurisdictions that currently have a version of the exemption in place, we believe that it is appropriate to introduce some new investor protection measures to the OM exemption. These include:

- requiring that non-reporting issuers provide to investors:
  - audited annual financial statements,
  - an annual notice on how the proceeds raised under the OM exemption have been used, and
  - in New Brunswick, Nova Scotia and Ontario, notice in the event of a discontinuation of the issuer's business, a change in the issuer's industry or a change of control of the issuer,
- requiring that marketing materials be incorporated by reference into the offering memorandum to provide investors with the same rights of action in respect of all disclosure made under the OM exemption in the event of a misrepresentation, and
- imposing additional investment limits in respect of both eligible (i.e., investors who meet certain income or asset thresholds) and non-eligible investors that are individuals to limit the risks associated with an investment in securities acquired under the OM exemption.

### *New key features of the OM exemption*

The following is a summary of the new key features of the OM exemption adopted by the participating jurisdictions.

#### (a) Investment limits

The participating jurisdictions have adopted investment limits for both eligible and non-eligible investors that are *individuals* (other than those that qualify as accredited investors or under the family, friends and business associates exemption). These limits will not apply to non-individual investors, whether eligible or non-eligible. The final amendments permit a higher investment threshold for eligible investors when a portfolio manager, investment dealer or exempt market dealer has made a positive suitability assessment.

The investment limits will apply to all securities acquired under the OM exemption as follows:

- in the case of a non-eligible investor that is an individual, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$10,000,
- in the case of an eligible investor that is an individual, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$30,000, and
- in the case of an eligible investor that is an individual and that receives advice from a portfolio manager, investment dealer or exempt market dealer that the investment above \$30,000 is suitable, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$100,000.

(b) New schedules to the risk acknowledgement form

The participating jurisdictions will continue to require all investors (including those who qualify as permitted clients) to complete and sign form 45-106F4 *Risk Acknowledgement*, which highlights for investors the key risks associated with investing in securities acquired under the OM exemption.

However, two new schedules have been added which must be completed by each investor that is an individual in conjunction with the risk acknowledgement form. One schedule asks investors to confirm their status, as an eligible investor, non-eligible investor, accredited investor or an investor who would qualify to purchase securities under the family, friends and business associates exemption. The other schedule requires confirmation that the investor is within the investment limits, where applicable. Investors that are not individuals do not have to complete these new schedules.

(c) Disclosure of audited annual financial statements, notice of use of proceeds and notice of specified key events

Non-reporting issuers that use the OM exemption will be required to provide audited annual financial statements to investors, as well as a notice that accompanies the financial statements which describes how the money raised under the OM exemption has been used. A new prescribed form has been introduced for the purposes of this disclosure.

In New Brunswick, Nova Scotia and Ontario, non-reporting issuers will also be required to provide notice to investors of the following events, within 10 days of the event occurring, in a new prescribed form:

- a discontinuation of the issuer's business,
- a change in the issuer's industry, or
- a change of control of the issuer.

(d) Marketing materials

Marketing materials used by issuers in distributions under the OM exemption must be incorporated by reference into the offering memorandum. As a result, the marketing materials will be subject to the same liability as the disclosure provided in the offering memorandum in the event of a misrepresentation.

(e) Other features

Issuers will be prohibited from relying on the OM exemption to distribute specified derivatives or structured finance products. In Alberta, Nova Scotia and Saskatchewan, the OM exemption will continue to be available to investment funds only if they are non-redeemable investment funds or mutual funds that are reporting issuers. In New Brunswick, Ontario and Québec, the OM exemption will not be available to investment funds.

## Background

The participating jurisdictions other than the Nova Scotia Securities Commission (**NSSC**) previously requested comment (the **March 2014 materials**) on proposals reflected in the final amendments. On March 20, 2014, as part of a broad review of the exempt market, the Ontario Securities Commission (**OSC**) published a Notice and Request for Comment which included the proposed amendments to the OM exemption and related policy changes (the **OSC proposals**). On the same date, in response to concerns with the use of the OM exemption, the Alberta Securities Commission (**ASC**), Autorité des marchés financiers (**AMF**), Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) and Financial and Consumer Services Commission (New Brunswick) (**FCNB**) published a Multilateral CSA Notice of Publication and Request for Comment regarding proposed amendments to the OM exemption and related policy changes (the **MI proposals**). The proposals of the ASC, AMF and FCAA were largely aligned, while the FCNB proposal was primarily harmonized with the OSC proposals.

On May 7, 2015, the NSSC published a Notice and Request for Comment (the **May 2015 materials**) which proposed changes to the OM exemption in Nova Scotia that are similar to the final amendments.

### Summary of written comments received by the participating jurisdictions

The comment period for the March 2014 materials ended on June 18, 2014. The participating jurisdictions that published the March 2014 materials collectively received written submissions from 1000 commenters regarding the OM exemption. Comment letters received by the following jurisdictions can be viewed on their websites:

- OSC – [www.osc.gov.on.ca](http://www.osc.gov.on.ca)
- AMF – [www.lautorite.qc.ca](http://www.lautorite.qc.ca)
- ASC – [www.albertasecurities.com](http://www.albertasecurities.com)

The comment period for the May 2015 materials ended on July 6, 2015. The NSSC received written submissions from four commenters. These comment letters can be viewed on the NSSC website at [nssc.novascotia.ca](http://nssc.novascotia.ca).

We have considered the comments received and thank all of the commenters for their input.

A summary of the comments submitted to the OSC, together with the responses of the OSC, is included as part of the local notice published in Ontario at Annex G.

A summary of the general themes raised in the comment letters that were received across the participating jurisdictions can be found under the heading “Key themes from the comment letters” below.

### Key themes from the comment letters

There were several key themes expressed in the comment letters submitted to the participating jurisdictions. Below is a summary of these key themes.

#### *Harmonization*

A significant number of commenters expressed concern about a lack of harmonization in the OM exemption across CSA jurisdictions, with some indicating that harmonization of the OM exemption should be a primary goal of the CSA. Commenters indicated that lack of harmonization could result in:

- increased complexity for issuers in complying with the OM exemption,
- increased time and cost for market participants, and
- increased regulatory burden.

Some commenters suggested that a lack of harmonization could deter issuers, especially SMEs, from using the OM exemption.

As a starting point, we have worked with the version of the OM exemption that currently exists in certain participating jurisdictions, such as Alberta and Québec. Currently, there are two primary models of the OM exemption that exist across the CSA (other than Ontario, which has not previously had an OM exemption).

The participating jurisdictions have endeavoured to harmonize the proposed new OM exemption. While we have not achieved complete harmonization, we believe that, having regard to different local capital markets and experiences, we have achieved substantial harmonization on most of the key aspects of the OM exemption. Further, in relation to the non-participating jurisdictions, there remains harmonization in important areas, such as the forms of offering memorandum and risk acknowledgement.

The participating jurisdictions believe the changes being made to the OM exemption are necessary to address investor protection concerns.

#### *Use of data*

Many commenters suggested that securities regulators should gather and publish more data on the exempt market in order to inform policy initiatives. Some commenters expressed concern about whether the participating jurisdictions had access to sufficient data to support the amendments that were being proposed, and indicated that no such data had been published.



We believe that we have access to sufficient information to make the policy decisions that are reflected in the OM exemption set out in the final amendments. At this time, the primary source of data on the exempt market available to securities regulators is the information filed with us through reports of exempt distribution. For example, data on the use of the OM exemption is currently gathered in those CSA jurisdictions that have the OM exemption. The ASC previously published a summary of that data in the MI proposals published for comment on March 20, 2014.

In addition, we considered data or information from a number of sources to support our review:

- the results of a survey conducted by a third party service provider engaged by the OSC as part of its review of new capital raising prospectus exemptions that provided insight into retail investors' views on investing in SMEs,
- household balance sheet data from Ipsos Reid's 2012 Canadian Financial Monitor Survey,
- feedback from investors obtained through consultations and other informal means,
- information regarding complaints and enforcement activity related to the OM exemption in those participating jurisdictions that currently have the OM exemption,
- consultations conducted in certain participating jurisdictions with a variety of market participants, and
- comments received on the proposals published in OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions*.

The CSA recently announced an initiative to modernize and update the reports of exempt distribution in order to obtain more detailed information on activity in the exempt market. A revised report of exempt distribution was published for comment by the CSA on August 13, 2015. The revised report is intended to provide securities regulators with necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes.

#### *Investment limits*

The March 2014 materials published by the FCNB and OSC included proposed investment limits of \$10,000 for non-eligible investors that are individuals and \$30,000 for eligible investors that are individuals for all securities acquired under the OM exemption in a 12-month period.

The March 2014 materials published by the ASC, AMF and FCAA included proposed investment limits of:

- \$10,000 for all investors that are not eligible investors for all securities acquired under the OM exemption in a 12-month period, and
- \$30,000 for eligible investors that are individuals and that are not accredited investors and do not qualify as specified family members, close personal friends or close business associates under the family, friends and business associates exemption in a 12-month period.

Most commenters were opposed to the proposed investment limits, and suggested that they would be overly restrictive and unfair to investors. In particular, the commenters noted the following:

- Investment limits would restrict investor choice and would reduce the ability of investors to appropriately design and diversify their investment portfolios.
- The investment limits are inflexible as they treat all eligible investors the same and do not take into account the particular financial circumstances of each individual investor.
- The investment limits would reduce the amount of capital available to issuers.
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* provides an appropriate regulatory framework for the exempt market and securities regulators should rely on the know-your-client, know-your-product and suitability obligations of registrants, instead of imposing limits on investors.
- The investment limits would have unintended consequences. For instance, registrants would "sell to the cap" and the sales process would be at risk of becoming a "tick the box" exercise.

- The investment limits would be too small to enable dealers to offer investments under the OM exemption on a cost-effective basis.
- The investment limits do not account for the stage-based nature of private capital.
- The investment limits would result in the redesign of exempt market products in attempts to avoid the limits.

In addition, many commenters noted that there have been significant losses in the public markets, yet investors are not restricted with respect to how much they can invest in those markets. Others were of the view that the proposed investment limits would not address the actual reasons why investors may lose money in investments under the OM exemption, and accordingly would not serve to protect investors. Further, concern was expressed that by setting a limit of \$30,000 for individual eligible investors, securities regulators appeared to be suggesting that this amount was an acceptable loss.

We continue to believe that investment limits are a necessary and appropriate investor protection tool that can help to reduce the risk associated with an investment in securities under the OM exemption, while still facilitating capital-raising by issuers.

However, in light of the feedback that we received, we considered different approaches to investment limits under the OM exemption and have made some changes to the investment limits that were proposed in the March 2014 materials. We believe that the revised approach to investment limits is more flexible, given that the category of “eligible investor” may include individual investors with very different financial circumstances, but still provides appropriate investor protection. The participating jurisdictions have also harmonized their positions since March 2014 so that the investment limits for both eligible and non-eligible investors do not apply to non-individual investors, such as corporations, partnerships or trusts. In addition, we have also made changes to the rule to prohibit the creation or use of an entity, such as a corporation or trust, solely for the purpose of relying on the OM exemption.

#### *Disclosure requirements*

The March 2014 materials proposed additional disclosure requirements for non-reporting issuers that distribute securities in reliance on the OM exemption. These requirements included the following:

- audited annual financial statements,
- a notice of the use of proceeds raised in reliance on the OM exemption, and
- in Ontario and New Brunswick, a notice of specified key events, to be provided within 10 days of the event occurring.

Commenters generally expressed support for requiring this disclosure to be provided by non-reporting issuers that use the OM exemption. However, some commenters did not support this requirement, on the basis that this would be a significant departure from current expectations for non-reporting issuers and would create additional costs for these issuers.

We believe that requiring non-reporting issuers raising money under the OM exemption to provide these items of disclosure to investors is necessary to provide investors with accurate and transparent information about their investment.

#### (a) Audited annual financial statements

Commenters generally supported requiring audited annual financial statements to be prepared in accordance with International Financial Reporting Standards (**IFRS**). However, some commenters suggested that these financial statements should only have to be audited by issuers that raise funds in reliance on the OM exemption above a certain threshold (with different thresholds being proposed by commenters). Some commenters did not support requiring an audit as this would impose an added cost that may be difficult for issuers, particularly SMEs, to bear which would not be justified given the limited utility of the financial statements. Other commenters stated that requiring the audited financial statements to be prepared in accordance with IFRS would also increase issuers' costs.

In considering this requirement, we noted that corporate legislation in many jurisdictions of Canada already requires shareholders to be provided with annual financial statements.

The final amendments retain the requirement for non-reporting issuers that rely on the OM exemption to provide audited annual financial statements prepared in accordance with IFRS. However, we are aware that the audit requirement could impose an additional burden on some smaller issuers, and we will continue to consider this matter during a future phase of our review.

Additionally, certain jurisdictions currently provide relief from the audit requirement as well as the requirement to prepare financial statements in accordance with IFRS in certain circumstances through blanket orders. In appropriate circumstances,

securities regulators that do not currently provide relief through blanket orders may consider granting exemptive relief from these requirements, which would be considered on a case by case basis.

The final amendments also provide an extension to the filing deadline in certain limited circumstances for issuers that would be required to file annual financial statements for a financial year that ends prior to the issuer's first distribution under the OM exemption. This would allow issuers to file the financial statements on or before the later of the 60<sup>th</sup> day after the issuer distributes securities under the OM exemption, and the deadline to file, deliver or make reasonably available the financial statements.

(b) Notice of discontinuation of the issuer's business, change of industry or change of control

Many commenters supported requiring non-reporting issuers to provide notice to investors of specified key events. However, some objected to this requirement because it would not be harmonized across all participating jurisdictions and it might result in increased costs for issuers.

In New Brunswick, Nova Scotia and Ontario, the final amendments require that non-reporting issuers must provide notice of specified key events to investors within 10 days of the event occurring. However, the notice will only be required with respect to the following events, which is a more limited list of events than the list set out in the March 2014 materials:

- a discontinuation of the issuer's business,
- a change in the issuer's industry, and
- a change of control of the issuer.

The FCNB, NSSC and OSC believe that this requirement will impose only a minimal administrative burden on issuers, given that the listed events will occur infrequently. We have also prescribed a form that sets parameters as to the nature and comprehensiveness of the information that will be required to be provided in the notice. At the same time, we believe that information on these key events would be of interest to investors and should be reported to them.

*Role of related registrants*

In the March 2014 materials, the FCNB and OSC proposed that registrants related to the issuer (i.e., affiliated registrants or registrants in the same corporate structure) would be prohibited from participating in a distribution of securities under the OM exemption.

Commenters expressed significant concern with this proposal. Some of the specific concerns raised by commenters included the following:

- Sales through a related registrant have long been accepted as part of the securities industry in Canada.
- All registrants are subject to the same regulatory oversight.
- There may be valid business reasons for an issuer to distribute securities through a related registrant, such as reduced costs.
- Excluding related registrants may negatively impact the ability of smaller issuers to raise capital under the OM exemption.
- Adequate safeguards relating to risks associated with the exempt market, including conflicts of interest, already exist.
- Excluding related registrants will negatively impact many registrants.

After considering the comments received, the FCNB and OSC have decided to remove the prohibition against related registrants participating in a distribution under the OM exemption. The existing regulatory framework requires registrants to identify and respond to material conflicts of interest that may affect their ability to meet their regulatory obligations, including conducting suitability assessments. We have included companion policy guidance to remind registrants of their responsibilities to address conflicts of interest in accordance with their regulatory obligations under NI 31-103 and National Instrument 33-105 *Underwriting Conflicts*.

### *Exclusion of investment funds*

Some commenters did not understand the policy rationale for the FCNB and OSC excluding investment funds from using the OM exemption as reflected in the March 2014 materials.

The FCNB and OSC continue to believe that it is appropriate to exclude investment funds from being able to distribute securities in reliance on the OM exemption. Since the end of the comment period on the March 2014 materials, the AMF has also decided to exclude investment funds from relying on the OM exemption.

Investment funds sold to retail investors are subject to significant and robust product regulation in national rules such as National Instrument 81-102 *Investment Funds* and National Instrument 81-107 *Independent Review Committee for Investment Funds*, including custodial requirements, voting requirements, conflict of interest provisions and investment restrictions. Mutual funds sold to retail investors are also required to provide investors with summary disclosure in a fund facts document. Additionally, the CSA is currently examining the fee structures of mutual funds sold to retail investors which may result in rulemaking initiatives. To permit investment funds to sell to retail investors under the OM exemption without the benefit of the disclosure and product regulation that applies to retail investment funds would be inconsistent with the principles underlying these existing rules and with three ongoing investment fund policy initiatives: modernization of investment fund regulation; point of sale disclosure for mutual funds; and the review of the cost of ownership of mutual funds. Further, the exclusion of investment funds is consistent with the objective of facilitating capital raising for business enterprises, particularly SMEs.

The ASC, FCAA and NSSC anticipate considering this issue in a later phase of the review of the OM exemption.

### **Summary of changes to the final amendments**

After considering the comments received on the March 2014 materials and the May 2015 materials and consultations with stakeholders, we have made some changes to what was originally proposed. The changes are reflected in the final amendments.

Annex F contains a summary of key differences between the final amendments and the March 2014 materials. In addition to the changes described in Annex F, we have revised the companion policy guidance proposed in the March 2014 materials, as appropriate, to reflect the amendments to NI 45-106.

We do not consider the changes made since the publication for comment to be material and therefore are not republishing the final amendments for a further comment period, except in Québec, where some of the consequential amendments must be published for comment for a 30-day period and Saskatchewan, where some of the consequential amendments must be published for comment for a 60-day period.

### **Implementation of the final amendments**

The final amendments will become effective on different dates in Ontario and the other participating jurisdictions. Subject to Ministerial approval where required, in Ontario, the final amendments will become effective on January 13, 2016 and in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, the final amendments will become effective on April 30, 2016.

A large majority of the issuers currently using the OM exemption have a December 31 year-end. The April 30, 2016 effective date in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan will allow these issuers to complete any offering that was initiated in these jurisdictions prior to the new requirements becoming effective and to decide whether they wish to continue using the OM exemption in its new form. It will also provide additional time for the non-December 31 year-end issuers that are currently using the OM exemption to transition to the new requirements.

Despite the delayed effective date in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, issuers must keep in mind that if they initiate a distribution or expand a distribution into Ontario once the OM exemption is available in Ontario, the issuer will be required to comply with all of the requirements of the OM exemption in Ontario, despite the later effective date in the other participating jurisdictions.

### **Consequential amendments**

#### *National and multilateral amendments*

We are making consequential amendments to the following instruments:

- National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, and
- National Instrument 45-102 *Resale of Securities*.

The ASC, FCNB, NSSC, AMF and FCAA are also making consequential amendments to Multilateral Instrument 11-102 *Passport System*.

In Québec, the consequential amendments to the above instruments were published for comment on October 22, 2015, for a 30-day comment period. In Saskatchewan, the consequential amendments to the above instruments were published for comment today for a 60-day comment period. The consequential amendments are intended to come into force in Québec and Saskatchewan at the same time as the amendments to NI 45-106 come into force in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, on April 30, 2016.

We are also making a minor change to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* to reflect the changes being made to the OM exemption.

#### *Local amendments*

Any changes to local rules or policies will be identified in a local notice, where applicable.

#### **Local matters**

Annex G is being published in any local jurisdiction that is making related changes to local securities laws and sets out any additional information that is relevant to that jurisdiction only, including information about any applicable approval processes.

#### **Questions**

Please refer your questions to any of the following:

##### *Ontario*

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Ontario Securities Commission  
416-593-2323  
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##### *Alberta*

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##### *New Brunswick*

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##### *Nova Scotia*

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Director, Corporate Finance  
Nova Scotia Securities Commission  
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*Québec*

Alexandra Lee  
Senior Policy Advisor  
Autorité des marchés financiers  
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*Saskatchewan*

Tony Herdzik  
Deputy Director, Corporate Finance  
Financial and Consumer Affairs Authority of  
Saskatchewan  
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**Annexes to Notice**

## Annex A – Rule Amendments

- Annex A-1 – Amending Instrument for National Instrument 45-106 *Prospectus Exemptions*
- Annex A-2 – Amending Instrument for National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*
- Annex A-3 – Amending Instrument for National Instrument 45-102 *Resale of Securities*
- Annex A-4 – Amending Instrument for Multilateral Instrument 11-102 *Passport System*

## Annex B – Policy Changes

- Annex B-1 – Changes to Companion Policy 45-106CP *Prospectus Exemptions*
- Annex B-2 – Changes to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

Annex C – Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption* and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption* to Form 45-106F4 *Risk Acknowledgement*

Annex D – Form 45-106F16 *Notice of Use of Proceeds*

Annex E – Form 45-106F17 *Notice of Specified Key Events*

Annex F – Summary of Key Changes to the March 2014 Materials

Annex G – Local Matters

## ANNEX A-1

AMENDING INSTRUMENT FOR NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

**Amendments to  
National Instrument 45-106 *Prospectus Exemptions***

1. ***National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.***
2. ***Section 1.1 is amended***
  - (a) ***in paragraph (b) of the definition of “eligibility adviser” by deleting “Saskatchewan or”,***
  - (b) ***in paragraph (h) of the definition of “eligible investor” by adding “in Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon,” before “a person that has obtained advice”.***
3. ***The Instrument is amended by adding the following section:***
  - 1.1.1 In this Instrument, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan
    - “date of transition to IFRS” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;
    - “exempt market dealer” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
    - “first IFRS financial statements” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;
    - “investment dealer” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
    - “new financial year” means the financial year of an issuer that immediately follows a transition year;
    - “old financial year” means the financial year of an issuer that immediately precedes a transition year;
    - “OM marketing materials” means a written communication, other than an OM standard term sheet, intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that contains material facts relating to an issuer, securities or an offering;
    - “OM standard term sheet” means a written communication intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that
      - (a) is dated,
      - (b) includes the following legend, or words to the same effect, on the first page:

“This document does not provide disclosure of all information required for an investor to make an informed investment decision. Investors should read the offering memorandum, especially the risk factors relating to the securities offered, before making an investment decision.”,
      - (c) contains only the following information in respect of the issuer, the securities or the offering:
        - (i) the name of the issuer;
        - (ii) the jurisdiction or foreign jurisdiction in which the issuer’s head office is located;
        - (iii) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;



- (iv) a brief description of the business of the issuer;
  - (v) a brief description of the securities;
  - (vi) the price or price range of the securities;
  - (vii) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;
  - (viii) the names of any agent, finder or other intermediary, whether registered or not, involved with the offering and the amount of any commission, fee or discount payable to them;
  - (ix) the proposed or expected closing date of the offering;
  - (x) a brief description of the use of proceeds;
  - (xi) the exchange on which the securities are proposed to be listed, if any, provided that the OM standard term sheet complies with the requirements of securities legislation for listing representations;
  - (xii) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;
  - (xiii) in the case of preferred shares, a brief description of any dividends payable on the securities;
  - (xiv) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;
  - (xv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;
  - (xvi) in the case of restricted securities, a brief description of the restriction;
  - (xvii) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;
  - (xviii) whether the securities are redeemable or retractable;
  - (xix) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;
  - (xx) contact information for the issuer or any registrant involved, and
- (d) for the purposes of paragraph (c), “brief description” means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the OM standard term sheet;

“portfolio manager” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“SEC issuer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“specified derivative” has the same meaning as in National Instrument 44-102 *Shelf Distributions*;

“structured finance product” has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*;

“transition year” means the financial year of an issuer in which the issuer has changed its financial year end;

“U.S. laws” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*.

**4. Section 2.9 is amended**

- (a) **in subsection (1) by deleting “, New Brunswick, Nova Scotia”,**
- (b) **in subsection (2) by replacing “In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon” with “In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon”,**

(c) **by adding the following subsections:**

**(2.1)** In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the acquisition cost of all securities acquired by a purchaser who is an individual under this section in the preceding 12 months does not exceed the following amounts:
- (i) in the case of a purchaser that is not an eligible investor, \$10 000;
- (ii) in the case of a purchaser that is an eligible investor, \$30 000;
- (iii) in the case of a purchaser that is an eligible investor and that received advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, \$100 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
- (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
- (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and
- (d) the security distributed by the issuer is not either of the following:
- (i) a specified derivative;
- (ii) a structured finance product.

**(2.2)** The prospectus exemption described in subsection (2.1) is not available

- (a) in Alberta, Nova Scotia and Saskatchewan, to an issuer that is an investment fund, unless the issuer is a non-redeemable investment fund or a mutual fund that is a reporting issuer, or
- (b) in New Brunswick, Ontario and Québec, to an issuer that is an investment fund.

**(2.3)** The investment limits described in subparagraphs (2.1)(b)(ii) and (iii) do not apply if the purchaser is

- (a) an accredited investor, or
- (b) a person described in subsection 2.5(1) [*Family, friends and business associates*].,
- (d) **in subsection (3) by replacing “In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon” with “In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon”,**

(e) **by adding the following subsection:**

**(3.0.1)** In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person that was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2.1).,

(f) **in subsection (3.1) by replacing “Subsections (1) and (2)”, with “Subsections (1), (2) and (2.1)”,**

(g) **in subsection (4) by deleting “, Saskatchewan”,**

(h) **by adding the following subsections:**

**(5.1)** In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, an offering memorandum delivered under subsection (2.1)

(a) must incorporate by reference, by way of a statement in the offering memorandum, OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution, and

(b) is deemed to incorporate by reference OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution.

**(5.2)** A portfolio manager, investment dealer or exempt market dealer must not distribute OM marketing materials unless the OM marketing materials have been approved in writing by the issuer.,

(i) **in subsections (15) and (16) by replacing “(1) or (2)” with “(1), (2) or (2.1)” wherever the phrase appears, and**

(j) **by adding the following subsections:**

**(17.1)** In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the issuer must file with the securities regulatory authority a copy of all OM marketing materials required or deemed to be incorporated by reference into an offering memorandum delivered under this section,

(a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or

(b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being delivered or made reasonably available to a prospective purchaser.

**(17.2)** OM marketing materials filed under subsection (17.1) must include a cover page clearly identifying the offering memorandum to which they relate.

**(17.3)** Subsections (17.4) to (17.21) apply to issuers that rely on subsection (2.1) and that are not reporting issuers in any jurisdiction of Canada.

**(17.4)** In Alberta, an issuer must, within 120 days after the end of each of its financial years, file with the securities regulatory authority annual financial statements and make them reasonably available to each holder of a security acquired under subsection (2.1).

**(17.5)** In New Brunswick, Ontario, Québec and Saskatchewan, an issuer must, within 120 days after the end of each of its financial years, deliver annual financial statements to the securities regulatory authority and make them reasonably available to each holder of a security acquired under subsection (2.1).

**(17.6)** In Nova Scotia, an issuer must, within 120 days after the end of each of its financial years, make reasonably available annual financial statements to each holder of a security acquired under subsection (2.1).

**(17.7)** Despite subsections (17.4), (17.5) and (17.6), as applicable, if an issuer is required to file, deliver or make reasonably available annual financial statements for a financial year that ended before the issuer distributed securities under subsection (2.1) for the first time, those annual financial statements must be filed

in Alberta, delivered in New Brunswick, Ontario, Québec and Saskatchewan or made reasonably available in Nova Scotia, as applicable, on or before the later of

- (a) the 60<sup>th</sup> day after the issuer first distributes securities under subsection (2.1), and
- (b) the deadline in subsection (17.4), (17.5) or (17.6), as applicable, to file, deliver or make reasonably available the annual financial statements.

**(17.8)** The annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must include

- (a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for
  - (i) the most recently completed financial year, and
  - (ii) the financial year immediately preceding the most recently completed financial year, if any,
- (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),
- (c) in the following circumstances, a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year:
  - (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
  - (ii) the issuer
    - (A) applies an accounting policy retrospectively in its annual financial statements,
    - (B) makes a retrospective restatement of items in its annual financial statements, or
    - (C) reclassifies items in its annual financial statements,
- (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS, and
- (e) notes to the annual financial statements.

**(17.9)** If the annual financial statements referred to in subsection (17.8) present the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income referred to in subsection (17.8).

**(17.10)** The annual financial statements referred to in subsection (17.8) must be audited.

**(17.11)** Despite subsection (17.10), for the first annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6), comparative information relating to the preceding financial year is not required to be audited if it has not been previously audited.

**(17.12)** Any period referred to in subsection (17.8) that has not been audited must be clearly labelled as unaudited.

**(17.13)** In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, if an issuer decides to change its financial year end by more than 14 days, it must deliver to the securities regulatory authority and make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

- (a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5), and

- (b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5).

**(17.14)** In Nova Scotia, if an issuer decides to change its financial year end by more than 14 days, it must make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

- (a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsection (17.6), and
- (b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsection (17.6).

**(17.15)** The notice referred to in subsections (17.13) and (17.14) must state

- (a) that the issuer has decided to change its financial year end,
- (b) the reason for the change,
- (c) the issuer's old financial year end,
- (d) the issuer's new financial year end,
- (e) the length and ending date of the periods, including the comparative periods, of the annual financial statements referred to in subsections (17.4), (17.5) and (17.6) for the issuer's transition year and its new financial year, and
- (f) the filing deadline for the annual financial statements for the issuer's transition year.

**(17.16)** If a transition year is less than 9 months in length, the issuer must include as comparative financial information to its annual financial statements for its new financial year

- (a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its transition year,
- (b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its old financial year,
- (c) in the following circumstances, a statement of financial position as at the beginning of the old financial year:
  - (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
  - (ii) the issuer
    - (A) applies an accounting policy retrospectively in its annual financial statements,
    - (B) makes a retrospective restatement of items in its annual financial statements, or
    - (C) reclassifies items in its annual financial statements, and
- (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS.

**(17.17)** A transition year must not exceed 15 months.

(17.18) An SEC issuer satisfies subsections (17.13), (17.14) and (17.16) if

- (a) it complies with the requirements of U.S. laws relating to a change of fiscal year, and
- (b) it delivers a copy of all materials required by U.S. laws relating to a change in fiscal year to the securities regulatory authority at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in any event, no later than 120 days after the end of its most recently completed financial year.

(17.19) The financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer under section 2.9 in accordance with Form 45-106F16, unless the issuer has previously disclosed the use of the aggregate gross proceeds in accordance with Form 45-106F16.

(17.20) In New Brunswick, Nova Scotia and Ontario, an issuer must make reasonably available to each holder of a security acquired under subsection (2.1) a notice of each of the following events in accordance with Form 45-106F17, within 10 days of the occurrence of the event:

- (a) a discontinuation of the issuer's business;
- (b) a change in the issuer's industry;
- (c) a change of control of the issuer.

(17.21) An issuer is required to make the disclosure required respectively by subsections (17.4), (17.5), (17.6), (17.19) and (17.20) until the earliest of

- (a) the date the issuer becomes a reporting issuer in any jurisdiction of Canada, and
- (b) the date the issuer ceases to carry on business.

(17.22) In Ontario, an issuer that is not a reporting issuer in Ontario that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (Ontario).

(17.23) In New Brunswick, an issuer that is not a reporting issuer in New Brunswick that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (New Brunswick).

(18) Repealed. [B.C. Reg. 86/2011, s. (e).].

5. **Paragraph 6.1(1)(c) is amended by replacing** “or (2) [Offering memorandum for Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon]” **with** “, (2) or (2.1) [Offering memorandum]”.

6. **Section 6.5 is amended by adding the following subsection:**

(1.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the required form of risk acknowledgement for individual investors includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption* and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption* to Form 45-106F4..

7. **Part 8 is amended by adding the following sections:**

8.4.1 Transition – offering memorandum exemption – update of offering memorandum – Despite subsection 2.9(5.1), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, an issuer is not required to update an offering memorandum that was filed in the local jurisdiction before April 30, 2016, solely to incorporate the statement required under paragraph 2.9(5.1)(a), unless the offering memorandum would otherwise be required to be updated pursuant to subsection 2.9(14) or Instruction B.12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.

8.4.2 Transition – offering memorandum exemption – marketing materials – Despite paragraph 2.9(17.1)(a), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, OM marketing materials that relate to an offering memorandum that was filed in the local jurisdiction before April 30, 2016 and that are delivered or made reasonably available after April 30, 2016 must be filed within 10 days from the earlier of delivery to, or being made reasonably available to, a prospective purchaser..

8. **Item 10.1 of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended by adding “Ontario,” before “Prince Edward Island”.**
9. **Item 10.2 of Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers is amended by adding “Ontario,” before “Prince Edward Island”.**
10. **Item 10 of Form 45-106F3 Offering Memorandum for Qualifying Issuers is amended by adding “Ontario,” before “Prince Edward Island”.**
11. **Form 45-106F4 Risk Acknowledgement is amended**
  - (a) **by replacing “In Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon to qualify as an eligible investor, you may be required to obtain that advice” with “In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon to qualify as an eligible investor, you may be required to obtain that advice”, and**
  - (b) **by adding the following:**

**Schedule 1**  
**Classification of Investors Under the Offering Memorandum Exemption**

**Instructions:** This schedule must be completed together with the Risk Acknowledgement Form and Schedule 2 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

**How you qualify to buy securities under the offering memorandum exemption**

Initial the statement under A, B, C or D containing the criteria that applies to you. (You may initial more than one statement.) If you initial a statement under B or C, you are not required to complete A.

A. You are an eligible investor because:		Your initials
<b>ELIGIBLE INVESTOR</b>	Your net income before taxes was more than \$75,000 in each of the 2 most recent calendar years, and you expect it to be more than \$75,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your net income before taxes combined with your spouse's was more than \$125,000 in each of the 2 most recent calendar years, and you expect your combined net income to be more than \$125,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Either alone or with your spouse, you have net assets worth more than \$400,000. (Your net assets are your total assets, including real estate, minus your total debt including any mortgage on your property.)	
B. You are an eligible investor, as a person described in section 2.3 [ <i>Accredited investor</i> ] of NI 45-106 or, as applicable in Ontario, subsection 7.3(3) of the <i>Securities Act</i> (Ontario), because:		Your initials
<b>ACCREDITED INVESTOR</b>	Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year.	

	Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities.	
	Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)	

	C. You are an eligible investor, as a person described in section 2.5 [Family, friends and business associates] of NI 45-106, because:	Your initials
FAMILY, FRIENDS AND BUSINESS ASSOCIATES	<p>You are:</p> <p>1) <i>[check all applicable boxes]</i></p> <p><input type="checkbox"/> a director of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a control person of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a founder of the issuer</p> <p>OR</p> <p>2) <i>[check all applicable boxes]</i></p> <p><input type="checkbox"/> a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p> <p><input type="checkbox"/> a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p>	
	<p>You are a family member of _____ <i>[Instruction: Insert the name of the person who is your relative either directly or through his or her spouse],</i> who holds the following position at the issuer or an affiliate of the issuer:</p> <p>_____.</p> <p>You are the _____ of that person or that person's spouse. <i>[Instruction: To qualify for this investment, you must be (a) the spouse of the person listed above or (b) the parent, grandparent, brother, sister, child or grandchild of that person or that person's spouse.]</i></p>	
	<p>You are a close personal friend of _____ <i>[Instruction: Insert the name of your close personal friend],</i> who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	
	<p>You are a close business associate of _____ <i>[Instruction: Insert the name of your close business associate],</i> who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	



D. You are not an eligible investor.		Your initials
<b>NOT AN ELIGIBLE INVESTOR</b>	You acknowledge that you are not an eligible investor.	

**Schedule 2**  
**Investment Limits for Investors Under the Offering Memorandum Exemption**

**Instructions:** This schedule must be completed together with the Risk Acknowledgement Form and Schedule 1 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

<b>SECTION 1 TO BE COMPLETED BY THE PURCHASER</b>
<b>1. Investment limits you are subject to when purchasing securities under the offering memorandum exemption</b>
You may be subject to annual investment limits that apply to all securities acquired under the offering memorandum exemption in a 12 month period, depending on the criteria under which you qualify as identified in Schedule 1. Initial the statement that applies to you.

A. You are an eligible investor.		Your initials
<b>ELIGIBLE INVESTOR</b>	As an eligible investor that is an individual, you cannot invest more than <b>\$30,000</b> in all offering memorandum exemption investments made in the previous 12 months, unless you have received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule, that your investment is suitable.	
	Initial one of the following statements:	
	<p>You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit of \$30,000 in all offering memorandum exemption investments made in the previous 12 months.</p> <p>You confirm that you received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule that the following investment is suitable.</p> <p>You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit in all offering memorandum exemption investments made in the previous 12 months of \$100,000.</p>	

B. You are an eligible investor, as a person described in section 2.3 [ <i>Accredited investor</i> ] of NI 45-106 or, as applicable in Ontario, subsection 7.3(3) of the <i>Securities Act</i> (Ontario).		Your initials
<b>ACCREDITED INVESTOR</b>	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.3 [ <i>Accredited investor</i> ], you are not subject to investment limits.	

C. You are an eligible investor, as a person described in section 2.5 [ <i>Family, friends and business associates</i> ] of NI 45-106.		Your initials
<b>FAMILY, FRIENDS AND BUSINESS ASSOCIATES</b>	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.5 [ <i>Family, friends and business associates</i> ], you are not subject to investment limits.	

D. You are not an eligible investor.		Your initials
<b>NOT AN ELIGIBLE INVESTOR</b>	<p>You acknowledge that you cannot invest more than <b>\$10,000</b> in all offering memorandum exemption investments made in the previous 12 months.</p> <p>You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit of \$10,000 in all offering memorandum exemption investments made in the previous 12 months.</p>	

SECTION 2 TO BE COMPLETED BY THE REGISTRANT	
<b>2. Registrant information</b>	
<i>[Instruction: this section must only be completed if an investor has received advice from a portfolio manager, investment dealer or exempt market dealer concerning his or her investment.]</i>	
First and last name of registrant (please print):	
Registered as: <i>[Instruction: indicate whether registered as a dealing representative or advising representative]</i>	
Telephone:	Email:
Name of firm: <i>[Instruction: indicate whether registered as an exempt market dealer, investment dealer or portfolio manager.]</i>	
Date:	

## 12. The Instrument is amended by adding the following form after Form 45-106F15:

**Form 45-106F16**  
**Notice of Use of Proceeds**

[Insert issuer name]

For the financial year ended [Insert end date of most recently completed financial year]

**Date:** [Specify the date of the Notice. The date must be no earlier than the date of the auditor's report on the financial statements for the issuer's most recently completed financial year.]

[Provide the information specified in the following table.]

1 Opening Proceeds		
(A)	Closing unused proceeds balance from the last Notice in Form 45-106F16 filed, if any	\$
(B)	Proceeds raised in the most recently completed financial year	\$
(C)	Total opening proceeds [Line (C) = Line (A) + Line (B)]	\$
2 Proceeds Used During the Most Recently Completed Financial Year		
	[Provide in reasonable detail a breakdown of all proceeds used in the most recently completed financial year, including proceeds used to pay the following, as applicable: i. selling commissions and fees ii. other offering costs iii. amounts paid in respect of each use of available funds identified in the offering memorandum iv. each other principal use of proceeds, identified separately]	\$
(D)	Total used proceeds [Line (D) is the sum of the uses of proceeds itemized in this section 2 of the table, and must equal the aggregate gross proceeds used during the most recently completed financial year.]	\$
3 Closing Unused Proceeds		
(E)	Closing unused proceeds [Line (E) = Line (C) – Line (D)]	\$

[If any of the proceeds required to be disclosed in this table were paid directly or indirectly to a related party (as defined in Instruction A.6 of Form 45-106F2 Offering Memorandum Form for Non-Qualifying Issuers) of the issuer, state in each case the name of the related party to whom the payment was made, their relationship to the issuer and the amount paid to the related party.]

**Instructions for Completing**  
**Form 45-106F16**  
**Notice of Use of Proceeds**

- The amount for Line (A) is taken from Line (E) in the prior year's Notice of Use of Proceeds (Notice), if applicable. If a Notice was not required in the prior year, then the amount for Line (A) is \$nil.
- The amount for Line (B) is the aggregate gross proceeds raised in all jurisdictions in Canada under section 2.9 [Offering memorandum] of National Instrument 45-106 (the OM exemption) during the most recently completed financial year. If an issuer raised funds in reliance on other prospectus exemptions concurrently with the OM exemption during the year and it is impractical to separately track proceeds raised only under the OM exemption, the issuer can provide the disclosure outlined in the table for the aggregate gross proceeds raised under all prospectus exemptions during the most recently completed financial year.

3. If Line (C) is \$nil, then the issuer does not have an obligation to file, deliver or make reasonably available the Notice for that financial year.
4. In Section 2 of the table, the issuer must provide a breakdown in reasonable detail of the uses of the aggregate gross proceeds during the most recently completed financial year. Issuers should ensure that the disclosure is specific enough and provides sufficient detail for an investor to understand how the proceeds have been used.
5. Both direct and indirect payments to related parties must be disclosed. An example of an indirect payment could include repayment of a debt that was incurred for a prior payment to a related party.
6. Proceeds invested on a temporary basis would not generally be considered to have been used.

**13. The Instrument is amended by adding the following form:**

**Form 45-106F17  
Notice of Specified Key Events**

This is the form required under subsection 2.9(17.20) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in New Brunswick, Nova Scotia and Ontario to make available notice of specified key events to holders of securities acquired under subsection 2.9(2.1) of NI 45-106.

### 1. Issuer Name and Address

Provide the following information.

Full legal name

Street address

Municipality

Website

Province/State

Postal code/Zip code

Country

### 2. Specified Key Event

Provide the following information.

The event, as described in section 3, is: *[Select one or more type of event from the list below]*

a discontinuation of the issuer's business

a change in the issuer's industry

a change of control of the issuer

Date on which the event occurred (yyyy/mm/dd):

### 3. Event Description

Provide a brief description of the event identified in section 2.

**4. Contact Person**

Provide the following information for a person at the issuer who can be contacted regarding the event described in section 3.

Name	<input type="text"/>	Title	<input type="text"/>
Email address	<input type="text"/>	Telephone number	<input type="text"/>

Date of notice (yyyy/mm/dd):

- 14. This Instrument comes into force in Ontario on January 13, 2016 and in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan on April 30, 2016.

## ANNEX A-2

AMENDING INSTRUMENT FOR NATIONAL INSTRUMENT 52-107  
ACCEPTABLE ACCOUNTING PRINCIPLES AND AUDITING STANDARDSAmendments to  
National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*

1. *National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards is amended by this Instrument.*
2. *Section 1.1 is amended*
  - (a) *by deleting “except in Ontario, ” from paragraph (d) of the definition of “acquisition statements”.*
3. *Subsection 2.1(2) is amended*
  - (a) *by deleting “except in Ontario, ” wherever it occurs, and*
  - (b) *by deleting “and” at the end of paragraph (g), by adding “, and” at the end of paragraph (h) and by adding the following paragraph:*
    - (i) all financial statements
      - (i) filed by an issuer under subsection 2.9(17.4) of National Instrument 45-106 *Prospectus Exemptions*,
      - (ii) delivered by an issuer under subsection 2.9(17.5) of National Instrument 45-106 *Prospectus Exemptions*, or
      - (iii) made reasonably available by an issuer under subsection 2.9(17.6) of National Instrument 45-106 *Prospectus Exemptions*.
4. *In the following provisions, “(c) and (e)” is replaced with “(c), (e) and (i)”:*
  - (a) *subsection 3.2(1);*
  - (b) *subsection 3.7(1);*
  - (c) *subsection 3.8(1);*
  - (d) *subsection 3.9(1);*
  - (e) *subsection 3.10(1).*
5. This Instrument comes into force in Ontario on January 13, 2016 and in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan on April 30, 2016.

## ANNEX A-3

AMENDING INSTRUMENT FOR NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES*Amendments to  
National Instrument 45-102 *Resale of Securities*

1. ***National Instrument 45-102 Resale of Securities is amended by this Instrument.***
2. ***Appendix D is amended in the list preceding “Transitional and Other Provisions” by replacing “section 2.9 [Offering memorandum] (in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon);” with “section 2.9 [Offering memorandum];”.***
3. This Instrument comes into force in Ontario on January 13, 2016 and in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan on April 30, 2016.

**ANNEX A-4**

**AMENDING INSTRUMENT FOR MULTILATERAL INSTRUMENT 11-102 *PASSPORT SYSTEM***

**Amendments to  
Multilateral Instrument 11-102 *Passport System***

- 1. *Multilateral Instrument 11-102 Passport System is amended by this Instrument.***
- 2. *Appendix D is amended by replacing the following rows***

Offering memorandum in required form	s. 2.9(5) of NI 45-106	n/a
Requirement to file offering memorandum within prescribed time	s. 2.9(14) of NI 45-106	n/a

***with***

Offering memorandum in required form	s.	2.9(5)	of NI	45-	106	s.	2.9(5)	& s.	2.9(5.1)	of NI	45-	106	s.	2.9(5)	& s.	2.9(5.1)	of NI	45-	106	s.	2.9(5)	& s.	2.9(5.1)	of NI	45-	106
Requirement to file offering memorandum within prescribed time	s. 2.9(14) of NI 45-106																									

- 3. This Instrument comes into force in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan on April 30, 2016.**



## ANNEX B-1

CHANGES TO COMPANION POLICY 45-106CP *PROSPECTUS EXEMPTIONS*

This Annex reflects changes to Companion Policy 45-106CP *Prospectus Exemptions* that will take effect upon the coming into force of the Rule Amendments set out in Annex A. Additions are represented with underlined text and deletions are represented with strikethrough text.

## PART 1 – INTRODUCTION

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

Sections 2.3(5), 2.4(1), 2.9(3), 2.9(3.0.1) and 2.10(2) of NI 45-106 specifically prohibit syndications. A distribution of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of securities to the persons beneficially owning or controlling the syndicate.

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

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

## PART 3 – CAPITAL RAISING EXEMPTIONS

## 3.3 Advertising

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

**3.3.1 Advertising and marketing materials under the offering memorandum exemption**

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, an offering memorandum prepared in accordance with the offering memorandum exemption in section 2.9(2.1) of NI 45-106 must incorporate by reference any marketing materials used in relation to a distribution under the offering memorandum exemption. Subsection 2.9(8) of NI 45-106 requires the issuer to sign a certificate that indicates that the offering memorandum does not contain a misrepresentation. As marketing materials are incorporated by reference into the offering memorandum, the issuer must also ensure that the information contained in marketing materials does not contain a misrepresentation.

In these jurisdictions, an issuer or registrant that uses marketing materials as part of an offering made in reliance on the offering memorandum exemption must review the marketing materials to confirm that they are consistent with the offering document and are fair, balanced and not misleading. In addition, these jurisdictions expect an issuer or registrant to determine whether any claims set out in marketing materials adequately refer to information to support these claims and representations. For example, if benchmarks are used for comparison purposes, the issuer or registrant should assess whether the benchmarks are relevant and comparable to the investment in question and confirm the marketing materials:

- (a) adequately explain differences between the benchmark and the investment,
- (b) make reference to the source of the benchmark and identify the date to which the information is current, and
- (c) where relevant, caution purchasers that historical performance is not necessarily indicative of future results.

Issuers that prepare offering memoranda in accordance with Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*, are also required to comply with requirements relating to forward-looking information, which are described in Instructions A.12 and B.14 of Form 45-106F2. Issuers cannot disseminate material forward-looking information unless it is contained within the offering memorandum. Additionally, forward-looking information contained in an offering memorandum must comply with certain requirements in National Instrument 51-102 *Continuous Disclosure Obligations*. These requirements also extend to marketing materials that are used in connection with a distribution under the offering memorandum exemption.

In these jurisdictions, if an issuer or registrant intends to rely on marketing materials prepared by a third party, such as an analyst report that rates a security or compares a security with securities of other issuers, the issuer or registrant is expected to perform its own assessment of the marketing materials to confirm that they are fair, balanced and not misleading. For example, if the report has been paid for by the issuer, or if there are other relationships between the analyst and the issuer, it would be inappropriate to describe the report as being an “independent” report. The report should also prominently disclose the fees paid and relationships between the analyst and the issuer. An issuer or registrant should not rely on marketing materials prepared by a third party without independently reviewing the materials prior to use.

A registrant should be aware of other CSA guidance on the review and use of marketing materials and reliance on marketing materials prepared by third parties.

### 3.4 Restrictions on finder's fees or commissions

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

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

### 3.8 Offering memorandum

- (1) Eligibility criteria – ~~Alberta, Manitoba, Northwest Territories, Nunavut, and Prince Edward Island, Québec and Saskatchewan~~

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

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

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

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

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

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the “know your client” and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have

obtained exemptions from the “know your client” and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(1.1) Eligibility criteria and investment limits – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

(a) Eligibility criteria

Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan impose eligibility criteria on persons investing under the offering memorandum exemption.

The qualification criteria for becoming an eligible investor are substantially the same as in the jurisdictions identified in subsection (1), above. Note, however, that in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, it is not possible to qualify as an eligible investor by receiving advice from an “eligibility advisor”.

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

(b) Investment limits for individual eligible and non-eligible investors

Both eligible investors and purchasers that do not qualify as eligible investors (non-eligible investors) who are individuals are subject to investment limits under the offering memorandum exemption. In these jurisdictions, non-eligible investors who are individuals are subject to an investment limit of \$10 000 and eligible investors who are individuals are subject to an investment limit of \$30 000. In both cases, the investment limits apply to all securities acquired by the purchaser under the offering memorandum exemption in the preceding 12 months.

However, an individual purchaser that qualifies as an eligible investor because the investor is an accredited investor or is a person described in the family, friends and business associates exemption, is not subject to an investment limit under the offering memorandum exemption.

The fact that investment limits have been established for eligible and non-eligible investors who are individuals does not mean that these amounts are suitable investments in all cases. If a registrant is involved in a transaction, the registrant must still conduct a suitability assessment to determine that the amount of the investment and the investment itself is suitable for the purchaser. This may result in a lower investment amount for a purchaser.

The \$30 000 investment limit may be exceeded by an eligible investor who receives advice from a portfolio manager, investment dealer or exempt market dealer that exceeding the investment limit of \$30 000 and the investment itself is suitable for the eligible investor. In this case, the investment limit for all securities acquired by the purchaser under the offering memorandum exemption in the preceding 12 months is \$100 000.

In determining the acquisition cost to a purchaser subject to investment limits, include any future payments that the purchaser will be required to make. Proceeds that may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities.

“Individual” is defined in the securities legislation of certain jurisdictions to mean a natural person. The definition specifically excludes partnerships, unincorporated associations, unincorporated syndicates, unincorporated organizations and trusts. It also specifically excludes a natural person acting in the capacity of trustee, executor, administrator or personal or other legal representative.

(c) Circumstances when investment limits can be exceeded

The fact that higher investment limits apply to individual eligible investors than individual non-eligible investors does not mean these higher amounts will be suitable in all cases for eligible investors. It is a condition of the offering memorandum exemption that, in order to exceed the \$30 000 investment limit, a registrant must determine that an investment above the \$30,000 investment limit is suitable for the purchaser. Unless a registrant determines that exceeding the \$30 000 investment limit is suitable for the purchaser, the issuer cannot accept a subscription in excess of \$30 000 from the purchaser. In this case, the registrant could also not proceed to take instructions from the purchaser to exceed the \$30 000 investment limit.

(d) Investment limits apply over a 12-month period

The investment limits for both individual eligible and non-eligible investors apply to the aggregate of all investments made by a purchaser in distributions by different issuers (or multiple offerings by the same issuer) under the offering memorandum exemption during the preceding 12 months, which may or may not be a calendar year. For example, if a purchaser wishes to acquire securities of an issuer under the offering memorandum exemption on January 15, the issuer must include in the calculation all investments made by the purchaser under the offering memorandum exemption beginning on January 16 of the prior year, up to and including the date of the proposed investment.

On each distribution, the issuer must confirm that the amount invested by a purchaser who is an individual does not exceed the applicable limit and should take reasonable steps to do so. This will require the issuer to first understand whether or not the purchaser is an eligible investor. As described above in section 1.9, the issuer should gather information that confirms the purchaser meets the criteria set out in the exemption. As part of this exercise, the issuer should also discuss with the purchaser the investment limits that apply to the purchaser.

In making a determination as to whether a purchaser is within the applicable investment limit, an issuer should obtain appropriate representations from the purchaser that confirm the purchaser has not exceeded the applicable investment limit over the relevant period. Note that we would have concerns if an issuer simply accepted standard representations from a purchaser without taking steps to verify the representations made by the purchaser. For instance, inquiries could be made with respect to other investments made under the offering memorandum exemption during the 12-month period preceding the current investment.

Notwithstanding the representations made by a purchaser in the schedules to the risk acknowledgement form, we expect an issuer to be able to explain what steps were taken to verify the representations made by the purchaser. We recognize that in many circumstances, a registrant may act as agent on behalf of an issuer for this process. In both cases, the guidance in section 1.9 above may also be instructive for this purpose.

(1.2) Role of registrant in providing suitability advice and conflicts of interest

A registrant involved in a distribution of securities pursuant to a prospectus exemption must not only establish that the prospectus exemption is available, it must also comply with its registrant obligations, including know-your-client, know-your-product and suitability. In assessing the level of investment that may be suitable for a purchaser under the offering memorandum exemption, registrants should take into consideration guidance published by the CSA on best practices for conducting a suitability assessment, which includes considering the level of concentration of investments in the client's portfolio.

NI 31-103 and the related companion policy provide a framework that requires registrants to identify and respond to material conflicts of interest that may affect their ability to meet their regulatory obligations, including suitability.

Where a registrant is providing suitability advice to a purchaser in respect of an offering by a related or connected issuer, we expect the registrant that is related or connected to the issuer to be aware of the material conflicts that arise in these circumstances, and to take appropriate steps to respond to the conflicts to ensure it is fulfilling its regulatory obligations. We expect a registrant to be able to demonstrate that it is addressing the conflicts by avoiding or managing and disclosing the conflicts of interest appropriately to ensure compliance with its obligation to deal fairly, honestly and in good faith with clients.

We expect all registrants to be aware of other CSA guidance on registrant obligations with respect to know-your-client, know-your-product and suitability, and identify and respond to conflicts of interest.

(5.1) Filing of marketing materials

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, marketing materials used in the context of an offering made in reliance on the offering memorandum exemption must also be filed with the securities regulatory authority. Once the marketing materials have been filed, there is no need to file them again after subsequent closings, unless there is a change to the marketing materials.

(7) Types of securities that can be distributed under the exemption – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, issuers are prohibited from distributing certain types of securities under the offering memorandum exemption, including specified derivatives and structured finance products. Note that this is in addition to the prohibition in subsection 2.9(3.1) against distributions of short-term securitized products under the offering memorandum exemption.

These types of securities have been excluded because the purpose of the exemption is for raising capital and it is not intended to be used to distribute complex or novel securities to purchasers. We would have concerns if issuers relied on the offering memorandum exemption to distribute novel or complex securities, even if they do not fall within the prohibited categories.

(8) Ongoing disclosure – Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, non-reporting issuers that issue securities under the offering memorandum exemption are required, in respect of each financial year, to file or deliver (as applicable) to the securities regulatory authority and make available to purchasers, audited annual financial statements within 120 days from the issuer's financial year end. In Nova Scotia, issuers are not required to file or deliver these financial statements to the securities regulatory authority, but are only required to make them available to purchasers that acquired securities under the offering memorandum exemption.

The following table illustrates when the first audited annual financial statements of an issuer would be due, as required by subsections (17.4), (17.5) and (17.6), following an initial distribution of securities under the offering memorandum exemption. The examples in the table take into account the extension to the filing deadline provided by subsection (17.7).

The following examples assume the issuer's financial year end is December 31.

<u>Date of formation</u>	<u>Date of first distribution under subsection 2.9(2.1)</u>	<u>Deadline for first annual financial statements under subsections 2.9(17.4), (17.5) and (17.6)</u>	<u>Financial periods included in annual financial statements</u>	<u>Notes</u>
<u>January 1, 20X3</u>	<u>April 15, 20X7</u>	<u>June 14, 20X7</u>	<u>December 31, 20X6 and December 31, 20X5</u>	<u>The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) before the filing deadline for annual financial statements, which would be April 30, 20X7. Since the distribution was completed so close to the filing deadline, the issuer can take advantage of the extension in subsection 2.9(17.7) and file the statements on June 14, 20X7.</u>
<u>January 1, 20X7</u>	<u>April 15, 20X7</u>	<u>April 30, 20X8</u>	<u>December 31, 20X7</u>	<u>The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) before the filing deadline for annual financial statements, which would be April 30, 20X7. However, since the issuer has not completed a financial year, the issuer would not be required to file annual financial statements until April 30, 20X8 for the financial year ended December 31, 20X7.</u>

<u>Date of formation</u>	<u>Date of first distribution under subsection 2.9(2.1)</u>	<u>Deadline for first annual financial statements under subsections 2.9(17.4), (17.5) and (17.6)</u>	<u>Financial periods included in annual financial statements</u>	<u>Notes</u>
<u>January 1, 20X3</u>	<u>June 15, 20X7</u>	<u>April 30, 20X8</u>	<u>December 31, 20X7 and December 31, 20X6</u>	<u>The issuer completes its first distribution under the offering memorandum exemption in subsection 2.9(2.1) after the filing deadline for annual financial statements in 20X7. The offering memorandum would already include audited annual financial statements for the year ended December 31, 20X6. The next audited annual financial statements of the issuer would be required to be filed by April 30, 20X8 for the year ended December 31, 20X7.</u>

The requirement to file or deliver (as applicable) to the securities regulatory authority and make available to purchasers annual financial statements continues to apply each year after the initial distribution under subsection 2.9(2.1) until the earlier of (1) the date the issuer becomes a reporting issuer and (2) the date the issuer ceases to carry on business.

(9) Ongoing disclosure – notice of specified key events – New Brunswick, Nova Scotia and Ontario

In addition to audited annual financial statements and a notice of how the proceeds raised under the offering memorandum exemption have been used, non-reporting issuers that issue securities in reliance on the offering memorandum exemption in New Brunswick, Nova Scotia and Ontario must also make available to investors a notice of certain key events, within 10 days of the occurrence of the event. These events are considered to be significant changes in the business of the issuer of which purchasers should be notified. This requirement is in addition to any similar requirement under corporate law and also applies to non-reporting issuers with non-corporate structures, such as trusts or partnerships.

In making a determination as to whether an issuer's industry has changed, issuers may consider whether they would identify a different industry category on Form 45-106F1 *Report of Exempt Distribution* than the category previously identified.

A non-reporting issuer must continue to provide notice of the specified events, if applicable, until the earlier of (i) the date the issuer becomes a reporting issuer or (ii) the date the issuer ceases to carry on business.

(10) Meaning of "make reasonably available"

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, disclosure documents will be considered to have been made reasonably available to each holder of a security acquired under the offering memorandum exemption if the documents are mailed to security holders, or if security holders receive notice that the disclosure documents can be viewed on a public website of the issuer or a website accessible by all holders of securities acquired under subsection 2.9(2.1) of the issuer (such as a password protected website). Issuers should take reasonable steps to enable purchasers to receive or access these documents promptly.

## PART 5 – FORMS

### 5.2 Forms required under the offering memorandum exemption

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

The required form of risk acknowledgment under sections 2.9(1), ~~and 2.9(2)~~ and 2.9(2.1) of NI 45-106 is Form 45-106F4.

In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, Form 45-106F4, required under subsection 2.9(2.1), includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption*, with respect to eligibility of individual investors, and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption*, with respect to investment limits of individual investors.

## ANNEX B-2

**CHANGES TO NATIONAL POLICY 11-203  
PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS**

This document reflects changes to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* that will take effect upon the coming into force of the Rule Amendments set out in Annex A. Additions are represented with underlined text.

**3.8 – General guidelines**

(4) The regulators are not prepared to extend the availability of a non-harmonized exemption set out in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) to a non-principal jurisdiction where the non-harmonized exemption is not available under that rule. If a filer makes a passport application or a dual application that would have that effect, the principal regulator will request that the filer provide a representation that no person or company will rely on the exemption in that non-principal jurisdiction. For example, jurisdictions have adopted different types of offering memorandum exemptions under NI 45-106. A principal regulator would not grant an exemption that would have the effect of allowing the use of a type of offering memorandum exemption that is not available under NI 45-106 in a non-principal jurisdiction, unless the filer gave a representation that no person or company would offer the securities relying on that type of offering memorandum exemption in the non-principal jurisdiction.



## ANNEX C

**SCHEDULE 1 CLASSIFICATION OF INVESTORS UNDER THE OFFERING MEMORANDUM EXEMPTION  
AND  
SCHEDULE 2 INVESTMENT LIMITS FOR INVESTORS UNDER THE OFFERING MEMORANDUM EXEMPTION  
TO FORM 45-106F4 RISK ACKNOWLEDGEMENT**

## Schedule 1

*Classification of Investors Under the Offering Memorandum Exemption*

**Instructions:** This schedule must be completed together with the Risk Acknowledgement Form and Schedule 2 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

**How you qualify to buy securities under the offering memorandum exemption**

Initial the statement under A, B, C or D containing the criteria that applies to you. (You may initial more than one statement.) If you initial a statement under B or C, you are not required to complete A.

A. You are an eligible investor because:		Your initials
ELIGIBLE INVESTOR	Your net income before taxes was more than \$75,000 in each of the 2 most recent calendar years, and you expect it to be more than \$75,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your net income before taxes combined with your spouse's was more than \$125,000 in each of the 2 most recent calendar years, and you expect your combined net income to be more than \$125,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Either alone or with your spouse, you have net assets worth more than \$400,000. (Your net assets are your total assets, including real estate, minus your total debt including any mortgage on your property.)	

B. You are an eligible investor, as a person described in section 2.3 [Accredited investor] of NI 45-106 or, as applicable in Ontario, subsection 7.3(3) of the <i>Securities Act</i> (Ontario), because:		Your initials
ACCREDITED INVESTOR	Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in this calendar year. (You can find your net income before taxes on your personal income tax return.)	
	Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year.	
	Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities.	
	Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)	

C. You are an eligible investor, as a person described in section 2.5 [Family, friends and business associates] of NI 45-106, because:		Your initials
<b>FAMILY, FRIENDS AND BUSINESS ASSOCIATES</b>	<p>You are:</p> <p>1) <i>[check all applicable boxes]</i></p> <p><input type="checkbox"/> a director of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> an executive officer of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a control person of the issuer or an affiliate of the issuer</p> <p><input type="checkbox"/> a founder of the issuer</p> <p>OR</p> <p>2) <i>[check all applicable boxes]</i></p> <p><input type="checkbox"/> a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p> <p><input type="checkbox"/> a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are (i) individuals listed in (1) above and/or (ii) family members, close personal friends or close business associates of individuals listed in (1) above</p>	
	<p>You are a family member of _____ <i>[Instruction: Insert the name of the person who is your relative either directly or through his or her spouse]</i>, who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You are the _____ of that person or that person’s spouse. <i>[Instruction: To qualify for this investment, you must be (a) the spouse of the person listed above or (b) the parent, grandparent, brother, sister, child or grandchild of that person or that person’s spouse.]</i></p>	
	<p>You are a close personal friend of _____ <i>[Instruction: Insert the name of your close personal friend]</i>, who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	
	<p>You are a close business associate of _____ <i>[Instruction: Insert the name of your close business associate]</i>, who holds the following position at the issuer or an affiliate of the issuer: _____.</p> <p>You have known that person for _____ years.</p>	

D. You are not an eligible investor.		Your initials
<b>NOT AN ELIGIBLE INVESTOR</b>	You acknowledge that you are not an eligible investor.	

**Schedule 2**  
**Investment Limits for Investors Under the Offering Memorandum Exemption**

**Instructions:** This schedule must be completed together with the Risk Acknowledgement Form and Schedule 1 by individuals purchasing securities under the exemption (the offering memorandum exemption) in subsection 2.9(2.1) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan.

**SECTION 1 TO BE COMPLETED BY THE PURCHASER**

**1. Investment limits you are subject to when purchasing securities under the offering memorandum exemption**

You may be subject to annual investment limits that apply to all securities acquired under the offering memorandum exemption in a 12 month period, depending on the criteria under which you qualify as identified in Schedule 1. Initial the statement that applies to you.

A. You are an eligible investor.		Your initials
<b>ELIGIBLE INVESTOR</b>	As an eligible investor that is an individual, you cannot invest more than <b>\$30,000</b> in all offering memorandum exemption investments made in the previous 12 months, unless you have received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule, that your investment is suitable.  Initial one of the following statements:	
	You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit of \$30,000 in all offering memorandum exemption investments made in the previous 12 months.	
	You confirm that you received advice from a portfolio manager, investment dealer or exempt market dealer, as identified in section 2 of this schedule that the following investment is suitable.  You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit in all offering memorandum exemption investments made in the previous 12 months of \$100,000.	
B. You are an eligible investor, as a person described in section 2.3 [ <i>Accredited investor</i> ] of NI 45-106 or, as applicable in Ontario, subsection 7.3(3) of the <i>Securities Act</i> (Ontario).		Your initials
<b>ACCREDITED INVESTOR</b>	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.3 [ <i>Accredited investor</i> ], you are not subject to investment limits.	
C. You are an eligible investor, as a person described in section 2.5 [ <i>Family, friends and business associates</i> ] of NI 45-106.		Your initials
<b>FAMILY, FRIENDS AND BUSINESS ASSOCIATES</b>	You acknowledge that, by qualifying as an eligible investor as a person described in section 2.5 [ <i>Family, friends and business associates</i> ], you are not subject to investment limits.	

D. You are not an eligible investor.		Your initials
<b>NOT AN ELIGIBLE INVESTOR</b>	<p>You acknowledge that you cannot invest more than <b>\$10,000</b> in all offering memorandum exemption investments made in the previous 12 months.</p> <p>You confirm that, after taking into account your investment of \$_____ today in this issuer, you have not exceeded your investment limit of \$10,000 in all offering memorandum exemption investments made in the previous 12 months.</p>	

SECTION 2 TO BE COMPLETED BY THE REGISTRANT	
<b>2. Registrant information</b>	
<i>[Instruction: this section must only be completed if an investor has received advice from a portfolio manager, investment dealer or exempt market dealer concerning his or her investment.]</i>	
First and last name of registrant (please print):	
Registered as: <i>[Instruction: indicate whether registered as a dealing representative or advising representative]</i>	
Telephone:	Email:
Name of firm: <i>[Instruction: indicate whether registered as an exempt market dealer, investment dealer or portfolio manager.]</i>	
Date:	

## ANNEX D

## FORM 45-106F16 NOTICE OF USE OF PROCEEDS

Form 45-106F16  
Notice of Use of Proceeds

[Insert issuer name]

For the financial year ended [Insert end date of most recently completed financial year]

Date: [Specify the date of the Notice. The date must be no earlier than the date of the auditor's report on the financial statements for the issuer's most recently completed financial year.]

[Provide the information specified in the following table.]

1 Opening Proceeds		
(A)	Closing unused proceeds balance from the last Notice in Form 45-106F16 filed, if any	\$
(B)	Proceeds raised in the most recently completed financial year	\$
(C)	Total opening proceeds [Line (C) = Line (A) + Line (B)]	\$
2 Proceeds Used During the Most Recently Completed Financial Year		
	[Provide in reasonable detail a breakdown of all proceeds used in the most recently completed financial year, including proceeds used to pay the following, as applicable: i. selling commissions and fees ii. other offering costs iii. amounts paid in respect of each use of available funds identified in the offering memorandum iv. each other principal use of proceeds, identified separately]	\$
(D)	Total used proceeds [Line (D) is the sum of the uses of proceeds itemized in this section 2 of the table, and must equal the aggregate gross proceeds used during the most recently completed financial year.]	\$
3 Closing Unused Proceeds		
(E)	Closing unused proceeds [Line (E) = Line (C) – Line (D)]	\$

[If any of the proceeds required to be disclosed in this table were paid directly or indirectly to a related party (as defined in Instruction A.6 of Form 45-106F2 Offering Memorandum Form for Non-Qualifying Issuers) of the issuer, state in each case the name of the related party to whom the payment was made, their relationship to the issuer and the amount paid to the related party.]

**Instructions for Completing  
Form 45-106F16  
*Notice of Use of Proceeds***

1. The amount for Line (A) is taken from Line (E) in the prior year's Notice of Use of Proceeds (Notice), if applicable. If a Notice was not required in the prior year, then the amount for Line (A) is \$nil.
2. The amount for Line (B) is the aggregate gross proceeds raised in all jurisdictions in Canada under section 2.9 [*Offering memorandum*] of National Instrument 45-106 (the OM exemption) during the most recently completed financial year. If an issuer raised funds in reliance on other prospectus exemptions concurrently with the OM exemption during the year and it is impractical to separately track proceeds raised only under the OM exemption, the issuer can provide the disclosure outlined in the table for the aggregate gross proceeds raised under all prospectus exemptions during the most recently completed financial year.
3. If Line (C) is \$nil, then the issuer does not have an obligation to file, deliver or make reasonably available the Notice for that financial year.
4. In Section 2 of the table, the issuer must provide a breakdown in reasonable detail of the uses of the aggregate gross proceeds during the most recently completed financial year. Issuers should ensure that the disclosure is specific enough and provides sufficient detail for an investor to understand how the proceeds have been used.
5. Both direct and indirect payments to related parties must be disclosed. An example of an indirect payment could include repayment of a debt that was incurred for a prior payment to a related party.
6. Proceeds invested on a temporary basis would not generally be considered to have been used.

## ANNEX E

## FORM 45-106F17 NOTICE OF SPECIFIED KEY EVENTS

**Form 45-106F17**  
**Notice of Specified Key Events**

This is the form required under subsection 2.9(17.20) of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) in New Brunswick, Nova Scotia and Ontario to make available notice of specified key events to holders of securities acquired under subsection 2.9(2.1) of NI 45-106.

**1. Issuer Name and Address**

*Provide the following information.*

Full legal name

Street address

Municipality

Website

Province/State

Postal code/Zip code

Country

**2. Specified Key Event**

*Provide the following information.*

The event, as described in section 3, is: *[Select one or more type of event from the list below]*

- a discontinuation of the issuer's business
- a change in the issuer's industry
- a change of control of the issuer

Date on which the event occurred (yyyy/mm/dd):

**3. Event Description**

*Provide a brief description of the event identified in section 2.*

**4. Contact Person**

*Provide the following information for a person at the issuer who can be contacted regarding the event described in section 3.*

Name	<input type="text"/>
Email address	<input type="text"/>

Title	<input type="text"/>
Telephone number	<input type="text"/>

Date of notice (yyyy/mm/dd):

	/		/	
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**ANNEX F****SUMMARY OF KEY CHANGES TO THE MARCH 2014 MATERIALS****Investment limits**

The March 2014 materials published by the FCNB and OSC provided that the acquisition cost of all securities acquired by an investor under the OM exemption in the preceding 12 months could not exceed:

- in the case of a non-eligible investor that is an individual, \$10,000, and
- in the case of an eligible investor that is an individual, \$30,000.

The March 2014 proposals published by the ASC, AMF and FCAA provided that the acquisition cost of all securities acquired by an investor under the OM exemption in the preceding 12 months could not exceed:

- in the case of an investor that is not an eligible investor, \$10,000, and
- in the case of an eligible investor that is an individual and that is not an accredited investor and does not qualify as a specified family member, close personal friend or close business associate under the family, friends and business associates exemption, \$30,000.

The OSC proposals provided that the above limits would apply to *individuals* that were not accredited investors. The MI proposal provided that the \$10,000 limit for non-eligible investors would apply to both individual and non-individuals and the \$30,000 limit would apply only to *individuals*, excluding accredited investors or those that would qualify under the family, friends and business associates exemption.

Based on the feedback that we received, we considered various options for investment limits under the OM exemption. The final amendments introduce investment limits for individual investors other than those that would qualify as accredited investors or investors that would qualify to invest under the family, friends and business associates exemption substantially as follows:

- in the case of a non-eligible investor that is an individual, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$10,000,
- in the case of an eligible investor that is an individual, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$30,000,
- in the case of an eligible investor that is an individual and that receives advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, the acquisition cost of all securities acquired by the purchaser under the OM exemption in the preceding 12 months cannot exceed \$100,000.

The investment limits will not apply to non-individuals, whether eligible or non-eligible investors. The final amendments also prohibit reliance on the OM exemption by an entity, such as a corporation or trust, that was created solely for the purpose of acquiring securities under the OM exemption.

**Eligibility criteria**

The March 2014 materials provided that an investor could qualify as an eligible investor by receiving suitability advice from a registered investment dealer (a member of the Investment Industry Regulatory Organization of Canada). This is consistent with the eligibility criteria set out in paragraph (h) of the existing definition of “eligible investor” in section 1.1 of NI 45-106.

The final amendments do not retain this category of eligible investor. Consistent with the approach to investment limits under the final amendments, we believe that the relevance of suitability advice should apply to whether an eligible investor can exceed the \$30,000 investment limit, rather than to whether they would qualify as an eligible investor.

### Risk acknowledgment form

The OSC proposal contemplated only requiring individual investors (other than individual investors who are permitted clients) to sign a new risk acknowledgment form that was based on the risk acknowledgment form for individual accredited investors. The MI proposals did not propose a change to the risk acknowledgement form but proposed not requiring permitted clients to have to sign the risk acknowledgment form.

The final amendments retain the requirement to have all investors purchasing securities under the OM exemption sign a risk acknowledgment form, which is the status quo in those jurisdictions that currently have the OM exemption. The required form is the same as the existing form of risk acknowledgement for the OM exemption (Form 45-106F4). In the future, we may consider updating the risk acknowledgement form and will seek to work with other CSA jurisdictions that have the same requirement. The final amendments also introduce two new schedules to the risk acknowledgement form to be completed only by investors that are individuals, as follows:

- one schedule asking an investor to confirm whether and how the investor meets the criteria of an eligible investor, and
- a second schedule asking an investor to confirm that the investor is investing within the appropriate investment limit or is not subject to an investment limit, whichever is applicable.

The second schedule also requires that information be provided with respect to any registrant that has provided advice to the investor. Investors that are not individuals do not have to complete these new schedules.

### Notice of use of proceeds

The March 2014 materials contemplated that non-reporting issuers would be required to provide a notice disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer in distributions under the OM exemption.

The final amendments retain this requirement, and have added a prescribed form – Form 45-106F16 *Notice of Use of Proceeds* – for providing notice of the use of proceeds. We think that a prescribed form will improve consistency in reporting, and will also provide guidance to issuers as to the nature of the information that should be provided, which will in turn support compliance.

### Notice of discontinuation of the issuer's business, change of industry or change of control

In New Brunswick and Ontario, the March 2014 materials contemplated that non-reporting issuers would be required to provide notice to investors of the following specified key events within 10 days of the event occurring:

- a fundamental change in the nature, or a discontinuation, of the issuer's business,
- a significant change to the issuer's capital structure,
- a major reorganization, amalgamation or merger involving the issuer,
- a take-over bid, issuer bid or insider bid involving the issuer,
- a significant acquisition or disposition of assets, property or joint venture interests, and
- changes to the issuer's board of directors or executive officers, including the departure of the issuer's chief executive officer, chief financial officer, chief operating officer or president or persons acting in similar capacities.

The final amendments require that in New Brunswick, Nova Scotia and Ontario, non-reporting issuers provide notice to investors of a streamlined list of events within 10 days of the event occurring, as follows:

- a discontinuation of the issuer's business,
- a change in the issuer's industry, and
- a change of control of the issuer.

The final amendments also prescribe a form – Form 45-106F17 *Notice of Specified Key Events* – that sets parameters as to the nature and comprehensiveness of the information that is required to be provided to investors.

**Offering memorandum – filing requirement in Ontario and New Brunswick**

The March 2014 materials contemplated that the offering memorandum would be *delivered* to the securities regulatory authorities in Ontario and New Brunswick and not placed on the public record.

The final amendments require that the offering memorandum and any marketing materials incorporated by reference into the offering memorandum be *filed* with the securities regulatory authorities in these jurisdictions and placed on the public record. This aligns with the existing requirement to file the offering memorandum in the other participating jurisdictions.

**Annual financial statements – timing**

The March 2014 materials proposed that non-reporting issuers that distribute securities under the OM exemption would be required to prepare audited annual financial statements and, on or before the 120<sup>th</sup> day after the end of its most recently completed financial year, file or deliver those statements to the securities regulatory authorities in Alberta, New Brunswick, Ontario, Québec and Saskatchewan, as applicable. In Nova Scotia, these statements are not required to be filed or delivered to the securities regulatory authority, but must be made reasonably available to investors.

The final amendments permit additional time to file audited annual financial statements in certain circumstances. This would allow issuers to file the financial statements on or before the later of the 60<sup>th</sup> day after the issuer distributes securities under the OM exemption, and the deadline to file, deliver or make reasonably available the financial statements, as applicable.

**Change in financial year end**

The final amendments introduce certain requirements that non-reporting issuers must comply with in the event of a change in financial year end that were not contemplated in the March 2014 materials. These requirements are based on the requirements for reporting issuers that are set out in National Instrument 51-102 *Continuous Disclosure Obligations*.

**Role of related registrants**

In New Brunswick and Ontario, the March 2014 materials proposed that registrants related to the issuer (i.e., affiliated registrants or registrants in the same corporate structure) would be prohibited from participating in a distribution of securities under the OM exemption.

The final amendments do not prohibit related registrants from participating in a distribution under the OM exemption. The existing regulatory framework requires registrants to identify and respond to material conflicts of interest that may affect their ability to meet their regulatory obligations, including conducting suitability assessments. We have included companion policy guidance to remind registrants of their responsibilities to address conflicts of interest in accordance with their regulatory obligations under NI 31-103 and National Instrument 33-105 *Underwriting Conflicts*.

**Investment funds**

The March 2014 materials excluded investment funds from being able to distribute securities in reliance on the OM exemption in Ontario and New Brunswick. In the final amendments, Québec has also decided to adopt the same exclusion. The exclusion of investment funds is consistent with the objective of the OM exemption to facilitate capital raising for SMEs.

**Marketing materials**

There has been no change to the original proposal made in the March 2014 materials to require marketing materials to be incorporated by reference into an offering memorandum. This requirement has been adopted by all of the participating jurisdictions.

The final amendments prohibit portfolio managers, investment dealers and exempt market dealers from distributing marketing materials in connection with a distribution under the OM exemption unless the marketing materials have been approved in writing by the issuer. This prohibition has been added to address concerns around liability for issuers in respect of marketing materials they did not prepare.

**ANNEX G-1**  
**LOCAL MATTERS**

### 1. Introduction

The securities regulatory authorities in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan (collectively, the **participating jurisdictions**) have made amendments to:

- National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) in respect of the offering memorandum exemption in section 2.9 of NI 45-106 (the **OM exemption**), and
- related consequential amendments.

The participating jurisdictions have also made changes to Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. Together, these amendments and changes are collectively referred to as the **multilateral amendments**.

The multilateral amendments modify the existing OM exemption in each of the participating jurisdictions other than Ontario and introduce the OM exemption in Ontario. Please refer to the CSA multilateral notice (the **multilateral notice**) for a discussion of the substance and purpose of the multilateral amendments.

### 2. Ontario-only amendments

The Ontario Securities Commission (the **OSC** or **we**) has made amendments to the following rules:

- OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* (**OSC Rule 11-501**),
- OSC Rule 13-502 *Fees* (**OSC Rule 13-502**), and
- OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (**OSC Rule 45-501**).

We have also made changes to the following policy:

- Companion Policy 45-501CP *To OSC Rule 45-501 Ontario Prospectus and Registration Exemptions* (**45-501CP**).

We have also made minor amendments to National Instrument 45-102 *Resale of Securities* (**NI 45-102**) and minor changes to 45-106CP to reflect corrections as a result of rule amendments made earlier this year. Together, the amendments to OSC Rule 11-501, OSC Rule 13-502, OSC Rule 45-501 and NI 45-102 are referred to as the **Ontario rule amendments** and the changes to 45-501CP and 45-106CP are referred to as the **Ontario changes**.

Together, the Ontario rule amendments and the Ontario changes are referred to as the **Ontario amendments**. The Ontario amendments are necessary to reflect the adoption of the OM exemption in Ontario and are attached to this Annex G.

### 3. Implementation of the multilateral amendments and Ontario amendments

On October 20, 2015, the OSC made the multilateral amendments and the Ontario amendments.

The multilateral amendments, the Ontario amendments and other required materials were delivered to the Ontario Minister of Finance on October 27, 2015. The Minister may approve or reject the multilateral amendments and Ontario amendments or return them for further consideration. If the Minister approves the multilateral amendments and Ontario amendments or does not take any further action by December 29, 2015 the multilateral amendments and Ontario amendments will come into force on January 13, 2016.

#### 4. Introduction of the OM exemption in Ontario

##### *OSC exempt market review*

The OSC engaged in a broad review of the exempt market (the **exempt market review**) to consider whether to introduce new prospectus exemptions that would facilitate capital raising for business enterprises, particularly small and medium-sized enterprises (**SMEs**), while protecting the interests of investors.

In connection with the exempt market review, on March 20, 2014, the OSC published for comment proposals for four new capital raising prospectus exemptions in Ontario (the **March 2014 materials**):

- an OM exemption,
- a crowdfunding prospectus exemption in addition to regulatory requirements applicable to a crowdfunding portal,
- an existing security holder exemption, and
- a family, friends and business associates exemption.

The OSC also published for comment two new reports of exempt distribution for use in Ontario.

Additional background information is available in the notice and request for comment published on March 20, 2014 which can be found on the OSC website. The comment period for these proposals ended on June 18, 2014.

Since that time, the OSC has completed the following steps:

- The existing security holder exemption came into force in Ontario on February 11, 2015.
- The family, friends and business associates exemption came into force in Ontario on May 5, 2015.
- The OSC has been working with the CSA to develop a new harmonized report of exempt distribution, which was published for comment on August 13, 2015.

The OSC expects to publish the crowdfunding regime in final form in fall 2015.

In developing the multilateral amendments (and in connection with the exempt market review), the OSC conducted extensive public consultations with various stakeholders including OSC advisory committees. The OSC also engaged a third-party service provider to conduct an investor survey to gain insight into retail investors' views on investing in SMEs. A summary of the results of the survey was published in the March 2014 materials.

##### *Investor protection*

The OSC is adopting the OM exemption because we believe it will support the capital raising needs of issuers that are moving beyond the early stages of development. The introduction of the OM exemption in Ontario will allow issuers to raise capital from a broader group of investors, including those that do not qualify as accredited investors, without the protections associated with a prospectus. This raises certain investor protection concerns that need to be addressed.

The OM exemption includes a number of investor protection measures:

- where a registrant is involved in a transaction, having a registrant explain the risks to investors and ensure that the investment is suitable in light of the investor's financial circumstances and investment objectives,
- requiring issuers to provide investors with an offering memorandum containing detailed disclosure to enable an investor to make an investment decision, where the quality of the disclosure is supported by a statutory right of action in the event of a misrepresentation and the offering memorandum is required to be filed with the Commission,
- requiring that any marketing materials used to solicit purchasers and market securities under the OM exemption be incorporated by reference into the offering memorandum so that they are subject to the same standard of liability, in order to motivate issuers to provide investors with fulsome key information about the issuers they are investing in,

- highlighting to investors the key risks associated with making an investment in the exempt market through a risk acknowledgement form which includes having investors confirm that they are within any applicable investment limits,
- requiring issuers that rely on the OM exemption to provide investors with basic ongoing information about the business activities of non-reporting issuers they have invested in, such as:
  - audited annual financial statements,
  - an annual notice on how the proceeds raised under the OM exemption have been used, and
  - a notice in the event of a discontinuation of the issuer's business, a change in the issuer's industry or a change of control of the issuer, and
- limiting investors' exposure through the introduction of investment limits that apply to individuals, with higher limits permitted where investors have received advice from a registrant that the investment is suitable.

#### *Compliance and oversight of the exempt market in Ontario*

Given that a broader group of retail investors will be able to access the exempt market through the OM exemption, the OSC is developing a compliance and oversight program to monitor distributions under the OM exemption. This program will have three main elements:

- assessing compliance,
- enhancing awareness, and
- gathering data to support the first two activities.

#### Assessing compliance

As part of the compliance and oversight program we will oversee issuers and registrants that distribute securities under prospectus exemptions, including the OM exemption, to confirm whether they are complying with their respective obligations.

This program will apply a risk-based approach to select issuers and registered firms for review, in order to determine compliance with the prospectus exemptions being relied upon as well as applicable registrant requirements. We will take appropriate compliance and cross-branch referral action, including recommendations regarding enforcement action, where warranted.

#### Enhancing awareness

We also plan to engage in education and other outreach activities for issuers, registrants and investors. For example, through programs such as the OSC SME Institute, the OSC offers seminars to the public on securities law requirements, including prospectus exemptions. The Compliance and Registrant Regulation Branch also provides webinars and other outreach sessions to the registrant community. In addition, the Office of Investor Policy, Education and Outreach engages in educational outreach activities aimed primarily at retail investors.

#### Data gathering

Data gathering will support both our compliance and outreach activities. We plan to track information gathered from the report of exempt distribution to assist us in understanding how the OM exemption is being used and how the exempt market is developing. For example, based on data gathered from the report of exemption distribution, we can learn about the type of issuers that are distributing securities under the OM exemption and the registrants that are involved in these distributions. In addition, we can learn about the amount of capital raised by issuers under the OM exemption and the amounts invested by investors.

As noted above, we are currently working with the CSA to develop a proposed new report of exempt distribution, which will facilitate more effective regulatory oversight of the exempt market. Improved data collection through an enhanced report of exempt distribution is essential to support our exempt market reform initiative and the introduction of the OM exemption specifically, as it will allow us to gain greater insight into exempt market trends and behavior than is possible with the existing report.

*Resale restrictions*

There are limited opportunities to resell securities acquired under a prospectus exemption, which can be an issue for securities not intended to be held to maturity or lacking redemption features. By expanding the prospectus exemptions that will be available to a broader group of investors, including retail investors, there will be a greater number of securities held by retail investors that are subject to resale restrictions. As a result, we plan to monitor this aspect of the exempt market, including the different products sold under the OM exemption.

We think it is important for investors to understand how resale restrictions will apply to securities acquired in the exempt market. As part of our investor outreach efforts, we will educate investors about the limited ability to sell securities acquired under the OM exemption (and other prospectus exemptions). We have also highlighted to investors in the risk acknowledgement form that there is limited ability to sell their securities and we expect registrants involved in distributing these securities to ensure that investors understand these limits.

*Consideration of other aspects of the OM exemption*

We note that in the March 2014 materials we sought feedback on whether the financial statements of non-reporting issuers should only be required to be audited over a certain threshold amount. For example, we suggested that it might be appropriate to not require an audit if the amount raised was less than \$500,000.

The final amendments require non-reporting issuers to provide audited annual financial statements. However, we are aware that the audit requirement could impose an additional burden on some smaller issuers and we will consider this matter during a future phase of our exempt market review. Certain CSA jurisdictions provide relief from the audit requirement as well as the requirement to prepare financial statements in accordance with International Financial Reporting Standards in certain circumstances through blanket orders. In appropriate circumstances, we may consider granting exemptive relief from these requirements, which would be considered on a case-by-case basis where we feel it would be in the public interest to do so.

In addition, some commenters have suggested that a streamlined form of offering memorandum should be developed to better facilitate capital raising by SMEs and reduce the time and cost associated with a distribution under the OM exemption.

We appreciate that the form of offering memorandum may need to be reconsidered. However, in our view, this work would be best pursued on a harmonized basis with other CSA jurisdictions. As a result, any changes to the form of offering memorandum would be considered for a future phase of our exempt market review.

*Cooperative Capital Markets Regulatory System*

In addition to the OSC's exempt market reform initiative, the provincial and territorial jurisdictions (CCMR jurisdictions) participating in the Cooperative Capital Markets Regulatory System (CCMR) are developing draft initial regulations relating to the exempt market, including a harmonized set of prospectus exemptions. The proposed prospectus exemptions were not included in the CCMR draft initial regulations published for comment on August 25, 2015 as additional drafting time was required, given existing differences among the CCMR jurisdictions and regulatory initiatives currently under consideration. The CCMR jurisdictions are finalizing the harmonized set of CCMR prospectus exemptions which they plan to publish for comment in the coming months.

**5. Comments received in Ontario**

As noted above, the comment period for the March 2014 exemptions ended on June 18, 2014. The OSC received written submissions from 871 commenters regarding the OM exemption. A summary of the comments submitted to the OSC, together with the responses of the OSC, is attached to this Annex G.

**6. Questions**

Please refer any questions regarding this notice to:

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## ANNEX G-2

## LOCAL RULE AMENDMENTS AND POLICY CHANGES

**Amendments to  
Ontario Securities Commission Rule 11-501  
*Electronic Delivery of Documents to the Ontario Securities Commission***

1. ***Ontario Securities Commission Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission is amended by this Instrument.***
2. ***Appendix A is amended by adding the following rows to the table immediately following the row “45-106F1”:***

45-106F2	Form 45-106F2 <i>Offering Memorandum for Non-Qualifying Issuers</i> or any amendment to a previously filed Form 45-106F2
45-106F3	Form 45-106F3 <i>Offering Memorandum for Qualifying Issuers</i> or any amendment to a previously filed Form 45-106F3
45-106 s. 2.9(17.1)	Filing of marketing materials pursuant to subsection 2.9(17.1) of National Instrument 45-106 <i>Prospectus Exemptions</i>
45-106F16	Form 45-106F16 <i>Notice of Use of Proceeds</i>
45-106 s. 2.9(17.13)	Delivery of a notice of change in financial year end pursuant to subsection 2.9(17.13) of National Instrument 45-106 <i>Prospectus Exemptions</i>
45-106 s. 2.9(17.5)	Delivery of annual financial statements pursuant to subsection 2.9 (17.5) of National Instrument 45-106 <i>Prospectus Exemptions</i>

3. This Instrument comes into force on January 13, 2016.

**Amendments to  
Ontario Securities Commission Rule 13-502 Fees**

1. **Ontario Securities Commission Rule 13-502 Fees is amended by this Instrument.**
2. **The table at Appendix C is amended in part B. Fees relating to exempt distributions under OSC Rule 45-501 Ontario Prospectus and Registration Exemptions and NI 45-106**

(a) **by replacing**

B2	Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer	\$500
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**with**

B2	Filing of a Form 45-501F1 or Form 45-106F1 for a distribution of securities of an issuer under an exemption from the prospectus requirement other than section 2.9 [ <i>Offering memorandum</i> ] of NI 45-106	\$500
B2.1	Filing of a Form 45-106F1 for a distribution of securities of an issuer under section 2.9 [ <i>Offering memorandum</i> ] of NI 45-106	Greater of (i) \$500 or (ii) 0.025% of the gross proceeds realized by the issuer from the distribution in Ontario

3. This Instrument comes into force on January 13, 2016.

**Amendments to  
Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions***

1. ***Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.***
2. ***Section 5.1 is amended by adding the following paragraph:***  

(d.1) section 2.9 of NI 45-106 [*Offering Memorandum*],.
3. ***Section 5.4 is amended by renumbering it as subsection 5.4(1) and by adding the following subsection:***  

“(2) The requirement in subsection (1) does not apply to an offering memorandum prepared and filed with the Commission in accordance with section 2.9 of NI 45-106.”
4. This Instrument comes into force on January 13, 2016.

**Amendments to  
National Instrument 45-102 Resale of Securities**

1. ***National Instrument 45-102 Resale of Securities is amended by this Instrument.***
2. ***Appendix D is amended by renumbering the second paragraph (a.1) as paragraph (a.2).***
3. This instrument comes into force on January 13, 2016.

**Changes to Companion Policy 45-501CP – To Ontario Securities Commission Rule 45-501  
Ontario Prospectus and Registration Exemptions**

This document reflects changes to Companion Policy 45-501CP – To Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions that will take effect upon the coming into force of the Rule Amendments set out in Annex A. Additions are represented with underlined text and deletions are represented with strikethrough text.

**5.3 Right of action for damages and right of rescission** – (1) Part 5 of the Rule provides for the application of the rights referred to in section 130.1 of the Act if an offering memorandum is delivered to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption in:

- (a) section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act (subject to the provisions of subsection 6.2(2) of the Rule) [*Accredited investor*],
- (b) section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act [*Private issuer*],
- (b.1) section 2.5 of NI 45-106 [*Family, friends and business associates*],
- (c) [Repealed.]
- (d) section 2.8 of NI 45-106 [*Affiliates*],
- (d.1) section 2.9 of NI 45-106 [*Offering memorandum*].
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*], or
- (g) section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act [*Government incentive security*].

The rights apply when the offering memorandum is delivered mandatorily in connection with a distribution made in reliance on the exemption in section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act, in accordance with the requirements of section 2.9 of NI 45-106 [*Offering memorandum*], or voluntarily in connection with a distribution made in reliance on a prospectus exemption in section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act, section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act, 2.5, ~~2.7~~, 2.8, 2.10 or 2.19 of NI 45-106.

(2) A document delivered in connection with a distribution in a security made otherwise than in reliance on the prospectus exemptions referred to in subsection (1) does not give rise to the rights referred to in section 130.1 of the Act or subject the selling security holder to the requirements of Part 5 of the Rule.

**5.4 Content of offering memorandum** – (1) Other than in the case of an offering memorandum delivered in connection with a distribution made in reliance on the exemption in section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act and section 2.9 of NI 45-106 [*Offering memorandum*], and subject to subsection (2), Ontario securities legislation generally does not prescribe the content of an offering memorandum. The decision relating to the appropriate disclosure in an offering memorandum generally rests with the issuer, the selling security holder and their advisors.

(2) Under section 5.3 of the Rule, the rights referred to in section 130.1 of the Act must be described in an offering memorandum delivered in connection with a distribution to which the rights apply.

**5.5 Review of offering memorandum** ~~Failure to disclose material information in offering memorandum~~ – (1) Staff may review the form and content of an offering memorandum filed in connection with a distribution made in reliance on the exemption in section 2.9 of NI 45-106 [*Offering memorandum*], or delivered in connection with a distribution made in reliance on another exemption referred to in Part 5 of the Rule, for the purpose of determining whether the issuer has complied with the requirements, conditions and restrictions of the exemption relied on for the distribution.

(2) If Commission staff becomes aware that an offering memorandum contains a misrepresentation, fails to disclose material information relating to a security that is the subject of a distribution, or the distribution otherwise fails to comply with Ontario securities law, staff may recommend remedial action or, in appropriate circumstances, enforcement action.

**5.6 Preliminary offering material** – (1) The Commission cautions against the practice of providing preliminary offering material to a prospective purchaser before furnishing a “final” offering memorandum unless the offering material contains a description of the rights referred to in section 130.1 of the Act in situations when the rights apply.

(2) The only material delivered to a prospective purchaser in connection with a distribution made in reliance on a prospectus exemption referred to in section 5.1 of the Rule should be:

- (a) a “term sheet” (representing a skeletal outline of the features of a distribution without dealing extensively with the business or affairs of the issuer of the securities being distributed) or in the case of a distribution made in reliance on the exemption in section 2.9 of NI 45-106 [Offering memorandum] an “OM standard term sheet”, as that term is defined in NI 45-106, and
- (b) an offering memorandum describing the rights referred to in section 130.1 of the Act available to purchasers and complying in all other respects with Ontario securities legislation, and
- (c) in the case of an offering memorandum prepared in accordance with section 2.9 of NI 45-106, OM marketing materials, as that term is defined in NI 45-106.

**5.7 Availability of offering memorandum** – Subject to *Freedom of Information and Protection of Privacy Act* requests, it is the Commission’s policy that an offering memorandum delivered to the Commission under section 5.4 of the Rule will not be made available to the public.

**Changes to Companion Policy 45-106CP *Prospectus Exemptions***

This document reflects changes to Companion Policy 45-106CP *Prospectus Exemptions* that will take effect upon the coming into force of the Rule Amendments set out in Annex A. Additions are represented with underlined text and deletions are represented with strikethrough text.

**3.6 Private issuer –**

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

Issuers that cease to be private issuers do not automatically become “reporting issuers”. They are simply no longer able to rely on the private issuer exemption in section 2.4(1). Such issuers would still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates prospectus exemption (~~except in Ontario~~) or the accredited investor prospectus exemption. However, issuers that rely on these prospectus exemptions must file a report of exempt distribution with the securities regulatory authority or regulator in each jurisdiction in which the distribution took place.

Editor's Note: Annex G-3 *OSC Summary of Comments and Responses* follows this page on separately numbered pages. Bulletin pagination resumes with Annex G-4.

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**ANNEX G-3**

**OSC SUMMARY OF COMMENTS AND RESPONSES**

Comments are arranged under the following topics:

<b><u>Topic</u></b>	<b><u>Page number</u></b>
General comments	2
Qualification criteria	7
Types of securities that can be offered under the OM exemption	14
Offering parameters	18
Role of registrants in distributions under the OM exemption	23
Definition of “eligible investor”	34
Investment limits	41
Risk acknowledgement form	62
Point of sale disclosure	64
Advertising and marketing materials	69
Right of withdrawal	73
Disclosure requirements for non-reporting issuers	74
Reports of exempt distribution	87
Activity fees	89

Topic	Comments	OSC response
<b>General comments</b>		
<p><b>Comments on the objectives of introducing an OM exemption</b></p>	<p><b>General objectives</b></p> <p>A significant number of commenters expressed support for the objective of providing greater capital raising opportunities for businesses, particularly small and medium enterprises (SMEs), by introducing an offering memorandum prospectus exemption (OM exemption).</p> <p>Many commenters also noted that this goal must include an emphasis on strong investor protection. Commenters made some of the following points:</p> <ul style="list-style-type: none"> <li>• The exempt market plays a crucial role in capital raising in Canada, particularly for SMEs.</li> <li>• The OM exemption is a welcome response to the ongoing funding crisis for small issuers.</li> <li>• The junior capital markets remain among the most challenged in our country and the proposed amendments are a significant move forward in addressing some of these challenges.</li> <li>• It appears that Canadian capital raising entities are turning more to exempt markets and less to public markets for their capital needs.</li> <li>• There are insufficient prospectus exemptions available in Ontario compared to other Canadian jurisdictions.</li> <li>• The introduction of an OM exemption in Ontario would be a very significant development in the Canadian capital markets.</li> </ul> <p>A few commenters objected to the suggestion by the OSC that the focus of the OM exemption should be on SMEs, rather than larger businesses.</p> <p><b>Specific objectives</b></p> <p>Commenters noted that OSC should focus on a number of specific objectives related to capital raising:</p> <ul style="list-style-type: none"> <li>• Ensuring issuers have access to the largest pool of qualified investors by allowing accredited and non-accredited investors to participate in private offerings.</li> <li>• Establishing consistent (harmonized) rules across various jurisdictions in Canada.</li> <li>• Minimizing compliance costs to issuers (including publicly listed companies)</li> </ul>	<p>We thank commenters for their support. One of the key purposes of introducing an OM exemption in Ontario is to facilitate capital raising by businesses, particularly SMEs, while maintaining appropriate investor protection.</p> <p>We expect the OM exemption to be useful to a wide range of issuers at different stages in their growth and business cycles.</p>

Topic	Comments	OSC response
	<p>and regulatory burden.</p> <ul style="list-style-type: none"> <li>• Strengthening enforcement.</li> </ul>	
<p><b>Support for the introduction of an OM exemption</b></p>	<p>A majority of commenters expressed support for the introduction of an OM exemption in Ontario. Commenters cited some of the following reasons in support of an OM exemption:</p> <ul style="list-style-type: none"> <li>• An OM exemption would have a positive effect on Ontario’s economic growth and would increase the market opportunities for issuers and dealers across Canada.</li> <li>• Introducing an OM exemption in Ontario would result in greater harmonization with other Canadian jurisdictions.</li> <li>• An OM exemption would provide better access to capital for SMEs.</li> </ul>	<p>We thank the commenters for their support.</p>
<p><b>Comments on underlying assumptions</b></p>	<p>Some commenters questioned certain of the assumptions evident in the proposal for an OM exemption published on March 20, 2014 (the March 2014 proposal). For example, commenters stated that:</p> <ul style="list-style-type: none"> <li>• The exempt market is not necessarily riskier to investors than public markets; rather it is more appropriate to categorize exempt market risk as constituting a different type of risk, rather than a greater risk than the public markets.</li> <li>• The exempt market is materially important to the Canadian economy.</li> <li>• Businesses should not necessarily be pushed through regulation to “go public”.</li> <li>• Eligible investors are not necessarily “retail” investors; true “retail investors” are those in the lower portions of the investing public in terms of income and assets.</li> </ul>	<p>We agree that the exempt market is an integral part of Ontario’s capital markets.</p> <p>In our view we have developed a proposal for an OM exemption that strikes the right balance between supporting capital raising while maintaining appropriate investor protection.</p>
<p><b>Concerns with the introduction of an OM exemption</b></p>	<p><b>General concerns</b></p> <p>One commenter expressed concerns with the OM exemption and noted that a properly reformed accredited investor exemption, along with the other existing exemptions in Ontario (private issuer exemption and family, friends and business associates exemption) as well as a properly conceived existing security holder exemption would allow for the ability of issuers to raise sufficient capital while</p>	<p>We acknowledge there are some concerns with introducing an OM exemption in Ontario and that Ontario has previously indicated a preference not to adopt this exemption. However, we believe that</p>

Topic	Comments	OSC response
	<p>adequately protecting investors.</p> <p><b>Original concerns with OM exemption remain</b>  One commenter noted that an OM exemption was introduced as a prospectus exemption in British Columbia and Alberta in 2001 and that Ontario did not adopt this exemption, due to concerns with the exemption. In the commenter’s view, these concerns remain.</p> <p><b>Existing non-compliance concerns</b>  One commenter noted that CSA member notices and reviews indicate a high level of non-compliance with the OM exemption that currently exists in other CSA jurisdictions. CSA member reviews also indicate non-compliance by exempt market dealers (EMDs) with their obligations under National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103) such as suitability obligations, as well as “know-your-product” (KYP) and “know-your-client” (KYC) obligations.</p> <p>It was noted that the following steps proposed by the OSC are not an adequate response to investor protection issues:</p> <ul style="list-style-type: none"> <li>• Enhancement of monitoring and oversight of exempt market activity.</li> <li>• Expanding educational outreach to issuers and investors.</li> <li>• In the event of non-compliance, assessing the regulatory tools available, including when and how they should be deployed.</li> </ul> <p>This commenter stated that while all of the above steps are needed this is not sufficient given the widespread non-compliance with the OM exemption in other jurisdictions, the lack of compliance by EMDs and the lack of effective oversight and policing of the exempt market. What is needed is a regulatory framework which deters non-compliance and encourages behaviour that is in the client’s best interest at the outset.</p> <p><b>Do not leave investor protection measures to later phase</b>  One commenter stated that it would be inappropriate to leave significant investor protection-related concerns to a later phase of the exempt market review as has been suggested.</p>	<p>the proposed exemption will provide greater capital raising opportunities for issuers while maintaining appropriate investor protection.</p> <p>Given that a broader group of retail investors will be able to access the exempt market through the OM exemption, the OSC is developing a compliance and oversight program to monitor distributions under the OM exemption.</p> <p>We believe that the proposed steps previously identified by the OSC, in conjunction with the OSC’s compliance and oversight program and the investor protection measures included in the OM exemption, will be effective in addressing investor protection concerns.</p> <p>We appreciate that the form of offering memorandum may need to be reconsidered and believe this work would be best pursued on a harmonized basis with other CSA jurisdictions. Any such changes would be considered for a future phase of the exempt market review.</p> <p>We are aware that the audit requirement could impose an additional burden on some smaller issuers and we will consider this matter during a future phase of our</p>

Topic	Comments	OSC response
	<p><b>Balance favours issuers</b></p> <p>One commenter stated the OSC has tipped the balance too far in favour of issuers, neglecting the interests of investors, in an effort to facilitate capital raising for business, in particular SMEs, through the introduction of the OM exemption and other exempt market proposals.</p>	<p>exempt market review. In appropriate circumstances, we may consider whether exemptive relief from these requirements should be granted, on a case-by-case basis and where it would be in the public interest to do so.</p>
<p><b>Harmonization generally</b></p>	<p><b>General comments on harmonization</b></p> <p>A significant number of commenters expressed concern about the potential lack of harmonization in the OM exemption across CSA jurisdictions. Many suggested that harmonization of regulations should be a top priority for securities regulators. Some pointed out that the recent proposals from some CSA jurisdictions could result in four versions of the OM exemption across Canada.</p> <p>Commenters suggested that, among other things, a lack of harmonization will increase the complexity of the OM exemption and raise costs for market participants. Some also suggested that it may discourage the use of the OM exemption.</p> <p><b>Consider British Columbia model of exemption</b></p> <p>Some commenters questioned why the OSC had not looked to the British Columbia model of OM exemption.</p> <p><b>Impact of proposed cooperative capital markets regulator</b></p> <p>Some commenters raised questions about how the proposed amendments may impact the British Columbia capital markets, given the proposal for a cooperative capital markets regulator between British Columbia and Ontario.</p>	<p>We acknowledge that harmonization is an important goal. We have worked with certain other CSA jurisdictions that are proposing amendments to the form of OM exemption that exists in those jurisdictions to achieve substantial harmonization where possible.</p> <p>As previously noted in March 2014 proposal, we have based our proposed OM exemption on the version of the exemption that existed in Alberta, as we believe that form of the exemption includes important investor protection measures.</p> <p>We cannot comment at this time on the impact of a cooperative capital markets regulator on this initiative.</p>
<p><b>Use of the OM exemption by SMEs</b></p>	<p><b>OM exemption will be used by SMEs</b></p> <p>Many commenters suggested that the OM exemption will be used by SMEs and will be an effective way for them to raise capital.</p> <p><b>Barriers to using the OM exemption</b></p> <p>Some commenters suggested that the version of the OM exemption proposed to</p>	<p>We appreciate the input from commenters on whether the OM exemption will be a useful tool for SMEs to raise capital and thank commenters for their suggestions on how to encourage use of the OM</p>

Topic	Comments	OSC response
	<p>be introduced in Ontario will not be useful to SMEs because of restrictions included in the exemption, such as investment limits, and costs associated with the exemption.</p> <p><b><i>Ways to encourage use of the OM exemption</i></b>  A few commenters suggested that use of the OM exemption (or non-use) by SMEs is likely due to a lack of knowledge and awareness of this exemption in the SME community. Once adopted, the OSC should focus on education and awareness of the OM exemption in those industries and sectors where it is encouraging its use.</p> <p>Other suggestions that were made included the following:</p> <ul style="list-style-type: none"> <li>• Keep the cost of capital for issuers to a minimum</li> <li>• Provide greater investor education</li> <li>• Reduce the amount of information that has to be included in an OM (for example, develop a standard OM template)</li> <li>• Provide relief from the requirement to provide audited financial statements in an OM (as certain jurisdictions have done by way of blanket order)</li> <li>• Limit disclosure requirements to those required by corporate law</li> </ul>	<p>exemption.</p>
<p><b>Cost benefit analysis</b></p>	<p>One commenter noted that the costs of additional regulation are ultimately passed on to investors, so a thorough cost benefit analysis needs to be undertaken regarding the proposal for an OM exemption.</p>	<p>The OSC included a cost benefit analysis of the introduction of proposed new prospectus exemptions, including the OM exemption, in the March 2014 proposal.</p>
<p><b>Northwest exemption</b></p>	<p>Some commenters raised concerns about the northwest exemption that exists in certain CSA jurisdictions, for example:</p> <ul style="list-style-type: none"> <li>• The northwest exemption does not serve investors and does not promote transparency, accountability, alignment or suitability.</li> <li>• There is no sound public policy basis to maintain the northwest exemption as it allows unregistered firms and individuals to continue to engage in the business of dealing in securities sold under prospectus exemptions without</li> </ul>	<p>We acknowledge these concerns. Ontario does not have the “northwest exemption”.</p>

Topic	Comments	OSC response
	having to conduct due diligence and suitability assessments.	
<b>Research and data</b>	Many commenters suggested that securities regulators should obtain and publish better data on the exempt market in order to inform policy initiatives.	<p>Our primary source for data on the exempt market is the information gained through the reports of exempt distribution on Form 45-106F1 (the Report).</p> <p>The OSC published a summary of exempt market data in the March 2014 proposal.</p> <p>The CSA published for comment on August 13, 2015 a proposal to amend the Report. The proposed revised Report would assist the CSA in obtaining more detailed information about exempt market activity.</p>
<b>Qualification criteria</b>		
<b>Investment funds</b>		
<b>Exclusion of investment funds – general</b>	Some commenters did not understand the policy rationale for excluding investment funds from using the OM exemption.	Investment funds sold to retail investors are subject to significant and robust product regulation in national rules such as National Instrument 81-102 <i>Investment Funds</i> and National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i> , including custodial requirements, voting requirements, conflict of interest provisions and investment restrictions. Mutual funds sold to retail investors are also

Topic	Comments	OSC response
		<p>required to provide investors with summary disclosure in a Fund Facts document. Additionally, the CSA is currently examining the fee structures of mutual funds sold to retail investors which may result in rulemaking initiatives. To permit investment funds to sell to retail investors under the OM exemption without the benefit of the disclosure and product regulation that applies to retail investment funds would be inconsistent with the principles underlying these existing rules and with three ongoing investment fund policy initiatives: modernization of investment fund regulation; point of sale disclosure for mutual funds; and the review of the cost of ownership of mutual funds.</p> <p>Further, the exclusion of investment funds is consistent with the objective of this policy project to introduce new prospectus exemptions that would facilitate capital raising for business enterprises, particularly SMEs.</p>
<p><b>Exclusion of investment funds – access to capital for SMEs</b></p>	<p>A number of commenters said that excluding investment funds would limit access to capital for SMEs. Some of the comments related to pools of mortgages or other loans created as an extension of a lending business (e.g. mortgage investment corporations or “MICs”) and to venture capital issuers. Some commenters questioned whether the definition of “investment fund” would even include certain businesses (including mortgage or other lending businesses) or venture capital issuers.</p>	<p>Certain issuers such as pools of mortgages or other loans created as an extension of a lending business (such as a mortgage investment corporation or “MIC”) or venture capital issuers would generally not meet the definition of “investment</p>



Topic	Comments	OSC response
		<p>fund" under securities legislation. As a result, these types of issuers would generally not be excluded from and could use the OM exemption. Guidance and discussion on the definition of "investment fund" may be found in section 1.2 of Companion Policy 81-106CP to National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i>, OSC Staff Notice 81-722 <i>Mortgage Investment Entities and Investment Funds</i> published September 12, 2013 and the November 2012 edition of <i>The Investment Funds Practitioner</i> under the heading "The Definition of an 'Investment Fund'".</p>
<p><b>Exclusion of investment funds – harmonization</b></p>	<p>Some commenters said that, by excluding all investment funds, the proposed OM exemption in Ontario increases the divide among the exemptions across jurisdictions.</p>	<p>In our view, the proposed OM exemption is largely consistent with the current model of OM exemption in Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Quebec, Saskatchewan and Yukon (the Alberta Model), which also restricts use of the exemption by investment funds. Under the Alberta model, only mutual funds that are reporting issuers and non-redeemable investment funds may rely on the exemption.</p>

Topic	Comments	OSC response
<p><b>Exclusion of investment funds – alternative investments</b></p>	<p>A number of commenters said that including investment funds would create a more democratized investing opportunity and increase access to alternative investments that are generally only available to high net worth or institutional investors.</p>	<p>This policy initiative is focused on introducing new prospectus exemptions that would facilitate capital raising for business enterprises, particularly SMEs. Increasing retail access to alternative investment fund products in the exempt market is outside the scope of this policy initiative.</p> <p>As a separate policy initiative, we are currently undertaking a project to modernize product regulation for investment funds, which includes consideration of retail access to alternative investment fund products in the public market.</p> <p>Also, as noted in the March 2014 proposal, OSC staff were requested to pursue amending the then existing accredited investor exemption to permit fully managed accounts to purchase investment fund securities using the managed account category of the accredited investor exemption in Ontario. This Ontario-only carve-out was removed as part of recent amendments implemented pursuant to the review of the accredited investor and minimum amount investment exemption.</p>

Topic	Comments	OSC response
<p><b>Exclusion of investment funds – risk</b></p>	<p>Some commenters said that it is less risky for investors to invest in an investment fund that includes SMEs than to invest directly in SMEs. These commenters mentioned one or more mitigating factors such as the presence of a registered investment fund manager and portfolio manager and the potential for diversification. Two commenters also referenced the potential for tax relief with respect to flow-through shares of certain resource companies.</p>	<p>As noted above, to permit investment funds to sell to retail investors under the OM exemption without the benefit of the disclosure and product regulation that applies to retail investment funds would be inconsistent with the principles underlying existing rules and with three ongoing investment fund policy initiatives: modernization of investment fund regulation; point of sale disclosure for mutual funds; and the review of the cost of ownership of mutual funds. Additionally, registration requirements are generally intended to work with, and not in place of, prospectus requirements and product regulation.</p> <p>Also, as investment funds sold in the exempt market are not subject to product regulation, including concentration restrictions and other investment restrictions, they are not required to be and may not be diversified.</p> <p>We note that tax relief with respect to flow-through shares of certain resource companies is accessible by investors through investment funds structured as flow-through limited partnerships in the public market.</p>

Topic	Comments	OSC response
<b>Exclusion of investment funds – cost of administration</b>	Some commenters said that using investment funds would reduce the cost and administration of raising capital for SMEs, indicating that investment funds have the infrastructure to deal with many investors whereas SMEs do not.	We note that an investment fund is an accredited investor and permitted to invest in all types of exempt issuers, including SMEs. Also, as noted above, venture capital issuers would generally not meet the definition of "investment fund" under securities legislation and would generally not be excluded from and could use the OM exemption.
<b>Exclusion of investment funds – small and medium fund managers</b>	One commenter stated that the exclusion of investment funds continues to put small and medium-size investment fund managers at a significant disadvantage in the Ontario market.	We do not believe that the size of an investment fund manager should determine whether retail investors benefit from the disclosure and product regulation that applies to retail investment funds.
<b>Issuer type or industry</b>		
<b>Ability to rely on the OM exemption based on issuer type or industry segment</b>	<p>A number of commenters expressed the view that the OM exemption should be available to a variety of issuer types and industry segments. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• Issuers from a number of sectors use the OM exemption today.</li> <li>• At least at the outset, real estate firms and mortgage investment companies seem to be the most likely candidates to use the OM exemption, as well as various successful firms that seek additional capital but prefer not to become reporting issuers.</li> <li>• The OM exemption should not be tailored for any particular issuer or industry.</li> <li>• Excluding certain industries (for example, real estate) or issuer types (for example, investment funds) from being able to use the OM exemption would unfairly limit issuers in those segments from a capital formation vehicle that has proven valuable in other jurisdictions.</li> </ul>	<p>Other than the prohibition on investment funds, we have not restricted the use of the OM exemption based on issuer type or industry.</p> <p>See "Investment funds" above in respect of the exclusion of investment funds.</p>

Topic	Comments	OSC response
<p><b>Support for tailored disclosure requirements for certain industries</b></p>	<p>Several commenters indicated that that tailored disclosure requirements may be beneficial to certain issuers and service providers. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Proportionate disclosure requirements are desirable as long as they help the issuer raise capital efficiently without added regulatory cost.</li> <li>• Different industry sectors would benefit from additional rules and guidance by the OSC on specific disclosure requirements for certain industries or securities. In particular, additional guidance on disclosure should be provided for mining, real estate and early stage issuers, as well as indirect offering structures in the private markets.</li> <li>• It may be beneficial to vary requirements based on issuer type to harmonize with the existing regulatory environment. For example, investment funds must comply with National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> and investment fund managers must comply with NI 31-103.</li> </ul>	<p>As noted above, we appreciate that the form of offering memorandum may need to be reconsidered and believe this work would be best pursued on a harmonized basis with other CSA jurisdictions. Any such changes would be considered for a future phase of the exempt market review.</p> <p>See “Investment funds” above in respect of the exclusion of investment funds.</p>
<p><b>Timing for introducing tailored disclosure requirements</b></p>	<p>Four commenters were of the view that tailored disclosure requirements should be introduced concurrently with the OM exemption, rather than at a later time. In particular, commenters noted the following:</p> <ul style="list-style-type: none"> <li>• The inapplicability of the OM form to real estate issuers should be addressed now rather than in the second phase of the exempt market review, as there are investor protection concerns with these issuers.</li> <li>• The sooner there is clarity around how each sector will be impacted by regulatory changes, the better.</li> </ul> <p>Alternatively, a number of commenters were of the view that implementation of the OM exemption in Ontario should not be delayed, and recommended providing more industry-specific guidance in the second phase of the exempt market review. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Guidance would be more timely when issues arise or more experience with the OM exemption in Ontario indicates that amendments are required.</li> <li>• Improved access to capital is critical for SMEs and growth/expansion stage issuers.</li> </ul>	<p>Please see the response to the comment above.</p>

Topic	Comments	OSC response
<p><b>Tailored disclosure requirements for certain industries should not be introduced</b></p>	<p>Several commenters did not support introducing tailored disclosure requirements for certain industries (such as real estate). Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• The current OM form is flexible and material information is required to be disclosed. Further form requirements would make OMs longer and create inflexible rules that might result in immaterial, confusing or misleading disclosure.</li> <li>• Disclosure of the business is already required in the current OM form. Altering the form would lead to additional legal fees being incurred by the issuer.</li> <li>• It is questionable whether additional disclosure would lead to better investor protection.</li> <li>• Any industry-specific disclosure should be harmonized across all CSA jurisdictions.</li> <li>• Market and investment models evolve rapidly, which weighs against having tailored disclosure requirements for different issuer types. Any tailoring of disclosure requirements should be fostered by best practices.</li> <li>• As the types of issuers using the OM exemption would generally be small issuers, there is no need for different disclosure requirements based on industry, which would add complexity with no additional benefits.</li> <li>• New disclosure should not be added unless clear concerns with a particular industry are identified.</li> </ul>	<p>Please see the response to the comment above.</p>
<p><b>Types of securities that can be offered under the OM exemption</b></p>		
<p><b>Support for excluding certain novel or complex securities for distribution under the OM exemption</b></p>	<p>A number of commenters supported prohibiting the distribution of certain novel or complex securities under the OM exemption.</p> <p><i>Difficult for investors to understand</i></p> <p>In particular, commenters expressed concern that these securities would not be easily understood by most retail investors.</p> <p>One commenter noted that the ideal approach would reflect the principle that if investors are provided with disclosure sufficient to ensure an understanding of the risks and benefits of the security, then that security is by its nature an</p>	<p>The following novel or complex securities will not be permitted for distribution under the OM exemption:</p> <ul style="list-style-type: none"> <li>• specified derivatives as defined in National Instrument 44-102 <i>Shelf Distributions</i>, and</li> <li>• structured finance products as defined in National Instrument 25-101 <i>Designated Rating Organizations</i>.</li> </ul>

Topic	Comments	OSC response
	<p>acceptable product offering. However, in the case of a newly established, fledgling market in exempt market securities distributed under the OM exemption, the exclusion of complex and novel securities is prudent and probably advisable.</p> <p><b>Access to capital</b> One commenter noted that given the other exemptions currently under consideration and the expected range of exemptions that will become available to Ontario issuers, it is not likely that the exclusion of complex and/or novel securities will have a negative impact on capital raising, at least for SMEs. However, another commenter agreed with the proposed approach but noted that any restrictions will reduce the potential value and use of the OM exemption and limit access to capital.</p> <p><b>Clarity on excluded securities</b> Two commenters supported prohibiting the distribution of complex or novel securities under the OM exemption, but recommended that the OSC not specifically restrict convertible securities, conventional warrants and rights and special warrants, which are used extensively by SMEs in raising capital.</p> <p><b>Support for providing a list of excluded securities</b> Several commenters agreed with the proposed approach to specify securities that may not be distributed.</p> <p><b>Support for providing a list of permitted securities</b> A number of commenters recommended providing a list of the types of securities that would be permitted for distribution under the OM exemption, rather than a list of the types of securities that would be prohibited.</p> <p>Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• It is possible to structure a product that does not technically meet the definition of an excluded security, thus permitting the distribution of complex or novel securities under the exemption.</li> <li>• The list of securities that should be permitted is reasonably well defined and understood and using that approach will preclude the addition of novel and</li> </ul>	<p>Given that the securities distributed under the OM exemption may be sold to retail investors, we do not think that it is appropriate to allow complex and/or novel securities to be sold without the full protections afforded by a prospectus.</p> <p>We have listed the types of securities that may not be distributed under the OM exemption. We expect that, relative to other prospectus exemptions for which we have provided a list of permitted types of securities, a wider range of issuers at different stages of development may use the OM exemption. Also, investors purchasing securities under the OM exemption will be provided with a disclosure document that includes information about the terms of the securities.</p> <p>For these reasons, we think it is appropriate to exclude only specific types of securities, rather than limit the distribution of securities under the OM exemption to a defined group of permitted securities.</p>

Topic	Comments	OSC response
	<p>complex securities not yet developed to a list of securities not permitted.</p> <ul style="list-style-type: none"> <li>• A list of permitted securities would provide better investor protection.</li> <li>• This approach would be similar to what is contemplated for crowdfunding.</li> </ul>	
<p><b>Support for permitting novel or complex securities to be distributed under the OM exemption</b></p>	<p>A number of commenters did not support excluding certain types of securities from being distributed under the OM exemption. Commenters were concerned primarily with limiting flexibility to issuers seeking to raise capital under the OM exemption.</p> <p>Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• It is important to give SMEs flexibility when structuring their securities to assist in capital raising and promote innovation, and restricting the sale of certain securities under the OM exemption would reduce this flexibility.</li> <li>• Excluding “complicated” investments like derivatives could reduce the ability of an issuer to properly hedge its position, creating unneeded risk.</li> <li>• Restricting the type of security that could be distributed under the OM exemption would reduce the potential value and use of the exemption for issuers, and limit access to capital.</li> <li>• It is questionable why complex structures should be restricted if an issuer could increase the viability of their offering, and as well the potential upside for investors, whether it be through tax efficiencies or structural benefit.</li> <li>• Caution should be exercised in excluding specific classes of securities without sufficient empirical evidence of harm to investors.</li> </ul> <p><b><i>Disclosure provides sufficient investor protection</i></b></p> <p>Many commenters suggested that novel and complex securities should be permitted to be distributed under the OM exemption, provided that appropriate disclosure, particularly regarding the risks associated with the investment, was provided to investors.</p> <p><b><i>Existing suitability obligations and registrant involvement</i></b></p> <p>One commenter noted that existing regulation is already in place to ensure that due diligence is done by EMDs to determine whether a specific investment is suitable for an investor. Another commenter was of the view that concerns about complexity should be addressed through existing suitability rules.</p>	<p>Given that the securities distributed under the OM exemption may be sold to retail investors, we do not think that it is appropriate to allow complex and/or novel securities to be sold without the full protections afforded by a prospectus.</p> <p>See “Investment funds” above in respect of the exclusion of investment funds.</p> <p>We do not agree that disclosure itself is sufficient to address potential investor concerns with complex or novel products sold under the OM exemption.</p> <p>Similarly, we do not agree that existing registrant obligations necessarily address the investor protection concerns with novel or complex products sold under the OM exemption.</p> <p>In our view this is not an area where additional guidance would be sufficient to address these concerns.</p>



Topic	Comments	OSC response
	<p>One commenter agreed that complex or novel securities such as specified derivatives and structured finance products may be difficult to understand but was of the view that these products should be permitted for distribution under the OM exemption if they are held within an investment fund or discretionary managed account managed by a registered portfolio manager with the proficiency to trade in such securities.</p> <p><b><i>Risk mitigation features</i></b>  One commenter noted that complex products are intended to accommodate the risk and return needs of investors and typically have built in risk mitigation factors for the benefit of the investor.</p> <p>Two commenters indicated that most private offerings that rely on the OM exemption today are fairly straightforward and noted that any complex securities would presumably be offered with support from qualified securities counsel.</p> <p><b><i>Additional guidance</i></b>  One commenter recommended not restricting the securities that can be offered under the OM exemption and introducing more guidance, if required.</p>	
<p><b>Alternative proposals</b></p>	<p>Two commenters suggested that the OSC implement one of two approaches to address the distribution of novel or complex securities under the OM exemption:</p> <ul style="list-style-type: none"> <li>• restrict derivatives and structured finance products initially, but give further consideration to these types of securities in phase two of the exempt market review, or</li> <li>• allow derivatives and structured finance products to be offered and provide further guidance on specific disclosure requirements in the second phase of the exempt market review, if issues arise.</li> </ul>	<p>Please see the responses to the comment above.</p>

Topic	Comments	OSC response
<b>Offering parameters</b>		
<b>Limit on time offering can remain open</b>		
<b>Length of time offering can remain open</b>	<p><b><i>Concerns with limiting the time an offering under the OM exemption can remain open</i></b></p> <p>A number of commenters were of the view that a limit should not be imposed on the length of time an offering under the OM exemption could remain open.</p> <p>Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Not imposing a time limit provides greater flexibility for issuers.</li> <li>• A time limit could inhibit capital raising.</li> <li>• The time frame for raising capital under the OM exemption should be determined by the issuer’s business model and need for capital and clear communication of these items should be provided through proper disclosure and transparency.</li> <li>• The length of time an offering remains open can be extremely variable and by imposing a time frame, issuers may be driven to accepting capital more quickly than their business circumstances would permit.</li> <li>• An offering under the OM exemption should remain open as long as the OM accurately reflects the key characteristics of the underlying security. If the OM is updated immediately to reflect any material change, investors will always be reviewing an accurate OM regardless of when it was written.</li> <li>• Many real estate investment opportunities may require the option to remain open indefinitely until a sufficient amount of capital is raised to undertake a project.</li> <li>• Restrictions on the length of time an issuer has to raise capital could inadvertently place initial investors at risk in the event sufficient funds were not raised to complete a project in the specified time.</li> </ul> <p>One commenter stated that the length of time an offering remains open depends on a calculation based on the type and number of securities the issuer wishes to issue, the amount of capital it wishes to raise, any unusual or unique characteristics of the issuer and, to a lesser extent, its industry category.</p>	<p>We thank commenters for their views and note that we have not introduced a limit on the length of time an offering under the OM exemption can remain open.</p>

Topic	Comments	OSC response
	<p><b><i>Support for limiting the time an offering under the OM exemption can remain open</i></b></p> <p>A few commenters expressed support for imposing a limit on the length of time an offering under the OM exemption could remain open. One commenter suggested that the OM should disclose how long the offer will remain open and should not be permitted to remain open for more than 90 days. The commenter was of the view that a 90 day limit would help to ensure the information in the offering document does not become stale.</p> <p>Another commenter stated a preference to have a reasonable time limit applied across all provinces, but supported harmonization as a priority.</p>	
<p><b>Risk of stale-dated disclosure in OM</b></p>	<p>Several commenters indicated that time limits to prevent stale-dated disclosure are not necessary because issuers are currently required to update information in an OM.</p> <p>Another commenter indicated that with the current regulations and guidelines, “stale-dated” offerings can be monitored by the dealers involved to ensure investors are receiving proper disclosure.</p> <p>One commenter stated that evidence from other jurisdictions in Canada that have the OM exemption suggests that the risk of stale-dated disclosure is not such a material risk that Ontario should differ from practices of other regulators. Another commenter was of the view that before introducing time limits on offerings, the OSC would need to review evidence to properly evaluate the risk to consumers posted by stale-dated disclosure in an OM.</p> <p>One commenter suggested that, to mitigate against the risk of stale-dated disclosure, the OSC and other CSA members could provide clear guidance and information to issuers and registrants as part of outreach programs, staff notices and other publications.</p>	<p>We agree with the comments that issuers are currently required to update information in an OM to ensure that it does not contain a misrepresentation. As noted above, we have not introduced a limit on the length of time an offering under the OM exemption can remain open.</p>

Topic	Comments	OSC response
<b>Limit on offering size</b>		
<b>Support for limiting the amount a non-reporting issuer could raise under the OM exemption</b>	<p>Several commenters expressed support for the concept of limiting the amount a non-reporting issuer could raise under the OM exemption.</p> <p>Some commenters supported imposing limits in certain circumstances. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Where issuers are raising funds from non-eligible investors, a limit could be a useful investor protection tool.</li> <li>• Issuers whose business model is to raise capital in continuous offerings should be restricted to a set limit of either number of offerings or amount of capital in a certain time period until successful exits of investor capital have occurred.</li> <li>• One commenter suggested that the OSC consider the approach taken in Australia, where an issuer can issue securities under an offer information statement rather than a prospectus, if the amount of capital to be raised, when added to all amounts previously raised by the issuer, is A\$10 million or less.</li> </ul>	<p>We thank commenters for their views on this topic. We have decided not to introduce any limits on the amount a non-reporting issuer could raise under the OM exemption at this time.</p> <p>We anticipate that the OM exemption may be useful for growing businesses that have moved beyond the start-up stage. We believe that it would be difficult for us to determine a reasonable limit on the amount of funds a business at the next stage of its development needs to move forward. Further, appropriate limits could vary depending on the issuer's industry.</p>
<b>Support for not limiting the amount a non-reporting issuer could raise under the OM exemption</b>	<p>A number of commenters did not support the concept of a limit on the amount a non-reporting issuer could raise under the OM exemption. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• An OM exemption (with no limits on the amount that can be raised) has been used extensively in western Canada, in multiple industries and with varied deal sizes and no significant issues have been identified.</li> <li>• Many issuers, including SMEs, do not want to “go public” and would prefer to raise capital under the OM exemption rather than incur the costs of a prospectus, as well as the ongoing reporting requirements for reporting issuers.</li> <li>• Financial limits would reduce the flexibility necessary for raising capital.</li> <li>• A limit would create an inflexible rule that is inconsistent with current disclosure and suitability rules.</li> <li>• It is not the mandate of the securities regulators to restrict the growth of any legitimate market in Canada.</li> </ul>	<p>As noted above, we have considered the comments received, and are not proposing any offering limits at this time.</p> <p>See “Investment funds” above in respect of the exclusion of investment funds.</p>

Topic	Comments	OSC response
	<ul style="list-style-type: none"> <li>• There are investor protection measures in NI 31-103 and CSA Notice 33-315 that lead one to question why a limit would be imposed.</li> <li>• A limit on what could be raised under the OM exemption would remove a diversification tool for investors and increase the cost of capital.</li> <li>• If the issuer is an investment fund or private equity fund, a limit would prevent lowering operating costs, returns to investors, and investments in SMEs relative to capital raised.</li> </ul> <p>One commenter did not believe a limit on the amount of capital raised under the OM exemption was necessary where investment dealers are involved in the financing.</p> <p>One commenter suggested that before any type of limit is placed on all non-reporting issuers, specific industry categories in which abuse or fraud is a concern should be subject to restrictions on the amount of capital to be raised and/or the permissible time frame.</p> <p>While not supportive of imposing a limit on the amount a non-reporting issuer could raise under the OM exemption, one commenter was of the view that if a limit was imposed, it should be high enough to substantially assist most issuers to expand their operations while still ensuring investors receive adequate protection through a robust disclosure document.</p> <p><b>Real estate investments</b>  One commenter noted that as real estate is a very capital-intensive asset class, there should not be any limit on the amount that a non-reporting issuer can raise in the real estate industry specifically.</p>	
<p><b>Difficulty of setting a limit that would be appropriate for all issuers</b></p>	<p>Several commenters stated that a limit should not be imposed on the amount a non-reporting issuer could raise under the OM exemption due to the difficulty of setting a limit that would apply to the diverse circumstances of issuers. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• Business decisions and economic factors should dictate the amount of capital that is raised under the OM exemption. Regulators should not determine the supply and demand of capital raising, nor should issuers be</li> </ul>	<p>As noted above, we agree that appropriate limits could vary depending on the issuer’s industry, and as a result, we have not proposed any limits on the amount an issuer could raise under the OM exemption.</p>

Topic	Comments	OSC response
	<p>penalized for being successful.</p> <ul style="list-style-type: none"> <li>• It would be difficult to prescribe capital raising limits that appropriately cover all non-reporting issuers. Increased amounts of capital do not readily correlate to issuer risk and restricting capital size may starve an opportunity and unintentionally create risk.</li> <li>• As the current OM exemption is not typically used by SMEs, the amount of capital required by different issuers for growth and expansion will vary widely by industry sector and business strategy.</li> <li>• Where the offering is distributed by dealers, the capital limitations of each offering may be best assessed by the KYP due diligence performed by EMDs.</li> </ul>	
<p><b>Other investor protection measures</b></p>	<p>Some commenters recommended considering other investor protection measures instead of imposing a limit on the amount a non-reporting issuer could raise under the OM exemption. In particular, commenters noted the following:</p> <ul style="list-style-type: none"> <li>• Emphasis should be placed on investor protection measures such as ensuring only registered EMDs and IIROC members can distribute securities under the OM exemption, and ensuring those investment dealers have properly complied with KYC and suitability requirements.</li> <li>• Instead of an issuer limit, consideration should be given to requiring that an issuer automatically becomes a reporting issuer within some period of time following the use of the OM exemption or earlier at the issuer’s election.</li> </ul>	<p>At this time, we are not introducing the proposals suggested by the commenters.</p> <p>Except where an issuer is in the business of trading in securities and is required to register under NI 31-103, we are not requiring that securities be sold through a registrant. Some issuers, especially SMEs, may wish to distribute securities directly, subject to the registration business trigger considerations.</p> <p>We believe that forcing non-reporting issuers to become reporting issuers too early may not be advisable.</p>

Topic	Comments	OSC response
<b>Role of registrants in distributions under the OM exemption</b>		
<b>Participation of registrants that are related to an issuer in a distribution under the OM exemption</b>		
<p><b>Support for prohibiting related registrants from participating in a distribution under the OM exemption</b></p>	<p>A minority of commenters were of the view that registrants related to an issuer distributing securities under the OM exemption should be prohibited from participating in the distribution.</p> <p>One commenter suggested that the best way to avoid conflicts of interest between registrants and issuers is to prohibit related registrants from participating in the distribution of the issuer. The commenter was of the view that this would increase registrant compliance with suitability obligations and would help improve market confidence.</p> <p>The commenter also recommended the application of international securities standards, whereby market intermediaries are required to avoid a conflict of interest if the conflict is so great that a management mechanism is unlikely to protect the interests of the client.</p> <p>Given the limited definition of “related” in National Instrument 33-105 <i>Underwriting Conflicts</i> (NI 33-105), one commenter was not concerned with the prohibition, other than the ongoing need to harmonize the OM exemption across Canada.</p> <p><b><i>Research on the impact of disclosure of conflicts of interest</i></b></p> <p>One commenter stated that research regarding the effects of disclosure shows the perverse effect of disclosing conflicts of interest, which may result in an investor having greater trust in the registrant, and reflects the fact that most investors do not have the requisite knowledge and experience to help them assess the potential effects of disclosed conflicts of interest.</p>	<p>We have made changes to our original proposal. Registrants that are related to the issuer will be permitted to participate in a distribution under the OM exemption.</p> <p>This is consistent with the OM exemptions that exist in other CSA jurisdictions.</p> <p>We note that all registrants are subject to the KYC, KYP and suitability obligations under NI 31-103, regardless of whether or not they are related to the issuer. We expect registrants to fulfill those obligations and take steps to address conflicts of interest, including avoidance if the conflict is contrary to the interests of a client.</p> <p>We acknowledge that distribution through a related registrant is an existing practice, and there are circumstances where the conflicts in this model can be appropriately managed. At this time we believe that these conflicts can be addressed through means other than imposing a prohibition on the participation of related registrants in a distribution under the OM exemption.</p>

Topic	Comments	OSC response
		Although we are not imposing a prohibition, registrants are obligated to avoid conflicts of interest that cannot be addressed through controls and/or disclosure.
<p><b>Concerns with prohibiting related registrants from participating in a distribution under the OM exemption</b></p>	<p>A significant majority of commenters did not support prohibiting related registrants from participating in distributions under the OM exemption. Many commenters indicated that related party sales have long been accepted as part of the securities industry in Canada.</p> <p>Most commenters made the following observations:</p> <ul style="list-style-type: none"> <li>• All EMDs are subject to the same standards, education requirements, regulatory oversight and professionalism. There should not be restrictions on who investors can deal with in an exempt market investment.</li> <li>• In distribution channels involving IIROC and MFDA dealers and online brokerage accounts there are no restrictions on individual investors either as to the amount they invest or through whom they invest. Even in those apparently less risky, independent channels, Canadian investors have experienced high volatility and value reductions.</li> <li>• Investors should have the freedom to make informed, independent choices about which investment dealer to select, even if that dealer is related to the issuer.</li> </ul> <p><b><i>Conflicts of interest cannot be eliminated</i></b></p> <p>Many commenters noted that conflicts of interest can never realistically be eliminated from securities transactions. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• There are inherent conflicts of interest with all dealers, and despite these inherent conflicts, dealers must manage a balance between the issuer, the investor and the dealer's own self-interest.</li> <li>• Some investors go to related registrants for the purpose of purchasing related issuer securities, not with the expectation of receiving comprehensive financial planning advice.</li> <li>• Some investors prefer to invest directly with an issuer or with a certain</li> </ul>	<p>As noted above, registrants that are related to the issuer will be permitted to participate in a distribution under the OM exemption provided the registrant complies with its obligations.</p> <p>With respect to the comments regarding evidence of the need for a prohibition on related registrants, we agree that it is important to have evidence to assist in policy making. We conduct compliance reviews of registrants that sell related and connected issuers and continue to gather relevant information. Additionally, we note that a new report of exempt distribution is currently being developed as a separate CSA project. This form will provide additional information about distributions under the OM exemption, including with respect to compensation payable to affiliated parties.</p>



Topic	Comments	OSC response
	<p>entity and should not be prohibited from doing so.</p> <p><b><i>Valid business reasons for selling related securities</i></b>  Some commenters noted that there are valid business reasons for an issuer to sell its own securities, including avoiding paying commissions to third parties and controlling the issuer’s own distribution channels.</p> <p><b><i>Advantages of using a related issuer</i></b>  A number of commenters suggested that related issuers may be in the best position to protect their clients because:</p> <ul style="list-style-type: none"> <li>• they know their product best, and</li> <li>• they have an incentive to deal honestly and in good faith with investors in order to support a long-term relationship.</li> </ul> <p>Two commenters stated that an issuer distributing its own securities through an EMD reduces costs and improves returns. Accordingly, requiring issuers with in-house registered dealers to hire an independent third party would increase costs and perhaps risk, since third party distributors also face incentives to engage in inappropriate selling. The commenter was of the view that these costs would be passed on to the consumer.</p> <p>One commenter stated that some financially sophisticated entrepreneurs prefer to rely on the expertise of professional advisers they trust. The commenter noted that this type of relationship is common between parties devoted to a mutual enterprise, and characterizes the relationship between issuers and in-house or affiliated dealers. The commenter expressed concern that denying experts the ability to harness the skills of other experts would stand in the way of effective capital formation.</p> <p>One commenter stated the exempt market is still maturing and self-distribution by EMDs adds balance to the current structure of the market, which is dominated by larger dealers, and may also prevent market abuse.</p> <p>Two commenters noted that issuers are currently able to conduct a non-brokered private placement directly to investors, without the additional investor</p>	

Topic	Comments	OSC response
	<p>protections provided by having a dealer involved (whether related or not).</p> <p><b><i>Insufficient evidence to exclude related registrants</i></b>  Two commenters were of the view that there is insufficient evidence to suggest that a prohibition on related registrants is necessary for investor protection. One commenter urged the OSC to permit related party product distribution while simultaneously requiring that the buyers and sellers of related party products submit useful data to the regulator.</p> <p><b><i>Impact on issuers</i></b>  A number of commenters referred to the impact on issuers (in particular, smaller issuers) of introducing a prohibition on distributing securities under the OM exemption through a related registrant. Specifically, commenters noted the following:</p> <ul style="list-style-type: none"> <li>• The restriction would prohibit a SME from compensating dealers through equity in circumstances in which the SME cannot afford to compensate the dealer with cash fees.</li> <li>• This could make the OM exemption disadvantageous to smaller issuers, as issuers required to distribute through third parties must incur costs to establish, educate and manage a distribution network and sales force which tends to be more difficult for smaller issuers.</li> <li>• Related product distribution is especially important within the exempt market because the more senior distribution houses and financial institutions have traditionally not participated in that market segment, making it more difficult for SMEs to raise capital.</li> <li>• The restriction would limit the ability of SMEs to raise capital, and could decrease the number of early-stage issuers and SMEs that are able to secure financing.</li> <li>• One commenter stated that the prohibition would present a hardship for issuers that operate under a business model in which a relater dealer was formed precisely for the purpose of distributing the issuer’s product.</li> <li>• The prohibition could increase costs for issuers that want to distribute their own securities, which would unduly restrict capital-raising.</li> <li>• Any increase in costs could reduce the proportion of the funds flowing from investors that can be converted into capital for issuers, as a third party</li> </ul>	

Topic	Comments	OSC response
	<p>dealer will take a larger portion of those funds than an in-house dealer.</p> <ul style="list-style-type: none"> <li>• The prohibition could adversely impact partially underwritten business plans or offerings, thus jeopardizing investor capital.</li> <li>• The prohibition would bar useful capital formation vehicles, such as a “micro-venture fund” limited partnership vehicle created for the purposes of investing in a SME, which could lead to more failed SMEs and greater investor losses.</li> </ul>	
<b>Other protections exist</b>	<p>Some commenters noted that a number of adequate safeguards relating to risks in the exempt market with related party sales are already in place. For example, dealers and their dealing representatives are subject to the same suitability requirements regardless of whether the product being sold is a security of a related or independent issuer. Further, if the issuer is a registrant, the trades would be subject to KYC, KYP and suitability obligations, and conflicts of interest must be disclosed when assessing suitability.</p> <p>A number of commenters suggested that a majority of the problems identified in the exempt market have been addressed by NI 31-103, in particular with the introduction of the EMD registration category. Commenters noted that ongoing reporting requirements and oversight by regulators gives a high level of protection to investors while allowing the market to function.</p> <p>One commenter noted that the OM exemption as proposed contains sufficient investor protections without the need for this prohibition, such as investment limits and a risk acknowledgement form.</p>	<p>As noted above, we continue to have concerns around material conflicts of interest where distributions are conducted through a related registrant. At this time, we are not introducing a prohibition on this practice under the OM exemption, given the other regulatory requirements we have in place to address this.</p> <p>However, we will continue to monitor this issue after the OM exemption is implemented to ensure that appropriate protections are in place.</p>
<b>Harmonization</b>	<p>Several commenters noted that no other CSA jurisdiction, apart from Ontario and New Brunswick, has proposed a prohibition on related registrants. In the interest of harmonization and to avoid confusion and complexity, the commenters recommended that the OSC reconsider the prohibition.</p> <p>One commenter also expressed concern that a related issuer prohibition would put Ontario-based issuers at a competitive disadvantage compared to issuers based outside of Ontario who can raise capital from a broader investor base, particularly for MIEs.</p>	<p>We appreciate the importance of harmonization.</p> <p>In Ontario, registrants that are related to the issuer will be permitted to participate in a distribution under the OM exemption. This is consistent with the OM exemptions currently available in other jurisdictions.</p>

Topic	Comments	OSC response
<b>Impact on dealers</b>	<p>Some commenters noted that many issuers are required to register because they are “in the business” of trading securities. However, issuers that sell their securities infrequently, and therefore do not trip the “business trigger”, can sell their own securities under the OM exemption. The policy behind the proposed related issuer restriction is applicable to those sales as well, yet these infrequent issuers are permitted to sell their own securities to eligible investors without being subject to the same KYC, KYP and suitability rules as EMDs. It was noted that this creates a further un-level playing field for EMDs.</p> <p>One commenter noted that when fund managers first enter the industry, it is very difficult for them and they often develop and expand through self-distribution. The commenter stated that EMDs must obtain performance records as part of their due diligence process. However, obtaining such a performance record would be nearly impossible for new fund managers without the ability to rely on self-distribution in the beginning stages of their operation.</p>	<p>We note that section 1.3 of the companion policy to NI 31-103 provides guidance regarding the analysis for when issuers are considered to be in the business of trading securities. While issuers can raise capital using the OM exemption, if the issuer is in the business of trading, it will need to be registered.</p>
<b>Sales commission concerns with independent registrants</b>	<p>Commenters noted the risk that independent dealers may be motivated to sell products with the highest commissions, which may reduce the return available to investors. One commenter stated that by allowing issuers to take advantage of their own networks to raise capital (including using related registrants), commissions can be considerably lower.</p> <p>Two commenters indicated that an issuer may be better able to balance the dealing representative commission incentive with cost of capital to the issuer if allowed to use its own distribution networks.</p>	<p>As noted above, we are not introducing a prohibition on the involvement of related registrants in a distribution under the OM exemption.</p>
<b>Alternative approaches to managing conflicts of interest and other OSC concerns</b>	<p>Rather than imposing a blanket prohibition, some commenters recommended examining what, if any, measures are needed to better regulate a dealer selling securities of a related issuer. These commenters suggested that the compliance issues that have been identified with EMDs should instead be addressed by dealing with registrants directly.</p> <p>It was noted that there are a number of existing regulatory tools available to address, manage and control conflicts of interest.</p>	<p>As noted above, we are not introducing a prohibition on the involvement of related registrants in a distribution under the OM exemption.</p> <p>However, we have previously issued guidance on our expectations of registrants’ compliance with their</p>

Topic	Comments	OSC response
	<p>One commenter was of the view that the proposed prohibition was based on a reaction to the actions of a few market participants who have created portfolio concentration issues by selling too much of their own securities to clients. As a possible solution, the commenter suggested that the CSA require a concentration report to be submitted by all dealers and issuers, which would list all of the investors who make an investment that results in an investment position equal to or greater than 10% of financial assets. By requiring this report, the commenter was of the view that dealers and issuers would give extra scrutiny to such investments.</p> <p>A number of commenters stated that issues relating to related registrants should be addressed through effective risk and conflict disclosure rather than a prohibition on related registrants.</p> <p>One commenter suggested that instead of a ban on related EMDs, guidance should be provided to non-compliant dealers and monitoring should take place to determine if guidance on disclosure is sufficient to address the problem.</p> <p>Commenters also noted that a variety of other techniques are currently used by the investment industry to address conflicts of interest, such as:</p> <ul style="list-style-type: none"> <li>• educating/enforcing the application of appropriate suitability standards, especially when conflicts of interest are involved,</li> <li>• providing continuing education for registrants about conflicts identification and management techniques,</li> <li>• having documented policies and procedures that address KYC/KYP and conflicts of interest and in particular those involving related/connected issuers,</li> <li>• implementing enhanced client disclosures/acknowledgements (i.e., the relationship disclosure documents),</li> <li>• introducing independent product reviews by third parties much like an independent review committee involving mutual funds,</li> <li>• specific categorization of the relationship such as “principal distributor” (i.e., manufacturer/distributor associated with offering documents) and providing enhanced disclosure related thereto,</li> <li>• expanding rights of rescission/withdrawals and categorization of a</li> </ul>	<p>KYC, KYP and suitability obligations. See for example, CSA Staff Notice 31-336 <i>Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations</i>.</p> <p>We will continue to monitor registrants’ compliance in these areas and will take appropriate regulatory action to ensure compliance with securities laws.</p>

Topic	Comments	OSC response
	<p>transaction as “solicited/not solicited”, and providing guidance on specific actions to be taken by a dealing representative and dealer in such circumstances, and</p> <ul style="list-style-type: none"> <li>• providing for enhanced compliance reviews by OSC staff of dealers that sell securities of related issuers.</li> </ul>	
<b>Alternative proposal</b>	<p>One commenter recommended allowing distributions by related issuers under the OM exemption with the following additional requirements:</p> <ul style="list-style-type: none"> <li>• audited financial statements for financings larger than \$500,000,</li> <li>• a clear use of funds that must be ultimately invested in a wholly unrelated third party, and</li> <li>• demonstration of subject matter expertise by the related-party sponsor of a pooled fund to increase the probability of success for an investment.</li> </ul>	<p>As noted above, we are not introducing a prohibition on the involvement of related registrants in a distribution under the OM exemption.</p> <p>See “Investment funds” above in respect of the exclusion of investment funds.</p>
<b>Connected registrants</b>	<p>One commenter recommended that registrants connected to the issuer (as that term is defined in NI 33-105) should be also prohibited from participating in distributions under the OM exemption for the same reasons that related registrants are excluded.</p> <p>However, another commenter agreed with the proposal to prohibit registrants that are related to an issuer from participating in a distribution under the OM exemption, but suggested that registrants that are connected to an issuer should not be prohibited.</p>	<p>We recognize that there are a wide range of relationships that may give rise to a connected issuer relationship. As noted above, registrants that are connected to the issuer will be permitted to participate in a distribution under the OM exemption.</p> <p>This is consistent with the OM exemptions that exist in other CSA jurisdictions.</p>
<b>Mortgage investment companies (MICs)</b>	<p>One commenter stated that the absence of a related issuer prohibition in British Columbia has helped to connect MICs with prospective investors, thereby promoting market efficiency. It was noted that a related issuer prohibition would hinder this and would have the potential to increase costs and diminish returns on investments, which may not be in the best interests of investors.</p>	<p>As noted above, we are not introducing a prohibition on the involvement of related registrants in a distribution under the OM exemption.</p>

Topic	Comments	OSC response
	<p>One commenter noted that MICs often know their products best and are the only parties who can competently advise investors about those products. In addition, the commenter indicated that many MICs cannot afford to pay commissions to independent EMDs.</p> <p>One commenter stated that the related issuer/EMD relationship provides investors with more insight into the performance of their investment, and provides regulators with a single point of contact from a communications and enforcement standpoint. Additionally, the commenter indicated that the long-term relationship that an investment in a mortgage investment product necessitates results in a level of client interaction with the issuer that an independent EMD could not provide.</p>	
<b>Unregistered finders</b>		
<p><b>Role of unregistered finders and the payment of commissions or finder's fees to unregistered finders in the exempt market</b></p>	<p><b><i>Role of finders generally</i></b></p> <p>A number of commenters provided information regarding the role of finders and finders' fees, noting that these play an important role. Specifically, it was noted that:</p> <ul style="list-style-type: none"> <li>• Finders refer investors to either an issuer or a registrant (in the case of a brokered offering).</li> <li>• In financial services, it is difficult to be a generalist and satisfy every need a client has. This is why referral arrangements are so popular and prevalent in the industry.</li> <li>• In Ontario, finders are used to assist the capital-raising efforts of issuers listed on the TSX Venture Exchange, as well as some private companies which are considering becoming publicly owned ones.</li> <li>• Finder's fees and finders play an important role in the exempt market because it is far more difficult to find purchasers who meet the prospectus exemption than to find purchasers for prospectus qualified securities.</li> <li>• One commenter stated that a registrant should be present whenever an investor is involved in a transaction and the role of a finder should be on the creation of relationships and management of training of applicable dealer representatives for the purpose of KYP.</li> <li>• The finder's fee is compensation for locating and introducing participants in</li> </ul>	<p>We thank the commenters for the information they have provided regarding the role of unregistered finders. We note that finders need to be registered if they are in the business of trading securities.</p>

Topic	Comments	OSC response
	<p>private placements conducted by the issuer.</p> <ul style="list-style-type: none"> <li>• Non-registered finders can play a pivotal role in connecting suitable investors with issuers.</li> <li>• Finders' fees are an important tool in enabling SMEs to access capital by enabling an issuer to outsource its marketing and allowing it to focus on its core business.</li> <li>• There are many cases in the real estate industry where an unregistered party such as a realtor or mortgage broker may identify a potential investor and assist in raising capital for an issuer.</li> <li>• The role of finders should be encouraged in the capital markets in order to incent individuals and others to locate investors, provided that a finder's activities do not trigger registration under applicable securities laws.</li> </ul>	
<p><b>Support for restricting the payment of commissions or finder's fees to unregistered finders</b></p>	<p>Several commenters expressed support for restricting the payment of commissions or finder's fees to unregistered finders involved in an offering under the OM exemption. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• Investors may not be adequately protected if finder's fees are paid to unregistered individuals who are not subject to any competency standards or obligations to investors. This could also impact investor confidence in our markets.</li> <li>• Given that unregistered finders do not have expertise, regulatory obligations or oversight, it is appropriate to restrict their activity in respect of the exempt market.</li> <li>• As non-registrants are not subject to formal oversight, it is entirely appropriate that the OSC move to restrict their activities in the exempt market.</li> <li>• The use of unregistered agents and finders will lead to greater risk of non-compliance with current regulations.</li> </ul> <p>Two commenters noted that restricting the commissions and fees of finders would have a negligible impact on capital-raising. In particular, it was suggested that issuers would instead engage with registrants who would perform the same functions.</p> <p>One commenter was of the view that prior to permitting finders' fees in Ontario,</p>	<p>There are no restrictions on the payment of commissions or finder's fees to unregistered finders involved in a distribution under the OM exemption. However, we will be monitor the use of the exemption after it is implemented and consider whether any future changes are warranted in relation to the payment of fees if issues emerge.</p>



Topic	Comments	OSC response
	<p>the OSC should obtain and publicly disclose information from other jurisdictions that have a prohibition on finders' fees and compare the level of investor protection and ability to raise capital in those jurisdictions with the experience of jurisdictions where finders' fees are permitted.</p>	
<p><b>Concerns with imposing restrictions on payment of commissions or finder's fees to any person, other than a registered dealer</b></p>	<p>A number of commenters did not support restricting the payment of commissions or finder's fees to unregistered finders involved in a distribution under the OM exemption. Specifically, commenters noted the following:</p> <ul style="list-style-type: none"> <li>• Restricting commissions or fees paid to finders will have a negative impact on capital raising, especially for SMEs.</li> <li>• While there is risk that unregulated finders may find persons who do not qualify for a prospectus exemption, this risk is mitigated by the fact that the dealer needs to be registered and has an obligation to ensure that a prospectus exemption exists for any trade or distribution.</li> <li>• There are many individuals who warrant a referral fee for their role in the process of raising capital.</li> <li>• Proper disclosure of finder's fees can mitigate any risks.</li> <li>• Limiting finder commissions will most likely result in a collapse of the finder service because the financial incentives will be insufficient.</li> <li>• There are already adequate rules in place to deal with concerns around unregistered finders.</li> <li>• SMEs depend on experts who are knowledgeable in their field, and unregistered persons may be able to promote a company to investors more efficiently than registered dealers.</li> <li>• The concerns relate to enforcement and participants who follow the rules should not be punished because others are non-compliant.</li> </ul> <p>Some commenters referred to specific circumstances in which they did not believe restrictions on payment of commissions or finder's fees to unregistered finders should be imposed. In particular, it was suggested that:</p> <ul style="list-style-type: none"> <li>• There is no need to restrict finder's fees in a brokered offering as registrants must comply with KYC, KYP and suitability requirements.</li> <li>• There is no need to restrict finder's fees in a distribution under the OM exemption as the disclosure in the OM provides adequate investor</li> </ul>	<p>Although we have not imposed restrictions on the payment of finder's fees to unregistered finders involved in a distribution under the OM exemption, we note that if finders solicit potential purchasers they cannot rely on the exemption in section 8.5 of NI 31-103. Further guidance on this topic is found in section 8.5 of the companion policy to NI 31-103.</p> <p>We will be monitor the use of the exemption after it is implemented and consider whether any future changes are warranted in relation to the payment of fees if issues emerge.</p>

Topic	Comments	OSC response
	<p>protection, especially if there are investment limits in place.</p> <ul style="list-style-type: none"> <li>Restrictions should not be placed on finders whose role is limited to providing an introduction to a registrant and the registrant provides the suitability assessment and recommendations to the investor. However, it was suggested that there should be restrictions to exclude unregistered finders from attending client meetings where suitability is assessed and finders should be transparent so the client understands the relationship.</li> </ul>	
<b>Additional guidance on role of finders</b>	Some commenters noted that there are circumstances where it is difficult to know if a finder has tripped the “business trigger” that would require them to become a registrant and indicated that additional guidance on this issue would be helpful.	We thank commenters for these comments but note that this is beyond the scope of this project.
<b>Create a registrant category for finders</b>	<p>One commenter recommended creating a finder’s category of registrant to allow for the payment of fees from the issuer to the finder on a contingent basis where, upon evaluation by the dealer, the investment was deemed to have been suitable.</p> <p>Another commenter suggested consideration of the concept of a “registered finder” that permits only a very narrow set of activities by finders that would not trigger registration, as some state regulators have done in the US.</p>	We thank commenters for these comments but note that this is beyond the scope of this project.
<b>Definition of “eligible investor”</b>		
<b>Eligible investor test – general comments</b>	<p><b>Relevance of eligible investor test</b></p> <p>One commenter stated that neither an asset test nor income test is sufficient to determine which investors have better access to information and are sophisticated enough to not require as much protection as others.</p> <p>One commenter did not support the application of an eligible investor test if an investor is dealing with an EMD. The commenter indicated that suitability is determined by more than just net worth or income levels and making sure investors receive complete disclosure and are fully aware of the details of the investment, the risks and whether it is suitable is paramount for each and every</p>	<p>We believe that the application of the eligible investor test and imposing different investment limits depending on whether an investment is an eligible investor or not are important investor protection measures.</p> <p>We believe this to be the case even in circumstances where the investor is purchasing securities through a</p>

Topic	Comments	OSC response
	<p>investor.</p> <p>One commenter was of the view that the eligible investor category should be eliminated and the OM exemption should align with the current model of OM exemption in BC. The commenter indicated that the only way to judge an investor’s sophistication is through the KYC process, and a registrant can provide the expertise and education required so that a client can invest in suitable products, even if they are deemed “unsophisticated” by the measure of their investable assets.</p> <p><b>Eligible investor test has not been adjusted for inflation</b></p> <p>Two commenters noted that the net asset and net income thresholds should be adjusted for inflation due to the fact that they have been in place for over a decade in many CSA jurisdictions and, as a result, the number of individual Canadians who qualify as eligible investors has risen significantly over time.</p> <p>It was noted that failure to adjust for inflation results in an effective reduction in the thresholds in a manner that lacks transparency.</p>	<p>registrant.</p> <p>The introduction of the OM exemption in Ontario will open up the exempt market to retail investors, and we believe that some limits should be put in place.</p> <p>We have considered the net income and net asset thresholds and consider them to be appropriate for the purpose of qualifying as an eligible investor. As a result, we have not proposed to increase these amounts for inflation.</p>
<p><b>Harmonization</b></p>	<p><b>Harmonization</b></p> <p>A number of commenters noted that the proposed amendments create two different definitions of “eligible investor” and that this is a departure from the desired trend towards harmonization of securities regulation across Canada.</p> <p>One commenter urged the CSA to re-examine the need for two separate definitions and to apply the definition currently proposed for use in those provinces other than Ontario and New Brunswick.</p> <p>One commenter stated that inconsistencies in the eligible investor test increase the cost of compliance for dealers and the cost of raising capital for issuers when suitability and KYC obligations make an inconsistent test unnecessary.</p> <p>One commenter was of the view that inconsistent definitions of eligible investor that treat individuals or companies in Ontario differently than individuals or companies in other jurisdictions is discriminatory.</p>	<p>We agree that harmonization is an important goal.</p> <p>There are currently two models of OM exemption in Canada today. We are substantially adopting the definition of eligible investor that is currently used in several jurisdictions today, with one revision, discussed in greater detail below.</p>

Topic	Comments	OSC response
	<p>One commenter expressed concern with the administrative confusion and complexity of having different eligible investor tests in multiple jurisdictions.</p> <p>One commenter stated that differences in the eligible investor test across jurisdictions could create a serious impediment to capital raising for SMEs. The variation in the definition of “eligible investor” between Ontario and other jurisdictions is an unnecessary difference that will only provide minor investor protection benefits, if any, at the expense of a more efficient and harmonized prospectus exemption regime.</p>	
<p><b>Net asset test – proposed change from \$400,000 to \$250,000 and exclusion of an investor’s primary residence</b></p>	<p><b><i>Support for proposed changes to the net asset test</i></b>  Several commenters expressed support for the proposed changes to the net asset test, which included reducing the threshold from \$400,000 to \$250,000, and excluding the value of the primary residence from the calculation of an individual’s net assets.</p> <p>One commenter stated that if the current \$400,000 net asset test was originally intended to only include liquid investments, then the threshold could remain as is. However, if it was recognized that the limit also included illiquid assets but now only liquid assets are intended to be included in the definition, the net asset test could be lowered.</p> <p><b><i>Exclusion of primary residence</i></b>  Several commenters supported the proposal to exclude the primary residence from the net asset test. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• The net asset test should exclude the value of the principal residence for individual investors, as such assets are illiquid.</li> <li>• Equity in the principal residence is unlikely to be viewed as just another financial asset by the individual and including the primary residence in the calculation of net assets may put the investor at risk, especially if they lack other assets.</li> <li>• A person’s primary residence should not be considered as part of their investment portfolio or indicative of their investment capacity.</li> <li>• Given the value of people’s homes in major cities in Canada, including this asset would make millions of Canadians eligible investors somewhat</li> </ul>	<p>We are adopting the net asset test set out in the definition of eligible investor that currently applies in several jurisdictions, with one change.</p> <p>We are not adopting paragraph (h) of the definition of eligible investor, which permits qualification as an eligible investor through receiving advice from an eligibility advisor. This change is a result of our approach to investment limits, which permit an eligible investor to exceed the \$30,000 investment threshold upon receiving advice from a registrant.</p> <p>An eligible investor will include a person whose net assets, alone or with a spouse, in the case of an individual, exceed \$400,000.</p> <p>An investor can include his or her primary residence in the calculation of net assets.</p>

Topic	Comments	OSC response
	<p>artificially.</p> <p>Other commenters did not support excluding the principal residence from the net asset test. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Many Canadians look to the equity of their home as part of their savings.</li> <li>• Given the lack of an articulated argument supported by empirical evidence, there is no case to support excluding the primary residence.</li> <li>• In the absence of any evidence of harm and for the sake of harmonization, the principal residence should remain within the definition of net assets.</li> <li>• The primary residence should not be excluded if this would have the effect of reducing the number of eligible investors.</li> <li>• Exclusion of the primary residence introduces a bias against investors based on the assets they choose to hold.</li> <li>• Investors approved for mortgage financing have the sophistication to understand the risks of a private investment.</li> <li>• Other illiquid investments (such as exempt market products) are not excluded from the calculation of net assets.</li> <li>• As noted in the March 20, 2014 publication by Alberta, Quebec, New Brunswick and Saskatchewan “if investors are qualifying as “eligible investors” based on a net asset test, there are very few who could do so without including their principal residence” (based on Statistics Canada data).</li> </ul> <p>One commenter suggested that the mortgage should be deducted from the principal residence value when calculating net assets.</p> <p><b><i>Allow an exception for those with significant equity</i></b></p> <p>One commenter was of the view that if the primary residence is excluded from the calculation of net assets, an exception should be provided based on the size of the investor’s ownership interest in the primary residence. This would mean that individuals that have a significant equity interest in their homes, but do not meet the net asset test, could still qualify as eligible investors. If an individual’s mortgage is at or under 20% of the primary residence’s current market value, and the individual has received advice on the risks of the transaction from a registered advisor, the commenter was of the view that the investor should be</p>	<p>This is consistent with the net asset test that is currently applied in several jurisdictions in Canada, which is well understood by the market.</p> <p>We acknowledge the concerns that have been expressed regarding inclusion of the principal residence in the calculation of net assets. However, we note that individuals qualifying as eligible investors will be limited in the amount of money they can invest under the OM exemption.</p>

Topic	Comments	OSC response
	<p>permitted to include the value of the residence in the calculation of net assets.</p> <p><b>Reduction of the net asset threshold to \$250,000</b>  One commenter who supported the removal of the primary residence also supported the reduction in the net asset test to \$250,000.</p> <p>One commenter disagreed that if the equity in an investor’s personal residence was excluded from the calculation of net assets, then the threshold should be reduced to \$250,000, as this would obviate most if not all of the benefit of excluding the principal residence in the first place.</p> <p>Two commenters disagreed with lowering the net asset threshold, on the basis that the principal residence of the investor should not be excluded from the test.</p>	
<b>Net asset test – included assets</b>	<p>Some commenters were of the view that all investments should be considered for the purpose of determining the status of an investor as eligible or not.</p> <p>One commenter recommended that in addition to excluding pension and education assets of a retail investor from the calculation of net assets, a person’s RRSP and RESP assets should also be excluded. The commenter was of the view that this would result in a net asset calculation that better represents the portion of an investor’s net worth they can afford to place at risk and from which they might better be able to bear a loss.</p>	<p>We thank commenters for their comments. As noted above, We are adopting the net asset test set out in the definition of eligible investor that currently applies in several jurisdictions, with one change.</p>
<b>Net asset test – based on financial assets rather than net assets</b>	<p>Two commenters recommended a test based on financial assets, similar to the test used in the definition of accredited investor, and adopting a threshold of \$100,000.</p>	<p>We thank commenters for their comments. As noted above, We are adopting the net asset test set out in the definition of eligible investor that currently applies in several jurisdictions, with one change, which is well understood by the market.</p> <p>We note also that there are policy differences underlying the categories of accredited investor and eligible</p>

Topic	Comments	OSC response
		investor.
<b>Eligible investor test – support for qualification by way of receiving advice from an eligibility advisor</b>	A number of commenters supported allowing investors to qualify as eligible investors on the basis of receiving advice from an eligibility advisor. Some of these commenters noted that the regulatory protections provided by the KYC, KYP and suitability obligations of registrants result in stronger investor protection than an income or asset test, which are at best proxies for sophistication or ability to withstand loss and do not address suitability.	We will not be adopting the part of the definition of eligible investor that provides for qualification by way of receiving advice from an eligibility advisor, given the approach that we are taking to investment limits for eligible investors.
<b>Eligible investor test – concerns with qualification by way of receiving advice from an eligibility advisor</b>	One commenter stated that while investors may seek and receive advice from registered investment dealers in connection with privately placed securities, such dealers would only be responsible for ensuring that their suitability, KYC and KYP obligations are fulfilled. The commenter stressed the importance of implementing a statutory best interest standard on all registrants providing advice, including with respect to advice provided on privately placed securities, as this would help to (i) ensure that an investment under the OM exemption is in a client’s best interest and (ii) mitigate concerns relating to the ability of an investor to qualify as an eligible investor.	As noted above we will not be adopting the concept of an eligibility advisor.  The implementation of a best interest standard is part of a separate CSA initiative and is beyond the scope of this project. This comment will be considered by the group working on that initiative.
<b>Category of registrant that can act as an eligibility advisor</b>	<p><b>IIROC members</b> One commenter recommended that a registrant providing advice for an investor to qualify as an eligible investor should be required to be an IIROC member, as this would provide investors with the additional protections associated with membership in a self-regulatory organization.</p> <p><b>Portfolio managers</b> One commenter recommended that the category of “eligibility advisor” be expanded to include portfolio managers.</p> <p><b>EMDs</b> A number of commenters recommended expanding the definition of eligibility advisor to include EMDs. Specific comments included the following:</p>	As noted above we will not be adopting the concept of an eligibility advisor.

Topic	Comments	OSC response
	<ul style="list-style-type: none"> <li>• EMDs specialize in private securities and the exempt market, and the EMD category was developed for the specific purpose of providing suitability advice to exempt market investors.</li> <li>• EMDs are in the best position to provide eligibility advice as dealer representatives are supervised by chief compliance officers to ensure compliance with KYC and suitability obligations.</li> <li>• IIROC members or other registrants could not perform the services as efficiently as EMDs and might increase costs to issuers by charging due diligence fees.</li> <li>• An independent EMD should be able to provide advice similar to investment dealers where there are no set limits.</li> <li>• An EMD is the most informed advisor on the products it agrees to distribute. Many registered investment dealers, lawyers and accountants that an average investor would approach are much less familiar with the OM exemption and the risks of these investments, and often have not had the opportunity to perform extensive KYP requirements on such offerings.</li> <li>• If a statutory best interest standard was implemented for registrants including EMDs, then the category of registrants qualified to act as eligibility advisors could be expanded to include EMDs.</li> </ul> <p>One commenter was of the view that the category of registrants qualified to act as eligibility advisors should not include EMDs, for the following reasons:</p> <ul style="list-style-type: none"> <li>• EMDs are not members of a self-regulatory organization,</li> <li>• EMDs may be subject to conflicts of interest which would result in advice that is not in the best interests of the client, and</li> <li>• there was a low level of compliance with KYP, KYC and client relationship disclosure obligations observed in compliance sweeps of EMDs conducted by regulators.</li> </ul> <p><b>Other categories</b></p> <p>One commenter recommended expanding the definition of eligibility advisor to include CFAs, while another suggested including other appropriate categories of restricted dealer.</p>	



Topic	Comments	OSC response
	<p><b>Education and experience</b></p> <p>One commenter was opposed to including lawyers and public accountants as eligibility advisors, and recommended that education or a background in finance should determine who should or should not be an eligibility advisor.</p> <p>One commenter was of the view that eligibility advisor status should be defined by personal qualification, and should be extended to anyone holding a qualification such as Certified Financial Planner, but should not include advisors who do not have high level qualifications and instead only hold broker licenses (such as a mutual fund license).</p>	
<p><b>Ongoing monitoring regarding eligibility advisors</b></p>	<p>One commenter recommended that the OSC monitor the use of this qualification criterion by requiring the provision of information to the OSC on its use and including the name of the registrant who provided the investment advice.</p>	<p>As noted above, we will not be adopting the concept of an eligibility advisor.</p>
<p><b>Investment limits</b></p>		
<p><b>General comments on investment limits</b></p>		
<p><b>Change in approach from original consultation paper</b></p>	<p>One commenter noted that the OSC's approach to an OM exemption published in OSC Staff Consultation Paper 45-710 <i>Considerations for New Capital Raising Prospectus Exemptions</i> (OSC Staff Consultation Paper 45-710), namely to use the terms and conditions of the crowdfunding exemption, including the same investment limits, has been abandoned. These proposed limits were \$2,500 per distribution and \$10,000 in total under the exemption in a calendar year.</p>	<p>Following consideration of the comments received on OSC Staff Consultation Paper 45-710 we developed a proposed OM prospectus exemption with different investment limits. These revised investment limits were reflected in the March 2014 proposal.</p>
<p><b>Regulatory objectives</b></p>	<p>One commenter stated that investment limits do not strike the right balance between investor protection and fair and efficient capital markets.</p>	<p>We believe that the introduction of the OM exemption in Ontario may support capital raising activity in Ontario, particularly for SMEs and that certain investor protection measures, including investment limits</p>

Topic	Comments	OSC response
		<p>for individual investors, are appropriate for this exemption. As a result, we believe the proposed OM exemption strikes the right balance between the dual mandates of the Commission, namely to foster fair and efficient capital markets while ensuring appropriate investor protection.</p>
<b>Minimum amount exemption</b>	<p>One commenter questioned why the \$150,000 minimum amount investment prospectus exemption would be replaced with a limit of \$30,000 for those who do not qualify as an accredited investor. The commenter suggested that most EMDs recognize that many trades made under the minimum amount investment prospectus exemption have been unsuitable and should never have taken place.</p>	<p>The minimum amount investment prospectus exemption was recently repealed for distributions of securities to individuals as part of CSA amendments to that exemption and the accredited investor exemption.</p> <p>The investment limits proposed for individual investors under the OM exemption are not intended to be a replacement for the minimum amount investment prospectus exemption.</p>
<b>Regulatory approach</b>	<p>One commenter stated that Canadian securities laws are principles based, while the proposed investment limits are rules based, which creates a dual (and contradictory) compliance regime. Rules based regulation is inflexible and encourages a “tick the box” mentality.</p>	<p>There are many examples in Canadian securities laws of other “bright line” tests. In our view, the proposed “flat cap” investment limits will potentially make it more straightforward to apply and monitor the investment limits.</p>
<b>Harmonization</b>	<p>A number of commenters expressed general concern about the increased dis-harmonization across the CSA that would result from the proposed investment limits and the resulting impact on fostering fair and efficient capital markets.</p>	<p>We agree that harmonization is an important goal.</p>

Topic	Comments	OSC response
	<p><b><i>Adopt British Columbia model</i></b>            Some commenters questioned why the OM exemption proposed by Ontario is not more aligned with the British Columbia model of OM exemption, given the commitment of both jurisdictions to create a cooperative securities regulator.</p>	<p>The OM exemption is not currently harmonized across all CSA jurisdictions, as there are two models of OM exemption that exist. We have worked with those CSA jurisdictions that also proposed amendments to the OM exemption in order to achieve harmonization wherever possible. As a starting point, we looked to the form of OM exemption that exists in Alberta and certain other CSA jurisdictions (the Alberta model of OM exemption).</p> <p>We took this approach for a number of reasons, including the potential for greater harmonization due to the level of support across the CSA for this model and the participation of Alberta in this initiative. Further, the Alberta model of the OM exemption already imposed certain investment limits on non-eligible investors.</p> <p>The current work being undertaken to create a cooperative capital markets regulator is on a separate track and is beyond the scope of this project.</p>

Topic	Comments	OSC response
<b>Support for investment limits</b>		
<p><b>General support for the concept of investment limits</b></p>	<p>Some commenters expressed varying degrees of support for the concept of investment limits. These commenters represented a significant minority of commenters overall.</p> <p>Commenters that expressed some support for investment limits provided a number of different reasons for this support, including the following:</p> <ul style="list-style-type: none"> <li>• One investor acknowledged that investment limits may protect some investors who are unable to protect themselves but was of the view that a lump sum limit should be replaced with an amount based on a percentage of an investor’s investible capital.</li> <li>• One investor expressed support for investment limits based on personal experience with failed investments in the exempt market, and the use of certain sales tactics by registrants.</li> <li>• One commenter agreed that investment limits should be established as part of the OM exemption to provide investor protection for less sophisticated investors who do not meet the accredited investor definition and who might not be able to withstand a significant loss.</li> <li>• One commenter stated that investment limits are a prudent measure and encouraged regulators to revisit the limits and make adjustments where necessary as the OM exemption takes effect over the next few years.</li> </ul> <p><b><i>Proposed investment limits too high and expose investors to risk</i></b></p> <p>One commenter expressed concern that the proposed limits were too high and may lead to a risk of overconcentration and lack of diversification by some investors. The commenter questioned whether it is appropriate from a public policy perspective to encourage relatively large investments in high risk investments when the median contribution to the average retirement savings account in Canada is much lower than \$30,000. This commenter expressed concern that the proposed investment limits may result in retail investors being encouraged to place more than their usual annual retirement savings in high-risk and illiquid investments.</p>	<p>We acknowledge that a minority of commenters expressed support for the proposed investment limits.</p> <p>We agree that investment limits are an important investor protection measure and we continue to believe that some form of investment limits are appropriate for the OM exemption.</p> <p>However, given the feedback we have received, we have made some changes to the proposed investment limits that were published for comment.</p>

Topic	Comments	OSC response
<p><b>Support for investment limits in certain circumstances</b></p>	<p>One commenter stated that investment limits are appropriate in certain higher risk circumstances, for example:</p> <ul style="list-style-type: none"> <li>• for certain types of securities (such as complicated securities), and</li> <li>• for investments in business start-ups that have no assets.</li> </ul> <p>Some commenters stated that the proposed investment limits would be appropriate if a registrant is not involved in the transaction. These commenters generally cited the role of registrants in conducting due diligence and performing suitability assessments in support of this view, and did not support investment limits where a registrant is involved.</p>	<p>In our view investment limits are appropriate for all investments made by individual retail (i.e., non-accredited) investors under the OM exemption, not just in the circumstances identified.</p> <p>Note that we also proposed that the OM exemption would not be available for distributions of certain complex securities including specified derivatives and structured finance products.</p>
<b>Opposition to investment limits</b>		
<p><b>General comments opposed to investment limits</b></p>	<p>A significant majority of commenters opposed the introduction of the proposed investment limits. Some of the general points made by commenters included the following:</p> <ul style="list-style-type: none"> <li>• There is no correlation between the amount of income and/or assets a person has and their ability to make sound investment decisions. As a result, investment limits based on the concept of whether an investor is an eligible investor or not do not make sense.</li> <li>• Investment limits appear to be the result of a public market lobby worried about the increased flow of capital to the private markets.</li> <li>• The proposed investment limits are both unduly restrictive and unnecessary.</li> </ul> <p>Many commenters that opposed the investment limits suggested that investment limits will not address the following issues:</p> <ul style="list-style-type: none"> <li>• The proposed investment limits will not address the lack of capital for issuers.</li> <li>• Investment limits will not address the risk of fraud.</li> <li>• Attempting to limit loss is not the best strategy for protecting investors.</li> <li>• While investment limits may cap an investor’s loss when an investment fails, the limits will not reduce the number of investment failures.</li> </ul>	<p>We acknowledge that the majority of commenters opposed the proposed investment limits.</p> <p>The purpose of introducing investment limits is to reduce the risk of investor loss and to also prevent individual investors from becoming over-concentrated in exempt market securities.</p> <p>We acknowledge that investment limits themselves may not prevent fraud. That is not the intended purpose of the investment limits.</p> <p>In considering the proposed investment limits we were not influenced by any particular industry</p>

Topic	Comments	OSC response
		group or segment.
<b>Unfair restriction on the exempt market</b>	<p>Many commenters suggested that investment limits may create a perceived stigma against exempt market products.</p> <p>One commenter stated that the exempt market should be able to compete with other markets on a level playing field, noting that the exempt market is too important to SMEs and the Canadian economy to restrict it with the proposed investment limits.</p> <p>One commenter noted that annual investment limits do not exist in any other capital sector in North America.</p> <p>One commenter stated the exempt market is still in early stages of growth and over-regulation is not the answer. The commenter expressed concern that the exempt market is being unfairly focused on as it has not yet achieved similar standing as the IIROC space in the eyes of the CSA.</p> <p>Many commenters noted that other types of investments are not singled out for investment limits, for example:</p> <ul style="list-style-type: none"> <li>• There are no restrictions on distribution channels such as IIROC, MFDA and online trading where Canadian investors have experienced high volatility and losses.</li> <li>• Investors are free to open a discount brokerage account without proper advice.</li> <li>• There are no investment limits for mutual funds or public securities.</li> <li>• Investment limits have not been introduced to other market segments such as GICs where returns may be eroded due to inflation.</li> </ul>	<p>Investment limits have been proposed because with the introduction of an OM exemption in Ontario, retail investors (as opposed to accredited investors) will be able to invest in securities sold without the benefit of a prospectus, as well as certain additional protections that are part of securities regulation.</p> <p>Securities sold on an exempt basis are <i>exempt</i> from the requirement to provide a prospectus, which is a foundational requirement in Ontario securities law.</p> <p>As a result of the lighter regulatory regime that will govern the issuance of securities under an OM exemption, in our view it is appropriate that certain investor protections be included in the exemption, including investment limits.</p> <p>This is not meant to stigmatize the exempt market generally, but rather is a response to the fact that securities sold under a prospectus exemption are subject to fewer requirements and less regulatory oversight than securities sold under a prospectus.</p>

Topic	Comments	OSC response
		<p>All investments involve some degree of risk. The proposed investment limits are intended to address specific investor protection concerns associated with the introduction of an OM exemption in Ontario.</p> <p>We note that investment limits can be seen in other contexts, including recent amendments to the Securities and Exchange Commission's (SEC) Regulation A, which allows securities to be sold without a prospectus to non-accredited investors, provided the amount invested is not more than 10 percent of the greater of the investor's annual income or net worth.</p>
<p><b>Impact on CSA jurisdictions that currently have the OM exemption</b></p>	<p>A number of commenters expressed concerns with how the proposed investment limits would impact jurisdictions that currently have an OM exemption with no investment limits.</p> <p>Many of these commenters suggested that investment limits would negatively impact capital raising in these jurisdictions.</p>	<p>We have worked with our colleagues in certain other CSA jurisdictions that currently have an OM exemption to understand how the exemption works in practice in those jurisdictions.</p>
<p><b>Exempt market securities are not necessarily riskier than other investments</b></p>	<p>A number of commenters stated that exempt market securities are not necessarily riskier than other investments.</p> <p>For example, some commenters suggested that investors do not consider certain attributes of exempt securities – such as illiquidity – to be a risk, but rather a protection against public market volatility.</p>	<p>Some exempt market securities may not necessarily be riskier than other investments. However, given the fact that securities offered by way of a prospectus exemption are subject to fewer requirements and less oversight than securities offered by reporting issuers, we believe additional investor</p>

Topic	Comments	OSC response
		protections are appropriate.
<b>Investor freedom of choice</b>	<p>A large number of commenters opposed the proposed investment limits on the basis that investors should be free to allocate their own capital when making investment decisions.</p> <p>Commenters raised the following points:</p> <ul style="list-style-type: none"> <li>• Investment limits may infringe individual rights under section seven of the <i>Charter of Rights and Freedoms</i> or be outside the regulators' scope of powers.</li> <li>• Investors will not understand the rationale for the investment limits and will be frustrated that their right to choose how much to invest is restricted.</li> <li>• Building an investment portfolio is an individualized process and choices should not be limited by the poor past experience of a small percentage of the investing population who chose not to diversify.</li> <li>• Investing is a personal decision and should only be tailored to an individual's specific financial situation, risk tolerance, wants, needs and goals and not be dictated by government regulations.</li> <li>• The freedom to invest in the exempt market should not be limited to the very rich, with everyone else having a small contribution limit.</li> <li>• Investment limits imply eligible or non-eligible investors are not as intelligent or sophisticated as wealthy investors.</li> <li>• Individual investors should be able to follow the lead of institutional investors, including large pension plans which are making significant contributions to private equity investments.</li> <li>• Individuals are free to allocate capital without oversight when gambling, buying lottery tickets, buying cars, using high-interest credit cards or a line of credit, and mortgaging homes to the full extent of their value.</li> <li>• Investors should be responsible for their own choices and regulators should focus on ensuring consumers are empowered to make informed investment decisions.</li> <li>• What is required is not a limit on investor freedom, but proper regulation of market participants. The mandate of regulators is to protect investors from bad actors as opposed to attempting to protect investors from themselves.</li> </ul>	<p>The investment limits are not intended to limit investor freedom. Rather, they are an acknowledgement that securities sold by way of a prospectus exemption are <i>exempt</i> from one of the core requirements of securities regulation. As a result, additional investor protection measures were considered to be necessary.</p> <p>Securities regulators have rulemaking authority under the <i>Securities Act</i> to draft rules dealing with specified matters, including the requirements associated with exemptions from the prospectus requirement. This includes the ability to determine the terms and conditions of any exemption from the prospectus requirement.</p> <p>The same investor protection considerations do not necessarily arise with institutional investors, who are generally sophisticated investors that have the ability to independently evaluate investment opportunities.</p> <p>We also agree that appropriate regulation of market participants, including registrants, is a key element of effective regulation of the exempt market.</p>



Topic	Comments	OSC response
<p><b>More data should be provided to support the proposed investment limits</b></p>	<p>A number of commenters stated that the proposed investment limits are arbitrary and that more data should be provided to support the proposed investment limits.</p> <p>Commenters suggested that due to this lack of empirical evidence:</p> <ul style="list-style-type: none"> <li>the concerns expressed with respect to the exempt market appear to be subjective, and</li> <li>the lack of data is inconsistent with the current trend towards evidence-based regulation.</li> </ul> <p>One commenter stated that regulators must reasonably demonstrate the proposed investment limits are appropriate to show they have balanced the dual mandates of investor protection and fostering fair and efficient capital markets.</p> <p><b>ASC data</b></p> <p>A few commenters noted that the proposed investment limits appear to be derived from ASC data. Two commenters questioned why no specific explanation was provided for how the investment limit of \$30,000 for eligible investors was determined. It appears to be based on the median investment of individuals and not the \$45,000 average investment as illustrated in the data provided by the ASC set out in Annex B to the CSA Multilateral Notice.</p>	<p>The investment limits were not determined arbitrarily. In developing the investment limits we considered data from a variety of sources.</p> <p>In our view, the proposed limits appropriately balance the dual mandates of investor protection and fostering fair and efficient capital markets.</p> <p>The CSA recently published for comment proposed amendments to the report of exempt distribution on Form 45-106F1 which will provide for enhanced data collection about exempt market distributions.</p> <p>The ASC also provided some data on the use of the OM exemption in Alberta in their publication dated March 20, 2014.</p>
<p><b>Proposed investment limits do not reflect the variety of different circumstances of eligible investors</b></p>	<p>Many commenters stated that the proposed investment limits do not recognize the broad spectrum of circumstances of individual investors that fall within the category of eligible investor. These commenters stated that an investment is a highly personal decision based not only on income and net worth, but sophistication, risk tolerance, goals and preferences. Applying one investment limit to all individual investors in this group does not recognize the differences (financial and otherwise) between them.</p> <p>Commenters made a number of points on this topic:</p> <ul style="list-style-type: none"> <li>Restricting an investor's ability to invest only \$30,000 per year is unsatisfactory for to someone with a portfolio of between \$400,000 and \$999,000.</li> </ul>	<p>We acknowledge that the category of eligible investor covers a wide range of financial circumstances. In response to comments received, we have amended the investment limits to allow for greater flexibility in application of the limit for individual eligible investors.</p>

Topic	Comments	OSC response
	<ul style="list-style-type: none"> <li>The proposed investment limits are problematic given the disparity between the thresholds to be an eligible investor and an accredited investor. For example, the proposed limits make little sense for an investor whose net worth approaches \$5 million and for whom a \$30,000 investment could be as little as 0.6% of the investor’s net worth.</li> <li>An investor’s income and assets are only two factors relevant to a suitability assessment, which could also include an investor’s age, investment needs, investment time horizon risk tolerance and percentage of net assets a client has invested.</li> <li>IIROC and MFDA members have had to evaluate clients on a more intimate basis than by simply making decisions solely based on income or assets, and since the implementation of NI 31-103, the same standard has applied to EMDs.</li> </ul>	
<p><b>NI 31-103 provides an appropriate regulatory framework for investor protection and therefore investment limits are not necessary</b></p>	<p>Many commenters stated that NI 31-103 provides sufficient investor protection, and that investment limits are not necessary when a registrant is involved in the distribution of securities under the OM exemption. This is because NI 31-103 imposes a number of obligations on registrants that function to protect investors, such as KYC, KYP and suitability obligations.</p> <p>Many commenters noted that the introduction of NI 31-103 in 2009 was a positive development for the exempt market industry and that it should be allowed to work as designed. Exempt market participants have invested considerable resources into implementing their KYC, KYP and suitability obligations an investment limits will undermine that progress.</p> <p>Commenters stated that regulators appear to have assumed that NI 31-103 is not working and that investment limits are therefore necessary for investor protection. Many suggested that NI 31-103 is a relatively recent rule that the market should have time to fully implement the principles-based regime set out in it.</p> <p>Commenters raised the following additional points in support of this theme:</p> <ul style="list-style-type: none"> <li>In CSA Staff Notice 31-336 <i>Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product</i></li> </ul>	<p>NI 31-103 provides a comprehensive regulatory framework for registrants, including EMDs.</p> <p>However, we disagree that this means that investment limits are unnecessary. We believe that investment limits are an important investor protection measure.</p>

Topic	Comments	OSC response
	<p><i>and Suitability Obligations</i> (CSA Staff Notice 31-336) the CSA stated that KYC, KYP and suitability obligations are the most fundamental obligations owed by registrants to their clients. Registrants have gone to great lengths to develop compliance systems that focus on suitability principles.</p> <ul style="list-style-type: none"> <li>• The OSC has in the past noted deficiencies with respect to registrants meeting their suitability obligations. This is because NI 31-103 has only been in existence for four years and Ontario does not yet have a retail exempt market, unlike western Canada.</li> <li>• Investment limits will place restrictions on an investor’s ability to achieve a balanced portfolio.</li> <li>• Since the implementation of NI 31-103 there have not been any significant market problems.</li> <li>• When registrants do not perform their duties professionally, appropriate regulatory action should be taken against them.</li> </ul> <p><b><i>No limits if a registrant is involved</i></b>  A number of commenters were generally opposed to investment limits if the investor was advised by a registrant.</p> <p><b><i>Investment limits will undermine the investor protection mechanisms in NI 31-103</i></b>  One commenter suggested the investment limits could result in OMs being sold by issuers without the benefit of registered dealers, thereby adding investor risk to the capital markets. The commenter was of the view that even though NI 31-103 contemplates the sale of securities without the use of a registered dealer provided the business trigger is not met, the OSC should not be implementing rules that result in the promotion of sales without the use of registered dealers.</p> <p>Another commenter stated that issuers should be encouraged to work with a registered dealer if raising over a certain amount of capital.</p> <p>One commenter stated that issuers would be motivated to try to capture investors’ annual maximum exempt market contributions each year, thereby subverting the suitability process.</p>	

Topic	Comments	OSC response
<p><b>Investment limits will negatively impact capital raising</b></p>	<p>A number of commenters stated that the proposed investment limits would negatively impact capital-raising in the exempt market, affecting issuers, dealers, the mortgage industry and borrowers, as well as the Canadian economy as a whole.</p> <p>For example, a number of commenters suggested that issuers would need to raise capital from a broader investor base in order to obtain the required amount of capital, and a larger base of security holders would likely result in additional costs and an increased administrative burden on issuers and dealers. One commenter also noted that in an increasingly global marketplace that competes for capital, the proposed investment limits would result in the movement of investment and profits outside of Canada.</p> <p><b><i>Impact on SMEs</i></b></p> <p>Many commenters noted that the proposed investment limits would make it more difficult for SMEs to raise capital, because it would be harder for SMEs to attract the attention of registered dealers to conduct due diligence and sell their products.</p> <p>One commenter suggested that the investment limits would function to help banks and larger companies increase profits while hurting smaller companies. One commenter was of the view that investment limits may have a particularly negative impact on early stage businesses, because they are riskier investments, and the proposed investment limits may effectively result in an allocation of capital to more established businesses.</p> <p><b><i>Increased competition among issuers for capital</i></b></p> <p>One commenter stated that investment limits would create excess competition among issuers, which would foster an emphasis on transactional, instead of long-term, relationships.</p> <p>One commenter noted that the proposed investment limits would favour issuers that issue RRSP eligible securities or securities with other tax incentives, as well as issuers that issue such securities in the first 60 days of the calendar year.</p>	<p>In our view, the introduction of an OM exemption in Ontario is a significant step that will likely foster greater capital raising activity for issuers, rather than limit it.</p> <p>We do not agree that the introduction of an OM exemption in Ontario will make it more difficult for SMEs to raise capital.</p>

Topic	Comments	OSC response
<p><b>Impact on investors</b></p>	<p>Many commenters stated that investment limits would have a negative impact on investors.</p> <p>Many also noted that the increased cost of capital-raising would be passed on to investors and would negatively impact investor returns.</p> <p>One commenter noted that the proposed investment limits do not take into account that many investors invest intermittently, not regularly, for a variety of reasons. As a result, investment contributions may vary from year to year and investors need more flexibility than a flat investment limit can provide.</p> <p><b><i>Limits will create problems for reinvestment of proceeds</i></b>  A significant number of commenters raised questions about how investors will be able to reinvest or rollover proceeds from previous investments that are in excess of the investment limits.  One commenter stated that investment limits would interrupt financial plans that are already in place.</p> <p>Commenters pointed out that:</p> <ul style="list-style-type: none"> <li>• Clients with larger amounts of investible assets, who may be looking to move money out of poorer performing investments or out of a company pension plan, may not be able to deploy their desired capital in the same year leaving them vulnerable to the volatility of the public markets.</li> <li>• Clients who are successfully exiting out of investments in which they have already invested more than \$30,000 would not be able to re-invest the full amount of their capital.</li> </ul> <p><b><i>Investment limits may limit diversification</i></b>  Many commenters stated that the proposed investment limits would reduce the ability of investors to create a diversified portfolio, due to the low amounts diversification in an investor’s portfolio.</p> <p>Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• The proposed investment limits may encourage an investor to put the maximum allowed into just one investment, rather than across multiple</li> </ul>	<p>In our view the proposed investment limits provide sufficient flexibility to provide for different investor circumstances and investment approaches.</p> <p>We understand that the proposed investment limits may impact the amount that some individual investors can invest in a given period, however we believe these limits are an appropriate investor protection measure.</p> <p>One of the purposes of the investment limits is to prevent individual investors from becoming over-concentrated in exempt market securities. We believe that the investment limits as revised, provide sufficient flexibility to allow for diversification within exempt market investments.</p>

Topic	Comments	OSC response
	<p>investments, thus discouraging diversification.</p> <ul style="list-style-type: none"> <li>• The proposed investment limits would act as a disincentive to compose a diversified investment portfolio or would make it cost prohibitive to do so.</li> <li>• Reduced diversification would make it harder for investors to recover from investment errors.</li> </ul>	
<b>Impact on registrants</b>	<p>Many commenters stated that the proposed investment limits would negatively impact registrants and particularly EMDs, because they would:</p> <ul style="list-style-type: none"> <li>• create a competitive disadvantage for EMDs,</li> <li>• reduce the number of EMDs in the marketplace and reduce competition in the registrant market,</li> <li>• make it harder for less well-financed EMDs to afford appropriate compliance systems and personnel, and</li> <li>• result in increased costs relating to deal processing, administration and compliance, including reporting of more investors per transaction.</li> </ul> <p>One commenter stated that the EMD category of registration should be fair and consistent with that of IIROC and the MFDA categories of registration.</p> <p>One commenter stated that the proposed investment limits would cause more experienced and educated dealing representatives to leave the industry as they would no longer be able to earn competitive incomes. The dealing representatives that do remain would not be able to offer some of the higher quality offerings with higher minimum investment amounts, nor would they be able to properly diversify client portfolios.</p> <p>One commenter stated that higher priced investments would be dropped by EMDs, or would need to be re-priced, as they would limit a dealing representative's ability to invest a client in a variety of exempt market products.</p> <p>One commenter stated that EMDs compete with securities dealers, mutual fund dealers, and insurance dealers for the same group of investors, but do so at a significant competitive disadvantage because EMDs are effectively limited to selling to eligible and accredited investors, whereas other market participants do not face similar restrictions.</p>	<p>Given that the introduction of an OM exemption in Ontario will significantly broaden the scope of activity that can be carried out by EMDs, we do not agree that EMDs will be placed at a competitive disadvantage.</p> <p>We believe the introduction of an OM exemption in Ontario will provide for new business opportunities for registrants.</p>

Topic	Comments	OSC response
<p><b>Sufficient investor protections already exist in the OM exemption</b></p>	<p>A number of commenters stated that there are already sufficient investor protections built into the form of OM exemption that currently exists in jurisdictions other than Ontario, and that investment limits are not necessary.</p> <p><b>Disclosure in the OM</b> Many commenters noted that investors receive detailed disclosure in the OM.</p> <p>One commenter stated that if the CSA believes that the form of OM does not provide adequate information to protect an investor then the form should be amended to include whatever additional disclosure the CSA believes is necessary to adequately inform the investor, rather than imposing an arbitrary investment limit on investors.</p> <p><b>Rights of action</b> Commenters noted that the OM contains protections for investors, including the right to sue directors for misrepresentation, as well as the right of rescission.</p> <p>One commenter noted that the OM exemption has rights similar to those given to investors buying under a prospectus, under which there are no investment limits. The commenter was of the view that this provides investor protection measures greater than those under most other prospectus exemptions.</p> <p><b>Risk acknowledgement form</b> Some commenters pointed out that the risks of securities acquired under the OM exemption are explained in the risk acknowledgement form provided to investors and were of the view that this is sufficient investor protection.</p>	<p>We acknowledge that some investor protections are already built into the OM exemption that exists in other CSA jurisdictions.</p> <p>However, we concluded that additional investor protections were necessary for the appropriate protection of retail investors.</p>
<p><b>Unintended consequences of investment limits</b></p>	<p>A number of commenters highlighted possible unintended consequences of the proposed investment limits. Some of these included the following:</p> <ul style="list-style-type: none"> <li>• Investment limits will ultimately fail to protect investors by causing the creation of a much higher risk, unregulated underground debt market.</li> <li>• Investment limits could lead to inappropriate behaviour by some EMDs and dealing representatives where the pursuit of commissions will undermine NI 31-103 compliance.</li> <li>• An annual investment limit may result in investors investing in less suitable</li> </ul>	<p>We expect registrants to continue to comply with all of their obligations as set out in NI 31-103.</p> <p>If we see evidence of non-compliance or inappropriate practices as part of our compliance reviews we will take action against registrants as</p>

Topic	Comments	OSC response
	<p>products where they have invested too early or too late in the 12 month period.</p> <ul style="list-style-type: none"> <li>• Investment limits will create an incentive for dealers to aggressively sell investments that are not in the best interest of investors as soon as the 12 month window opens.</li> <li>• Efforts may be taken to circumvent the limits, such as tax planning and corporate structuring by investors.</li> <li>• Investors may move to multiple exempt market dealers and not fully disclose their previous purchases in order to invest as they wish, thus putting themselves at greater risk and having the opposite effect than the proposals were intended to address.</li> <li>• Difficulty in complying with CSA Staff Notice 31-336, particularly for dealers that are related to the issuer.</li> <li>• Misalignment of issuer and dealer interests, resulting in a disincentive to work with registered dealers because dealers are required to conduct a suitability analysis.</li> </ul>	<p>appropriate.</p> <p>In response to comments, we have revised the investment limits to provide greater flexibility in the amount individual eligible investors can invest in OM securities.</p>
<p><b>Impact on mortgage investment companies (MICs)</b></p>	<p>A number of commenters stated that the proposed investment limits would specifically harm MICs and this would reduce mortgage financing for many individuals. It was noted that MICs perform an important role as lenders to creditworthy individuals, and that a negative impact on MICs would harm the efficient operation of the capital markets as MICs serve a market that banks won't.</p>	<p>With the introduction of an OM exemption in Ontario, we expect this will provide increased opportunities for MICs and other real estate entities for raising capital. The OM exemption will allow MICs to raise capital from a broader investor base than was previously permitted.</p>
<p><b>Alternative proposals</b></p>		
<p><b>Limits should be on a per issuer basis</b></p>	<p>Four commenters suggested a better approach would be to have an investment limit on a per issuer basis rather than an annual limit on the investor. For example, this approach could allow an investor to invest up to \$30,000 per issuer on an annual basis, but invest an unlimited amount under the OM exemption involving different issuers.</p>	<p>We considered whether an investment limit should be imposed on a per issuer basis. However, we had concerns that this approach would allow investors to invest potentially significant amounts of</p>



Topic	Comments	OSC response
		<p>money in exempt market securities, potentially resulting in an over-concentration in exempt market securities.</p>
<p><b>Related registrants</b></p>	<p>A few commenters noted there may be particular concerns with the activities of related registrants and that the focus should be on investor protection concerns associated with related registrants. For example, some commenters suggested that instead of investment limits, related registrants should be prohibited from selling securities under the OM exemption. Others stated that investment limits should only be imposed when a related registrant is involved in an offering.</p>	<p>We had originally proposed excluding registrants that are related to an issuer from participating in an OM distribution. However, on considering the comments received, as noted above, we have decided not to implement this type of prohibition.</p> <p>All registrants are subject to the same obligations under NI 31-103. We expect all registrants to fulfill those obligations and to take steps to address conflicts of interest, including avoidance if the conflict is contrary to the interests of a client.</p>
<p><b>Risk disclosure</b></p>	<p>Instead of investment limits, one commenter suggested addressing investor protection concerns by requiring the use of a risk acknowledgement form that describes the possibility of losing all of one's money when investing under the OM exemption and the dangers of allocating more than 10% of one's capital in an illiquid security.</p>	<p>We agree that risk disclosure is an important investor protection tool. The OM exemption requires that a risk acknowledgement form be provided to investors. However, we do not believe that a risk acknowledgement form is a substitute for investment limits.</p> <p>We have added two schedules to the risk acknowledgement form that must be completed by individual investors. One schedule confirms an investor's</p>

Topic	Comments	OSC response
		<p>status as either an eligible or non-eligible investor and asks the investor to confirm which category they meet. The other schedule provides information on the investment limits under the OM exemption and requires investors to confirm they have not exceeded the investment limits.</p>
<p><b>Require trades to be facilitated by a registrant</b></p>	<p>Some commenters suggested only allowing the OM exemption to be relied upon by investors when trades are facilitated by a registrant. By working with a registrant, the investor would benefit from the experience and obligations of registrants.</p>	<p>It is possible for an issuer that is not in the business of trading in securities, to distribute securities under the OM exemption. We expect that in most cases, a registrant will be involved in an OM distribution.</p>
<p><b>Investor education</b></p>	<p>Some commenters suggested that the focus should be on investor education rather than imposing limits on how much individuals can invest.</p>	<p>We agree that investor education is important. However, we do not believe that investor education alone is an appropriate substitute for investment limits.</p>
<p><b>Other types of limits</b></p>	<p>Some commenters suggested that the investment limits should be per offering, rather than annual limits.</p> <p>One commenter recommended a limitation on a product by product basis – for example as a limit per product issuance as a percentage of net financial assets.</p> <p>Two commenters noted that, although opposed to investment limits, any limit would be better defined by a percentage of net assets rather than a flat amount.</p>	<p>We considered whether the investment limits should be on a per offering basis, rather than an annual limit. However we continued to have concerns that this approach would allow investors to invest in multiple offerings up to an unlimited amount.</p> <p>Linking the limits to a type of product would in our view be complicated to apply and monitor.</p>

Topic	Comments	OSC response
		<p>We also considered whether the investment limits should be calculated as a percentage of net income and/or net assets. Ultimately, we had concerns that this approach would be complicated to apply and could be challenging to monitor.</p>
<p><b>Other measures</b></p>	<p>A number of commenters provided suggestions as to other measures that could be implemented to improve investor protection, for example:</p> <ul style="list-style-type: none"> <li>• A greater emphasis should be placed on punishing those who commit fraud.</li> <li>• Regulators should focus on vetting investments rather than imposing investment limits.</li> <li>• Changes should be made to ensure issuers provide better “use of funds” transparency and other disclosure to investors.</li> </ul>	<p>We acknowledge that there are many other ways to enhance investor protection.</p> <p>We note that the OM exemption will require non-reporting issuers to provide some basic information to investors, including:</p> <ul style="list-style-type: none"> <li>• audited annual financial statements,</li> <li>• an annual notice on how the proceeds raised under the OM exemption have been used, and</li> <li>• a notice in the event of a discontinuation of the issuer’s business, a change in the issuer’s industry or a change of control of the issuer.</li> </ul>
<p><b>Applicability of investment limits to individual investors only</b></p>	<p>One commenter stated that there are insufficient reasons to exclude non-individual investors from the proposed investment limits, noting that an investment limit is one investor protection measure that mitigates against the fact that securities are distributed without a prospectus and those concerns apply equally to non-individual investors, such as small, closely-held corporations. The commenter suggested that if the investment limits only apply to individuals, it is possible that entities could be used as a means to circumvent</p>	<p>We continue to believe that investment limits should only be imposed on individual investors (excluding those who qualify as accredited investors or under the <i>Family, friends and business associates</i> exemption).</p>

Topic	Comments	OSC response
	<p>the restrictions and the limit should apply to those entities as well.</p>	<p>We note that the OM exemption includes an anti-avoidance provision that disqualifies use of the exemption by an entity that is set up for the sole purpose of using the exemption. This provision is intended to prevent individuals from creating corporations or other entities in order to circumvent the investment limits.</p>
<p><b>Proposed investment limit amounts of \$10,000 for individual non-eligible investors and \$30,000 for individual eligible investors who are not accredited investors</b></p>	<p>A few commenters expressed agreement that the proposed dollar values for the limits are appropriate, while a number of commenters questioned whether the proposed dollar values were set at the right amounts.</p> <p>Some commenters that objected to limits for eligible investors agreed with the \$10,000 limit for non-eligible investors.</p> <p>One commenter suggested that the limit for eligible investors should be \$50,000, based on data provided by the ASC in the CSA notice and request for comment published on March 20, 2014. This data indicated that the average size of investments by individual investors was \$47,900 in 2012.</p> <p>One commenter suggested that the limits should be based on a calendar year to make it easier for investors to keep track of the limit.</p> <p>Another commenter noted that investors do not follow a “per month” or “per year” investment model and that private investments are often project-based. The stage-based nature of private capital necessitates an investing approach that often results in larger, lump-sum investments. By setting annual investment limits, investors may be encouraged to make rushed investment decisions to acquire the maximum investment limit in a given year.</p> <p>One commenter stated that it is questionable whether most Canadians can afford to lose the amount of the investment limits. The commenter referenced the investor survey previously commissioned by the OSC which found that</p>	<p>We recognize that there are different views on the amount of the investment limits. The \$10,000 limit for individual non-eligible investors is based on the limit in the existing OM exemption available in other CSA jurisdictions.</p> <p>Among other things, we considered data from the Canadian Financial Monitor Survey on the financial circumstances of Canadian households. In our view, an annual \$30,000 investment limits represents a generous limit, based on the average incomes and investment levels of Canadians.</p> <p>While we realize that investments are not necessarily made on an annual basis, we believe this approach will make it easier for investors to apply and monitor.</p> <p>We acknowledge the comment that</p>

Topic	Comments	OSC response
	<p>Canadians' median savings and investments (including RRSPs but excluding the home) are about \$45,000. Almost 6 out of 10 respondents were found to have less than \$50,000 savings and investments. The commenter noted that an investment of \$10,000 in an offering under the OM exemption would represent a significant portion of these individuals' savings.</p>	<p>points out the investor survey previously conducted by the OSC, which suggested Canadians' savings and investments are low. The \$30,000 limit for eligible investors will not be a suitable amount for everyone and where a registrant is involved, a suitability assessment will still need to be conducted.</p>
<p><b>Compliance and enforcement issues</b></p>	<p>Many commenters noted that it is unclear who will monitor investment limits and how they will be enforced. Others raised questions about what consequences would apply, and to whom, if the limits were not adhered to.</p> <p>One commenter stated that securities regulators should not rely on self-certification through the risk acknowledgement form to ensure the investor is within the investment limits, and questioned the value of self-certification in light of significant non-compliance with the accredited investor exemption.</p> <p>One commenter recommended that there be a registry or database maintained by the OSC or CSA, that tracks the amounts invested by a given purchaser in order to guard against abuse of the limits.</p> <p>One commenter stated that costs to ensure compliance with annual limits will inevitably be passed on to clients, divert resources away from more substantive compliance work, and limit issuers' access to capital under the OM exemption.</p> <p>One commenter noted that the ability to accurately track whether investors have achieved their annual limit seems onerous. The commenter referred to the infrastructure required to oversee RRSP contribution limits, noting that it is still possible for taxpayers to over-contribute to their registered plans and it happens regularly, despite the amount of regulation, oversight and accountability in place.</p> <p>One commenter stated that regulators should focus on the enforcement of</p>	<p>We acknowledge that the investment limits may pose some compliance challenges. However, we believe it is appropriate to place some responsibility for complying with the investment limits with investors. We also expect any registrant or issuer involved in the transaction to take reasonable steps to determine whether an investor is within the investment limits, and have added companion policy guidance on the steps that an issuer or registrant can take to confirm compliance with the exemption.</p> <p>Given that a broader group of retail investors will be able to access the exempt market through the OM exemption, the OSC is developing a compliance and oversight program to monitor distributions under the OM exemption.</p>

Topic	Comments	OSC response
	<p>existing rules and regulations to ensure investors can make informed decisions.</p> <p>Some commenters encouraged regulators to take action against registrants that fail to meet suitability and other requirements, so long as this standard is enforced equally among all registrant categories.</p> <p>One commenter stressed that regulators should focus on education and enforcement, not investment limits.</p>	
<b>Risk acknowledgement form</b>		
<b>Further data</b>	<p>One commenter recommended that the OSC gather information from other CSA members on the investor experience with risk acknowledgement forms in the exempt market, and in particular with the OM exemption. The commenter stated that the OSC should publish information disclosing the effectiveness of such forms in light of existing complaints, investigations and enforcement proceedings where such forms were used.</p> <p>One commenter recommended that investor testing could be conducted on the proposed risk acknowledgement form to see whether it would help investors make better investment decisions and help protect investors.</p> <p>One commenter expressed scepticism that the proposed risk acknowledgement form would have any material impact on an investor's decision as to whether to invest in a particular security as any investor protection benefit seems secondary to the benefit to issuers as protection from regulatory action for improper use of the exemption. The commenter recommended that adequate research be performed in this area as there appears to be little or no empirical research into the efficacy of risk acknowledgement forms in protecting investors.</p>	<p>We agree that it would be helpful to have further data regarding the use and effectiveness of risk acknowledgement form and new schedules for individual investors.</p> <p>However, we believe that it is appropriate to adopt a requirement that individuals purchasing securities under the OM exemption sign a risk acknowledgement form and do not want to delay its implementation. We believe that this requirement will help to address concerns around investors not understanding the risks of investing under the OM exemption.</p> <p>At this time we are not moving forward with a new form of risk acknowledgement, but will use the current form already in use in other CSA jurisdictions. However, we have adopted two new schedules to the form. The schedules will require</p>

Topic	Comments	OSC response
		individual investors to verify how they qualify as eligible investors, and also that they are in compliance with the applicable investment limits.
<b>Alternative approaches</b>	<p>One commenter recommended considering alternatives to the risk acknowledgement form, such as leaving it to the issuer or registrant to determine the appropriate form for acknowledging required disclosure, or options to provide greater flexibility to address the needs and circumstances of the broad range of capital market participants. For example, the commenter suggested that it may be appropriate for issuers to be required to obtain a risk acknowledgement form from investors investing below a particular threshold. The commenter expressed the following concerns about the risk acknowledgement form:</p> <ul style="list-style-type: none"> <li>• It is duplicative as most of the information would typically be included in the subscription agreement and/or in the offering document and could be seen as undermining the validity of representations made in subscription agreements or other documents.</li> <li>• The risk acknowledgement form would not better address the investor knowledge gap than existing KYC, KYP, and suitability obligations on dealers. Where dealer obligations do not apply when an investor is purchasing directly from an issuer, concerns can be addressed by requiring the issuer to disclose to the investor that the issuer is not a registrant and not subject to the same obligations to the investor.</li> <li>• The risk acknowledgement form requirement would place an unnecessary administrative burden on issuers as it must be presented to purchasers in physical form and two copies are required to be signed. If the requirement is maintained, accommodation should be made for electronic transmission, execution and retention.</li> <li>• The requirement of the issuer to keep a copy of the risk acknowledgement form for eight years is an unnecessarily lengthy period of time that does not appear to reflect applicable retention or limitation periods under the <i>Securities Act</i> (Ontario) or IIROC requirements.</li> <li>• The proposed investment limits already serve to provide investor protection without the requirement to sign a risk acknowledgement form.</li> </ul>	<p>We do not think that the requirement to obtain risk acknowledgement forms is unduly burdensome on issuers.</p> <p>We do not think it is sufficient for this information to be included in a subscription agreement, which can be a lengthy document that uses technical language. We think it is necessary that investors receive the risk acknowledgement form as a separate document writing using plain language.</p> <p>Further, we do not think that the use of a risk acknowledgement form will undermine the validity of representations made in subscription agreements or offering documents or call into question the ability to rely on them. They are separate documents prepared for a separate purpose.</p> <p>We believe that requiring a risk acknowledgement form is an important investor protection measure that should apply in addition to the current obligations of registrants, as well as in addition to</p>

Topic	Comments	OSC response
	<ul style="list-style-type: none"> <li>In certain circumstances, an “evergreen” risk acknowledgement form may be appropriate, particularly where an investor has an ongoing relationship with a dealer and/or an investment strategy that suits the use of an “evergreen” risk acknowledgement form.</li> </ul> <p>The commenter urged the OSC to allow for electronic execution, dissemination and retention of the risk acknowledgement form and reduce the retention period.</p>	<p>other investor protection measures such as investment limits.</p> <p>We have imposed requirement to retain the signed risk acknowledgement form for eight years because this represents the length of the longest limitation period under Canadian securities legislation.</p> <p>We think that introducing different forms to be used in different circumstances could result in confusion.</p>
<b>Point of sale disclosure</b>		
<b>OM disclosure should be addressed now</b>	<p>One commenter expressed the view that a review of the disclosure required in an OM should be addressed now, noting that critical investor protection aspects should be dealt with at this phase of reform and not left to a later date.</p>	<p>We acknowledge the comment. The current form of OM has been used in other jurisdictions and is familiar to industry. At this time, we think it would be helpful to enhance consistency and reduce confusion by permitting the use of the existing form of OM when the OM exemption is first introduced in Ontario.</p> <p>As noted above, we appreciate that the form of offering memorandum may need to be reconsidered and believe this work would be best pursued on a harmonized basis with other CSA jurisdictions. Any such changes would be considered for a future phase of the exempt market</p>



Topic	Comments	OSC response
		review.
<b>Form of OM</b>	<p><b><i>Support for the use of existing OM form</i></b>  A number of commenters expressed support for adopting the current form of OM. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• There are no specific concerns with the existing disclosure requirements and the current form of OM is adequate.</li> <li>• The OM form contains open-ended questions to encourage significant disclosure. If investors or their advisors are overwhelmed by the nature or amount of the disclosure, they should not be participating in the exempt market.</li> <li>• Liability concerns increase the level of disclosure in the OM.</li> <li>• This is not the time for Ontario to introduce changes to a proven model.</li> </ul> <p><b><i>Recommendations regarding OM disclosure</i></b>  A number of commenters provided recommendations regarding OM disclosure, which focused primarily on streamlining and reducing the length of the OM. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Issuers should include a one-page summary at the beginning of the OM outlining the key risks and returns of the investment in very plain and simple terms.</li> <li>• Clear rules on the length of OMs should be imposed. Other jurisdictions that already use OMs have had issues with respect to the length of the document being equivalent to a prospectus and in order for the OM exemption to be a success in Ontario, a limitation on the length of an OM is very important.</li> <li>• The length of the OM could be reduced for reporting issuers if they were able to incorporate existing continuous disclosure into the OM by reference.</li> <li>• Issuers could prepare an “OM Facts” document that provides an investor with standardized meaningful disclosure similar to the “Fund Facts” document for mutual funds.</li> <li>• Depending on how much capital is being raised, OM offerings may not be financially viable for many SMEs due to the cost of producing the prescribed form of OM that currently exists. Accordingly, a simplified version of the OM could be prepared by firms that raise smaller dollar amounts at a lower cost in order for all sizes of issuers to benefit from the exemption.</li> </ul>	<p>At this time, we are not proposing any substantive changes to the form of OM that is currently used today in other CSA jurisdictions.</p> <p>We appreciate the challenges involved with streamlining the OM in light of liability concerns, and are aware that concerns have been raised around the length of OMs that are being prepared under the current OM exemption.</p> <p>As noted above, we appreciate that the form of offering memorandum may need to be reconsidered and believe this work would be best pursued on a harmonized basis with other CSA jurisdictions. Any such changes would be considered for a future phase of the exempt market review.</p>

Topic	Comments	OSC response
	<ul style="list-style-type: none"> <li>A standardized OM form should be adopted.</li> </ul>	
<b>Guidance on disclosure required in an OM</b>	<p>Some commenters were of the view that further guidance on disclosure requirements for OMs would be helpful. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>More consistent and prescriptive guidance, perhaps resulting from a subsequent CSA review, would be very useful in helping industry understand how it can rely on more concise OMs, yet ensure they are compliant with legal and regulatory expectations.</li> <li>Guidance in the form of best practices publications and industry outreach to law firms would help.</li> <li>Clear guidance regarding what is required to be included in an OM would assist issuers in drafting OMs that contain the disclosure required for investor education and protection.</li> <li>Guidance should be provided around how to concisely provide prospective investors with an understanding of the product, business model and risks.</li> </ul>	<p>Please see the responses to comments above.</p>
<b>Investor protection concerns</b>	<p>One commenter stated that many retail investors are unable to understand the disclosure that is provided to them, so the provision of an OM, even if fully compliant, may not lead to an informed investment decision. The commenter noted that many retail investors lack sufficient financial literacy and many do not read or pay attention to the disclosure provided, often because they rely on their advisor to tell them what they should know or because the sales process encourages them to regard disclosure as a formality.</p>	<p>We acknowledge that there are concerns around the extent to which potential investors read the disclosure that is contained in an OM and if they do, whether they are able to understand it.</p> <p>Developing measures to enhance financial literacy is beyond the scope of the exempt market review.</p> <p>As noted above, we appreciate that the form of offering memorandum may need to be reconsidered and believe this work would be best pursued on a harmonized basis with other CSA jurisdictions. Any such changes would be considered for a</p>

Topic	Comments	OSC response
		future phase of the exempt market review.
<b>Disclosure requirements for blind pool issuers</b>		
<p><b>Blind pool issuers – anticipated use of OM exemption and specific requirements</b></p>	<p><b><i>Ability for blind pool issuers to rely on the OM exemption</i></b></p> <p>Several commenters supported permitting blind pools to use the OM exemption. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Blind pool offerings are important structures for issuers that have a certain segment or market niche category that they want to invest in, but do not have the specific assets lined up.</li> <li>• Blind pools offer flexibility in timing that help the issuer attain “fire sale” prices beneficial for investor returns.</li> <li>• The OM exemption is a beneficial tool for blind pool issuers and would greatly benefit the general investing public and companies seeking capital.</li> <li>• Use of the OM exemption for a blind pool offering is appropriate as long as the business plan and mandate clearly articulates the requirements and attributes of the assets being brought into the pool.</li> </ul> <p>Some commenters did not see there to be a need for blind pool issuers to use the OM exemption, while others were not supportive of blind pool issuers using the exemption. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• It is questionable whether blind pool issuers that have no specific business plan should be able to rely on the OM exemption.</li> <li>• Blind pool issuers are excluded from the proposed crowdfunding exemption and should be excluded here also.</li> <li>• It is not appropriate for blind pools (other than capital pool companies and special purpose acquisition corporations which have comprehensive offering rules) to use the OM exemption.</li> <li>• Blind pools raise investor protection concerns. The OSC should conduct a cost-benefit analysis before permitting blind pools to use the OM exemption. Given the amount of retail capital that blind pools would likely raise from the OM exemption, and the level of risk involved, it may be imprudent to allow blind pools to use the OM exemption.</li> </ul>	<p>We have not imposed any restrictions on the nature of the business that can distribute securities under the OM exemption. As a result, a blind pool issuer or an issuer without a specific business plan may use the exemption. Additionally, we are not imposing any specific disclosure requirements on blind pool issuers or issuers without a specific business plan at this time.</p> <p>This approach is consistent with the existing models of the OM exemption in other jurisdictions today.</p> <p>As noted above, we appreciate that the form of offering memorandum may need to be reconsidered and believe this work would be best pursued on a harmonized basis with other CSA jurisdictions. Any such changes would be considered for a future phase of the exempt market review.</p>

Topic	Comments	OSC response
	<p><b><i>Specific disclosure requirements for blind pool issuers</i></b>  Several commenters were of the view that specific disclosure for blind pool issuers would be beneficial. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• Specific disclosure would be useful to investors. It was noted in particular that the characteristics of blind pool investments differ when compared to individual issuer characteristics.</li> <li>• Specific guidance would be cost effective for issuers (similar to the standard disclosure requirements for capital pool companies under the TSX Venture Exchange’s capital pool company program).</li> </ul> <p>One commenter recommended considering specific disclosure requirements for blind pool issuers.</p> <p>Some commenters provided recommendations around the nature of disclosure relating to blind pool issuers. In particular, commenters indicated that:</p> <ul style="list-style-type: none"> <li>• Disclosure for blind pool issuers should clearly articulate the attributes as well as the requirements for assets to qualify for the blind pool. Subject assets being acquired into a blind pool should be disclosed as acquired, with specific disclosure to both invested and future prospective investors, indicating the attributes of the acquired assets and disclosing how it meets the investment mandate.</li> </ul> <p>Other commenters were of the view that no specific disclosure should be required for blind pool issuers. Commenters stated the following:</p> <ul style="list-style-type: none"> <li>• The current form of OM is sufficient at disclosing material information and is flexible.</li> <li>• OM disclosure should be harmonized for all issuers.</li> </ul>	
<p><b>Other investor protection measures relating to blind pools</b></p>	<p>One commenter, while not supportive of blind pool issuers being able to rely on the OM exemption, suggested that if they are permitted to do so a risk acknowledgement form and professional financial advice should be required for investor protection.</p>	<p>At this time, we are not introducing any specific requirements relating to investments in blind pools under the OM exemption.</p> <p>We note that all individuals who purchase securities under the OM</p>

Topic	Comments	OSC response
		exemption will be required to sign a risk acknowledgement form.
<b>Advertising and marketing materials</b>		
<p><b>Requirement to incorporate by reference into the OM any marketing materials used (with result that liability would attach to marketing materials)</b></p>	<p><b><i>Support for requiring marketing materials to be incorporated by reference</i></b>  A number of commenters supported requiring that marketing materials be incorporated by reference into the OM with resulting liability. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Incorporation of marketing materials is an important requirement as many retail investors will rely on the marketing materials and verbal representations of the seller.</li> <li>• A statutory or contractual right of action should flow from the marketing materials as well as the OM. The practical inability of an investor to recover losses in the event of fraud or other misconduct means that misrepresentation in marketing materials must be prevented at the outset.</li> <li>• It is appropriate for the statutory or contractual right of action for damages or rescission to extend to marketing materials. The availability of a right of action will be a deterrent to the making of misrepresentations in such materials, which are intended to influence the decision making process of prospective investors.</li> <li>• Incorporation by reference would result in more balanced content of marketing materials.</li> <li>• This would facilitate getting information into the clients' hands that is both accessible and unbiased.</li> <li>• Currently, dealers are responsible for reviewing all marketing materials put forward by an issuer through their distribution channels to ensure consistency with an OM. This is extremely onerous and creates concern that liability for misstatements will be directed back at the dealership rather than the issuer who created the documents.</li> <li>• Registrants would welcome better policing of marketing materials.</li> <li>• Issuers should be accountable for providing false information in marketing materials.</li> </ul> <p>One commenter recommended extending the requirement to OMs that are</p>	<p>Issuers relying on the OM exemption will be required to incorporate by reference into the OM any marketing materials used in the distribution.</p> <p>We believe that requiring marketing materials used to sell securities under the OM exemption to be incorporated by reference into the OM is appropriate. We also believe that marketing materials should be subject to the same standard of liability as the OM.</p> <p>As investors may rely on marketing materials in making an investment decision, we believe that this is an important requirement for investor protection, particularly as the OM exemption will open up exempt market investments to retail investors.</p> <p>While we acknowledge the concerns expressed by commenters around the potential burdens on issuers that this requirement could impose, we believe that the benefits in terms of investor protection outweigh the potential burdens.</p>

Topic	Comments	OSC response
	<p>voluntarily delivered to the OSC in non-OM exemption distributions.</p> <p>One commenter noted that there are conflicting market views around incorporation by reference of marketing materials. The commenter indicated that EMDs strongly support incorporating marketing materials by reference into the OM, while issuers feel this could result in increased costs and timelines, as well as reduce flexibility if marketing materials need to be changed or adapted.</p> <p><b><i>Opposition to requiring marketing materials to be incorporated by reference</i></b> Some commenters did not support requiring that marketing materials be incorporated by reference in an OM. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Incorporating marketing materials by reference in the OM would add to existing concerns about liability and may further limit use of the OM exemption.</li> <li>• The proposal does not promote harmonization as no other jurisdiction has a requirement to incorporate by reference marketing materials in an OM.</li> <li>• It may be more difficult to attract investors if issuers choose not to provide marketing materials to investors due to concerns they may be exposing themselves to interpretation and compliance issues.</li> <li>• It would be cost prohibitive to undertake the legal review to ensure that all publically visible information about a company and its products is consistent with the OM disclosure. Historical content would likely be inconsistent with an OM prepared at a later date.</li> <li>• This would make the process and OM document unnecessarily cumbersome and would cause issuers to incur additional and expensive legal costs to complete the OM.</li> <li>• It would be administratively burdensome for issuers to have to send updated marketing materials to investors after the OM is issued.</li> </ul>	<p>At this time, we do not propose to extend the same requirement to OMs that are voluntarily provided under other prospectus exemptions.</p>
<p><b>Content of marketing materials</b></p>	<p>One commenter stated that marketing materials should be required to reproduce the type of language found in many risk acknowledgement forms about the risk of loss of the investment principal and ongoing exposure to illiquidity risk.</p> <p>One commenter stated that as investors should be making their investment</p>	<p>We thank commenters for their feedback. For consistency, we have based the definition of OM standard term sheet on the existing definition of “standard term sheet” found in National Instrument 41-101 <i>General</i></p>

Topic	Comments	OSC response
	<p>decisions based on information disclosed in the OM, all marketing materials should be derived from information contained within the OM which provides investors with statutory rights from misrepresentation.</p> <p>One commenter was supportive of the prescribed content of the OM standard term sheet (as defined in the proposal) but suggested that clarifying statements in the OM marketing materials would be needed to ensure that investors are aware that marketing materials, whether or not they form part of an OM, are never a replacement for the full disclosure contained in that OM.</p> <p>One commenter noted that part (c) of the definition of “OM standard term sheet” restricts the information that may be included in such a term sheet and tracks the definition of “standard term sheet” found in NI 41-101. The commenter suggested that certain changes be made to the information that can be included in a “standard term sheet” and also in the OM standard term sheet.</p>	<p><i>Prospectus Requirements</i> (NI 41-101).</p>
<p><b>Additional guidance on appropriate marketing practices in 45-106CP</b></p>	<p><b><i>Concerns with proposed guidance</i></b></p> <p>One commenter indicated that the proposed guidance in section 3.3 of the companion policy to NI 45-106 appears to impose local content requirements and disclosure standards on marketing materials used in Ontario in addition to or in place of an OM. The commenter stated that if this is the intention, then it should be in a rule rather than in a companion policy.</p> <p>One commenter raised the following objections with respect to the proposed guidance:</p> <ul style="list-style-type: none"> <li>• The creation of content requirements or disclosure standards for marketing materials used in the context of private placements will discourage participation in the Canadian exempt market and will further reduce Canadian institutional investors’ access to exempt market securities, including, in particular, foreign securities.</li> <li>• The range of persons who are obliged to review the marketing materials is too broad. “Seller” as presently defined is non-exhaustive and expressly includes registered dealers. This should be clearly limited to the issuer and/or selling security holder, as applicable, who are actually selling the securities.</li> </ul>	<p>The new guidance on advertising and marketing materials has been adopted by those jurisdictions that are making amendments to the OM exemption, in addition to Ontario.</p> <p>The guidance in this section relates to the requirement that marketing materials be incorporated by reference into the OM. This means that the marketing materials will be subject to the issuer certificate that confirms there is no misrepresentation in the OM.</p> <p>We expect that registrants that use marketing materials to distribute securities should also be responsible for reviewing the marketing materials.</p>

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	<ul style="list-style-type: none"> <li>• Marketing materials should not be held to a new, separate standard of being “fair, balanced and not misleading”. The final marketing rules for prospectus offerings in Canada did not adopt a “fair, true and plain” standard for marketing materials.</li> <li>• The general expectation that a “seller” will confirm “whether any claims set out in the marketing materials adequately refer to the information to support these claims” should be removed as it is vague and goes beyond what is required in marketing materials used in connection with public offerings.</li> </ul> <p><b>Recommendations for additional guidance</b></p> <p>Two commenters recommended further guidance as to what constitutes an issuer’s marketing materials, beyond the offering document and a related investor presentation. These commenters expressed concern if this is intended to include general corporate, product, competitive and market information that might be contained on an issuer’s website, blog, published white papers, etc., which could be inconsistent with current disclosure in the OM.</p> <p>One commenter noted that some EMDs and issuers are providing what they call “analyst reports” to investors, and indicated that it would be helpful to have further guidance from the OSC and a consistent approach across the CSA on whether such reports can, or should, be used. The commenter indicated that concerns have been raised regarding liability and registration requirements involving the providers of such reports and potential overreliance on the reports in place of KYP obligations.</p>	<p>Similar guidance was previously published in CSA Staff Notice 31-336 <i>Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations</i> (NI 31-336) which stated that in meeting the “your product” obligation, registrants should conduct their own product assessment to ensure that any third-party report is “fair balanced and not misleading”.</p> <p>Given that the OM exemption can be used to distribute securities to retail investors (not just accredited investors) we believe the proposed guidance is appropriate.</p>
<p><b>Additional concerns regarding marketing materials</b></p>	<p>One commenter stated that additional steps need to be taken with respect to marketing materials in order to prevent investor harm. Specifically, the commenter recommended the following measures:</p> <ul style="list-style-type: none"> <li>• Regulators’ expectations regarding permitted advertising and marketing should be made clear. For example, marketing materials should not be permitted to misuse hypothetical data, provide misleading returns or make misleading statements about the investment’s tax efficiency.</li> <li>• Misleading marketing and advertising should not be permitted to be cured through fine print disclosure on the materials, since the expectation that</li> </ul>	<p>We have included additional guidance in the companion policy to NI 45-106 regarding the use of marketing materials.</p> <p>Issuers using marketing materials in connection with a distribution under the OM exemption will be required to incorporate the marketing materials</p>



Topic	Comments	OSC response
	<p>such disclosure will be read is low.</p> <ul style="list-style-type: none"> <li>Marketing materials should contain a description of the key risks associated with the investment.</li> </ul>	<p>by reference into the OM. As a result, marketing materials will be subject to liability in the event of a misrepresentation.</p> <p>Further, marketing materials used in connection with a distribution under the OM exemption will be required to be filed with securities regulators. We believe that imposing a filing requirement will provide for greater accountability around the preparation and use of marketing materials, as well as greater ability of securities regulators to monitor industry practices around the use of marketing materials.</p>
<b>Right of withdrawal</b>		
<b>Two business day right of withdrawal</b>	<p>One commenter was of the view that the timing requirement for the delivery of the notice required by subsection 2.9(6) of NI 45-106 is ambiguous as an issuer may not know exactly when a purchaser “signs” the purchase agreement and may only know when the issuer receives the agreement or when the purchaser sends the agreement to the issuer. Given this ambiguity, the commenter recommended providing a more specific time from which to calculate the two-day period.</p>	<p>The two business day right of withdrawal provision has not been changed from the provision that currently exists in the form of OM exemption available in other CSA jurisdictions. For consistency, we have adopted the same provisions.</p> <p>In our view there should be no ambiguity about the date on which the purchaser signs the purchase agreement.</p>

Topic	Comments	OSC response
<b>Disclosure requirements for non-reporting issuers</b>		
<b>Disclosure requirements</b>		
<p><b>Support for requiring non-reporting issuers to provide audited annual financial statements, an annual notice on how the proceeds raised under the OM exemption have been used and notice of specified key events</b></p>	<p>A number of commenters were generally supportive of requiring non-reporting issuers to provide to investors that acquire securities under the OM exemption:</p> <ul style="list-style-type: none"> <li>• audited annual financial statements,</li> <li>• an annual notice on how the proceeds raised under the OM exemption have been used, and</li> <li>• a notice of specified key events.</li> </ul> <p>Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Providing disclosure is a prudent business practice to earn trust with investors.</li> <li>• The requirement to provide disclosure recognizes a vital need for investors to remain informed about the performance of their investment.</li> <li>• Requiring disclosure from issuers will provide a basic standard and a more consistent expectation throughout industry.</li> <li>• Issuers are often willing to provide updated disclosure during the capital raising stage of a project, but after capital is raised EMDs no longer have leverage to ensure an issuer provides ongoing financial updates or changes to the registrant or investors. Many EMDs spend a significant amount of time, energy and expense monitoring issuers they have raised capital for historically, to be able to provide insight and updates to their investor clients.</li> </ul> <p>One commenter expressed support for disclosure of the aggregate proceeds raised and for audited annual financial statements, but questioned whether there would be compliance with such requirements and whether it would ensure sufficient accountability to retail investors.</p> <p>One commenter was of the view that the following information would be meaningful to investors:</p> <ul style="list-style-type: none"> <li>• detailed financial statements that are informative and reliable, and</li> <li>• material changes that are communicated in a timely fashion.</li> </ul>	<p>We acknowledge the support of commenters.</p> <p>We acknowledge the comment regarding the challenge of adopting a “one size fits all” approach to ongoing disclosure, as well as the recommendation to require disclosure from issuers that involve greater risks. However, at this time we believe that it is appropriate to require the same level of disclosure from all issuers that are offering securities under the OM exemption, as this will enhance consistency and certainty regarding the disclosure that is provided.</p> <p>As noted above, we will monitor use of the OM exemption after it is implemented in Ontario through a compliance and oversight program.</p> <p>We are aware that the audit requirement could impose an additional burden on some smaller issuers and we will consider this matter during a future phase of our exempt market review.</p>

Topic	Comments	OSC response
	<p>One commenter conditionally agreed with the proposals, noting that disclosure requirements would increase costs for issuers and ultimately for investors, thereby further narrowing the difference in cost between raising capital under a prospectus and under the OM exemption. The commenter suggested limiting the proposed disclosure to industry categories deemed to be more open to fraud, abuse or undue investor risk.</p> <p>One commenter recommended a requirement similar to that for dealers to provide an annual “fund facts” type document and make available the current OM (if currently raising capital) at the investor’s request.</p> <p>One commenter indicated that the challenge is to identify the level of disclosure required and the time period of disclosure to make this a meaningful requirement to benefit investors, noting that due to the variety of investment opportunities, a “one size fits all” approach may not be applicable.</p> <p>One commenter requested clarification in the companion policy to NI 45-106 to address situations where an issuer relying on the OM exemption is lending or otherwise advancing distribution proceeds to a related entity. The commenter was of the view that investor protection would be better served if these entities are also required to provide disclosure similar to that required for the issuer.</p> <p>Two commenters had no objection to requiring some basic disclosure of issuers that have used the OM exemption, provided that relief can be provided to issuers in certain circumstances.</p>	
<p><b>Concerns with requiring non-reporting issuers to provide audited annual financial statements, an annual notice on how the proceeds raised under the OM exemption have been used and notice of specified key events</b></p>	<p>Several commenters were not supportive of requiring issuers to provide to investors that acquire securities under the OM exemption:</p> <ul style="list-style-type: none"> <li>• audited annual financial statements,</li> <li>• an annual notice on how the proceeds raised under the OM exemption have been used, and</li> <li>• a notice of specified key events.</li> </ul> <p>Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• Imposing disclosure obligations on non-reporting issuers confuses the</li> </ul>	<p>We acknowledge that some commenters expressed concerns with requiring non-reporting issuers to provide disclosure, particularly with respect to the potential costs and additional burdens that such a requirement would impose. We also acknowledge that it is a significant departure from current rules to</p>

Topic	Comments	OSC response
	<p data-bbox="638 256 1325 282">difference between reporting issuers and non-reporting issuers.</p> <ul data-bbox="590 293 1465 613" style="list-style-type: none"> <li data-bbox="590 293 1465 354">• This would be an unnecessary administrative and financial burden on non-reporting issuers.</li> <li data-bbox="590 358 1465 418">• Requiring non-reporting issuers to adopt provide this disclosure will have a chilling effect on the use of the OM exemption by non-reporting issuers.</li> <li data-bbox="590 423 1465 483">• If compliance costs and risks are too high, it will not be practical for SMEs to use the OM exemption.</li> <li data-bbox="590 488 1465 548">• Adding disclosure requirements would increase costs and further reduce any cost advantage of the OM exemption to undertaking a prospectus financing.</li> <li data-bbox="590 553 1465 613">• Disclosure requirements should be limited to what is required by corporate law.</li> </ul>	<p data-bbox="1493 256 1839 316">require non-reporting issuers to provide this type of disclosure.</p> <p data-bbox="1493 358 1898 607">However, we believe it is important for investors to receive some basic disclosure regarding the issuers they are investing in. In particular, since the OM exemption will allow non-reporting issuers to raise capital from a large number of retail investors, we believe that this is appropriate.</p> <p data-bbox="1493 651 1898 802">The requirement to make reasonably available to investors these items of disclosure imposes a level of accountability on an issuer and its directors and officers.</p> <p data-bbox="1493 846 1898 1094">While some issuers that sell securities under the OM exemption will be required by corporate law to provide certain disclosure to shareholders, many issuers in the exempt market are not corporations and are therefore not governed by corporate law statutes.</p> <p data-bbox="1493 1138 1877 1321">We are aware that the audit requirement could impose an additional burden on some smaller issuers and we will consider this matter during a future phase of our exempt market review.</p>

Topic	Comments	OSC response
<b>Harmonization</b>	Several commenters expressed concern regarding potential dis-harmonization, noting that disclosure requirements should be consistent among all jurisdictions.	<p>We agree that harmonization is an important goal.</p> <p>The participating jurisdictions have worked together and have substantially harmonized disclosure requirements relating to annual financial statements and notice of use of proceeds raised under the OM exemption.</p>
<b>Alternative to requiring disclosure</b>	One commenter was of the view that instead of mandating specific disclosure to be provided, issuers using the OM exemption should be required to specify in the OM both the disclosure they will provide to security holders and the length of time during which disclosure will be provided, so that potential investors can consider this in making an investment decision. The commenter also recommended that purchasers have a right of action against the issuer in circumstances where the issuer does not satisfy its commitment to provide disclosure or the disclosure contains a misrepresentation.	We thank the commenter for this suggestion. We are introducing some basic disclosure requirements for non-reporting issuers that raise money using the OM exemption. We believe that this will help to ensure consistency in the disclosure that is provided to investors.
<b>Financial statements</b>		
<b>Requirement to provide audited annual financial statements</b>	<p><b><i>Support for requiring audited annual financial statements</i></b></p> <p>A number of commenters supported requiring audited annual financial statements to be provided by non-reporting issuers. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Audited financial statements should be provided to investors prior to investing so they have the information necessary to help make an informed investment decision.</li> <li>• There is an absence of empirical data to support the assertion that the cost of preparing audited financial statements is prohibitively expensive for capital raising.</li> <li>• Since it appears that many issuers using the OM exemption are not organized under corporate law statutes and are not subject to an annual financial statement requirement, it is essential that this be required under</li> </ul>	<p>We believe that annual audited financial statements provide valuable information to investors with respect to their investment.</p> <p>However, we also acknowledge that the preparation of financial statements, particularly audited financial statements, involves additional cost for issuers. We understand that this cost may be of particular concern to early stage issuers and that requiring audited</p>

Topic	Comments	OSC response
	<p>the OM exemption.</p> <ul style="list-style-type: none"> <li>• While adding cost, providing audited annual financial statements will help to make issuers accountable to investors, particularly with respect to the use of proceeds.</li> <li>• Issuers using the OM exemption should, at minimum, provide investors with audited financial statements, ongoing performance data on the assets, and enhanced disclosure on the use of funds.</li> </ul> <p>One commenter supported requiring issuers to provide annual audited financial statements until such time as fundraising is complete and the funds have been allocated. Once funds have been used for a project however, the commenter was of the view that requiring additional audits would create an unnecessary expense for the issuer (and ultimately the investor).</p> <p>One commenter indicated that there is a lack of a comprehensive method to release this information to investors, noting that some issuers have a few thousand investors which makes distribution difficult and costly. It was suggested that adding information to issuer or EMD websites could be an alternative.</p> <p>One commenter recommended that the requirement to provide audited annual financial statements be extended to all issuers relying on exemptions in NI 45-106.</p> <p><b>Opposition to requiring audited annual financial statements</b>  Many commenters did not support requiring audited annual financial statements to be provided by non-reporting issuers. Commenters expressed concern in particular with the cost associated with preparing audited financial statements. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Particularly for early stage businesses, the costs associated with an annual audit can be significant and issuers should not be required to incur such costs simply because they have issued securities under the OM exemption.</li> <li>• Requiring audited annual financial statements is not an appropriate requirement for non-reporting issuers which are often in an early stage of development.</li> </ul>	<p>financial statements could be a deterrent to some small issuers using the OM exemption.</p> <p>At this time, we are imposing a requirement for all issuers to provide audited annual financial statements both at the point of sale and on an ongoing basis.</p> <p>As noted above, we are aware that the audit requirement could impose an additional burden on some smaller issuers and we will consider this matter during a future phase of our exempt market review.</p> <p>We have provided guidance on how issuers can fulfil the requirement to “make reasonably available” the required disclosure to investors, for example by posting materials to the issuer’s website.</p>

Topic	Comments	OSC response
	<ul style="list-style-type: none"> <li>• This requirement could be a disincentive to using the OM exemption.</li> <li>• This would be a significant departure from current expectations relating to non-reporting issuers.</li> <li>• This would place financial and administrative burdens on non-reporting issuers.</li> <li>• Investors participating in a distribution under the OM exemption are protected as they will be required to acknowledge, in the proposed risk acknowledgement form, that they will be provided with less disclosure than reporting issuers are required to provide to their investors.</li> <li>• The cost of audits can be prohibitive and a better solution would be to ensure investors have the right to receive the information and to pay for an audit.</li> <li>• It would be preferable to see an alternative way of reporting financial information that would not necessarily require a full audit.</li> <li>• Investors have voted at every opportunity to reject audits or the implementation of IFRS.</li> <li>• Audits do not offer protection from fraud.</li> <li>• Existing corporate law imposes a requirement to provide annual audited financial statements to shareholders, unless such shareholders have agreed to dispense with the requirement.</li> <li>• Some industries have much higher audit costs than others.</li> </ul>	
<p><b>Alternative approach</b></p>	<p>One commenter stated that it would be preferable to require disclosure in the OM of the type of financial information and other reporting that investors can expect to receive and then allow investors to decide whether they are willing to acquire the securities offered.</p> <p>Another commenter specifically rejected the proposed alternative approach of requiring that the issuer provide disclosure on the type and amount of continuous disclosure that it proposes to provide to investors, noting that this will likely result in very little disclosure being available. The commenter was of the view that disclosure of the rights investors have (or do not have) is inferior to requiring basic protections.</p>	<p>We thank the commenters for their suggestions. We are introducing a requirement that non-reporting issuers that raise money using the OM exemption provide to investors:</p> <ul style="list-style-type: none"> <li>• audited annual financial statements,</li> <li>• an annual notice on how the proceeds raised under the OM exemption have been used, and</li> <li>• a notice in the event of a discontinuation of the issuer's</li> </ul>

Topic	Comments	OSC response
		<p>business, a change in the issuer’s industry or a change in control of the issuer.</p> <p>We believe that this will help to ensure consistency in the disclosure that is provided to investors and will also ensure that this includes financial disclosure.</p>
<p><b>Threshold for requiring annual financial statements to be audited</b></p>	<p><b><i>Threshold for audited statements</i></b></p> <p>One commenter stated all financial statements should be audited regardless of the size of the company.</p> <p>A number of commenters supported imposing a threshold above which financial statements would be required to be audited. The following comments were provided regarding the appropriate threshold:</p> <ul style="list-style-type: none"> <li>• If the aggregate amount raised is \$500,000 or less, a review of financial statements is adequate.</li> <li>• Two commenters supported audited financial statements for capital raises of \$500,000 or more, but for amounts less than \$500,000, a review of financial statements is adequate.</li> <li>• One commenter suggested a threshold of \$750,000.</li> <li>• One commenter stated annual financial statements should be audited, on an ongoing basis, if an issuer has raised more than a \$1 million, subject to exigent circumstances.</li> <li>• Another commenter also supported requiring annual audited financial statements on an ongoing basis if an issuer has raised more than \$1 million and expended more than \$250,000, subject to providing relief to issuers that face particular challenges. Review engagement financial statements are adequate for amounts raised by an issuer in excess of \$500,000 but less than \$1 million.</li> <li>• One commenter suggested the threshold not be less than \$3 million.</li> <li>• One commenter suggested that review engagement financial statements are adequate for amounts raised by an issuer under any prospectus</li> </ul>	<p>At this time, we are imposing a requirement for all issuers to provide audited annual financial statements both at the point of sale and on an ongoing basis.</p> <p>As noted above, we are aware that the audit requirement could impose an additional burden on some smaller issuers and we will consider this matter during a future phase of our exempt market review.</p>



Topic	Comments	OSC response
	<p>exemption in excess of \$500,000, but less than \$1 million.</p> <ul style="list-style-type: none"> <li>• One commenter did not support the requirement for audited financial statements unless the threshold was increased to \$2 million.</li> </ul> <p>While not supportive of requiring audited financial statements, one commenter suggested in the alternative that a threshold for the requirement be implemented similar to that proposed for the crowdfunding exemption. The commenter noted that industry participants are best suited to recommend an appropriate threshold which should be meaningfully high (for example, \$2.5 million) and recommended that small companies be exempt from the requirement.</p> <p>One commenter recommended the use of annual reviewed statements by an independent public accounting firm and requiring the delivery of audited financial statements at the point of sale when reporting issuers rely on the OM exemption.</p> <p>One commenter was of the view that the OM exemption would be a more useful financing tool if smaller issuers received exemptive relief from the audited financial statements requirement for smaller financings (i.e., less than \$ 1 million) similar to that provided by Multilateral CSA Notice 45-311 <i>Exemptions from Certain Financial Statement-Related Requirements in the Offering Memorandum Exemption to Facilitate Access to Capital by Small Businesses</i>.</p> <p>One commenter noted that each CSA member (other than British Columbia and Ontario) issued blanket orders that provide relief from the audited financial statement requirement and the requirement for issuers to prepare financial statements using Canadian GAAP applicable to publicly accountable enterprises provided that certain conditions are met. The commenter was of the view that the OSC should provide similar relief to that set out in the blanket orders as part of the OM exemption instead of requiring issuers to seek exemptive relief, and that the minimum threshold for when an audit is required should be increased from \$500,000 to \$1 million.</p>	

Topic	Comments	OSC response
<p><b>Requirement that audited annual financial statements must comply with the requirements of section 4.1 of NI 51-102 and NI 52-107</b></p>	<p>Some commenters did not support requiring companies to change from preparing financial statements in accordance with ASPE to preparation in accordance with IFRS, noting this would result in additional expense.</p> <p>One commenter noted that the requirement for audited financial statements to be prepared in accordance with IFRS would require market value appraisals on an ongoing basis for real estate based investments which would increase the cost of the IFRS audits and reduce profitability to shareholders.</p>	<p>We note that issuers that currently use the OM exemption in other CSA jurisdictions are required to include audited financial statements in the OM that are prepared in accordance with IFRS.</p> <p>In order to provide consistency in the information provided to investors, we have required that ongoing financial statements also be prepared in accordance with IFRS.</p>
<p><b>Notice of specified key events</b></p>		
<p><b>Requirement for non-reporting issuers to provide notice in the event of a discontinuation of the issuer's business, a change in the issuer's industry or a change in control of the issuer, within 10 days of the event</b></p>	<p><b><i>Support for the requirement to provide notice of specified key events</i></b></p> <p>A number of commenters expressed support for requiring non-reporting issuers to report key events. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• It is critical that shareholders and investors are aware of significant events that happen within any company whether it is a reporting or non-reporting issuer.</li> <li>• Despite the additional costs, providing notice of certain events should be required as it is beneficial to investors.</li> <li>• Investors should receive timely notice of these events as they may materially change the risk, time horizon or nature of the investment.</li> </ul> <p>One commenter expressed support for requiring issuers to provide notice of the listed events but questioned whether issuers would comply with the requirement.</p> <p>One commenter suggested that the requirement should be restricted to issuers that have raised over \$1M under the OM exemption.</p> <p>Some commenters supported requiring issuers to provide notice of certain events, as long as it could be done in a manner that would not be overly</p>	<p>Non-reporting issuers that distribute securities under the OM exemption will be required to provide investors with notice of certain specified events.</p> <p>We agree with the commenters that investors should be informed of certain key events. While in some cases, the statute under which an issuer was formed will already require that notification of certain key events be provided to shareholders, we believe that the OM exemption will be used by a variety of issuer types. Some issuer structures (in particular, non-corporate entities) may not otherwise be required to notify investors of these events.</p>

Topic	Comments	OSC response
	<p>burdensome. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• Reporting significant events should be done in a cost effective manner.</li> <li>• An “access equals delivery” system should be permitted for all updates.</li> <li>• Communication from issuers to investors should be encouraged to be in electronic form (i.e., email or notification on the issuer’s website).</li> </ul> <p>Additionally, some commenters expressed concern with requiring that notice be provided within 10 days of the event, and recommended that the time frame be increased to 15 or 20 days, or to provide for quarterly reporting. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• SMEs may not have the resources to disseminate the information within 10 days.</li> <li>• A 10 day period is onerous for a private company. Private security holders do not have trading decisions available to public security holders that require this sort of disclosure.</li> </ul> <p>Two commenters encouraged reporting of the listed events provided that the OSC and the CSA consider adopting a form of secondary market trading in the private capital markets as part of phase two of the exempt market review.</p> <p><b>Objections to requirement to provide notice of specified key events</b> Some commenters were not supportive of requiring issuers to provide notice of the listed events. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• The requirement is overly onerous.</li> <li>• The events requiring disclosure are similar to those that would be considered “material” (as defined in the <i>Securities Act (Ontario)</i>), however these events are not defined with reference to a generally accepted and understood standard, such as “materiality”, and the language used (i.e., “fundamental change” and “significant change”) is subject to interpretation and is ambiguous.</li> <li>• As investors who purchase securities from non-reporting issuers under the OM exemption have no ability to sell their securities other than pursuant to another prospectus exemption or under a prospectus, the requirement may have little or no impact on the market for these securities.</li> <li>• The requirement would result in further de-harmonization of the OM</li> </ul>	<p>We appreciate that some sophisticated investors may be able to negotiate access to information about issuers they invest in. However, the introduction of the OM exemption in Ontario will provide retail investors with greater opportunities to invest in the exempt market, and we do not expect that retail investors will generally be in a position to negotiate with respect to the type of information they would like to receive on an ongoing basis.</p> <p>Even though the securities of a non-reporting issuer are subject to an indefinite hold period, notice of the specified events could still be of value to a retail investor.</p> <p>We have reconsidered the list of proposed events in the March 2014 proposal, and have streamlined the list to include the following events:</p> <ul style="list-style-type: none"> <li>• a discontinuation of the issuer’s business,</li> <li>• a change in the issuer’s industry, and</li> <li>• a change of control of the issuer.</li> </ul> <p>This streamlined list sets out an objective set of events that issuers must provide notice of.</p> <p>We appreciate that this is a new</p>

Topic	Comments	OSC response
	<p>exemption.</p> <ul style="list-style-type: none"> <li>• The list of events is not sufficiently defined and should be better aligned with concepts or terms which have been considered under Canadian jurisprudence. Some terms may cause confusion regarding the trigger for when to report, such as “significant acquisition” or “major reorganization”.</li> <li>• A materiality threshold may result in smaller issuers being required to file more reports than larger issuers. This could be costly and onerous for smaller issuers.</li> <li>• The requirement would increase the costs of using the OM exemption.</li> <li>• The value of the benefits of such disclosure is uncertain.</li> </ul>	<p>requirement that will be imposed on non-reporting issuers. We are of the view that the requirement would represent a relatively minimal administrative burden on an issuer (including a SME) since:</p> <ul style="list-style-type: none"> <li>• the events included in the list would likely only occur infrequently, and</li> <li>• we have prescribed a form that sets parameters as to the nature and comprehensiveness of the information that would be required to be provided.</li> </ul> <p>We have provided guidance in the companion policy on ways this information can be made reasonably available to investors.</p> <p>We are of the view that a ten day notice period is appropriate and do not think that it is overly burdensome. We believe that the revised list of events are significant in nature and their occurrence should be communicated to investors in a timely manner.</p>
<b>Events requiring notice</b>	<p>Commenters that supported requiring issuers to provide notice of the events identified in the notice and request for comment generally agreed with the proposed list of events. However, one commenter expressed support for the list, assuming that it did not contain any items that issuers would be subject to reporting on under corporate law.</p>	<p>We have reconsidered the list of events identified in the March 2014 proposal, and have streamlined the list to include only the following events:</p> <ul style="list-style-type: none"> <li>• a discontinuation of the issuer’s</li> </ul>

Topic	Comments	OSC response
	<p>One commenter agreed with the events listed in the proposal but was of the view that disclosure of the events is not sufficient. The commenter recommended that a special resolution of investors be required prior to the occurrence of any of the events so that investors have assurance that the issuer will not deviate from the stated business plan.</p>	<p>business,</p> <ul style="list-style-type: none"> <li>• a change in the issuer’s industry, and</li> <li>• a change of control of the issuer.</li> </ul> <p>Requiring a special resolution of investors prior to the occurrence of any of the events is beyond the scope of the exempt market review.</p>
<b>Time period during which disclosure is required</b>		
<p><b>Requirement to provide disclosure until the earliest of: (i) issuer becoming a reporting issuer or (ii) issuer ceasing to carry on business</b></p>	<p><b><i>Support for proposed time during which disclosure must be provided</i></b>  A number of commenters supporting requiring non-reporting issuers to provide the specified disclosure until the earliest of (i) the issuer becoming a reporting issuer or (ii) the issuer ceasing to carry on business. Further, one commenter added that non-reporting issuers should be mandated to report to all investors and any dealerships that have raised capital on their behalf until such time as they are reporting issuers, cease to carry on business, or fully exit investors of their investment.</p> <p><b><i>Concerns with this proposed requirement</i></b>  Several commenters expressed concern with the proposal, noting that the proposed time period for providing disclosure is too long.</p> <p><b><i>Other events that would warrant expiration of the disclosure requirements</i></b>  Several commenters were of the view that there are no other events that should trigger the end of the requirement to provide disclosure.</p> <p>One commenter stated that no other events would warrant expiration of the requirement to provide the required disclosure, but noted that as the market provides feedback over time, events may arise which would prompt a change to the proposed requirement.</p> <p>One commenter was of the view that the required disclosure should be provided</p>	<p>Non-reporting issuers that distribute securities under the OM exemption will be required to provide disclosure until the earliest of (i) the date the issuer becomes a reporting issuer, or (ii) the date the issuer ceases to carry on business.</p> <p>We think that this is an appropriate time frame within which non-reporting issuers should be required to provide disclosure to investors. Once an issuer becomes a reporting issuer, it will become subject to continuous disclosure requirements under securities law, which are more robust than the disclosure requirements under the OM exemption. As a result, we do not think that a reporting issuer should be subject to the specific disclosure requirements under the OM exemption.</p>

Topic	Comments	OSC response
	<p>as long as an investor has capital invested with the issuer, and there is a financial relationship ongoing.</p> <p>One commenter recommended considering additional events that would permit a non-reporting issuer to cease providing the required disclosure, including going private transactions, the issuer being purchased by a third party or falling below a certain threshold number of shareholders (for example, where the issuer qualifies as a “private issuer”). Another commenter was of the view that non-reporting issuers should not be required to provide disclosure after the proceeds have been spent.</p>	<p>We think it is important that issuers receive certain information regarding their investment. The specified time period ensures that issuers are subject to a requirement to provide certain information to investors, regardless of whether or not they are reporting issuers.</p> <p>As long as an issuer has investors that acquired securities under the OM exemption, then the issuer must continue to provide disclosure as required by the exemption, until either the issuer ceases to carry on business or becomes a reporting issuer.</p>
<b>Other disclosure</b>		
<p><b>Additional disclosure that would be useful for investors</b></p>	<p>A number of commenters were of the view that there was no other disclosure that issuers should be required to provide to investors. One commenter noted that the proposed disclosure is sufficient and expressed concern that additional disclosure would undermine the purpose of the OM exemption.</p> <p>One commenter was of the view additional disclosure requirements will inevitably need to be implemented as the market adapts and accepts the proposed changes.</p> <p>Some commenters recommended additional disclosure that would be useful to investors. Specific comments included the following:</p> <ul style="list-style-type: none"> <li>• It would not be unreasonable to expect issuers to provide quarterly or bi-annual updates, as is required by dealers to provide regular statements to investors under NI 31-103.</li> <li>• An issuer should be required to disclose whether any of its principals have</li> </ul>	<p>We have introduced a requirement for basic disclosure that we believe will provide useful information to investors and will not be unduly burdensome for issuers.</p>

Topic	Comments	OSC response
	<p>invested their own money in the issuer, at a minimum, and whether they continue to have a financial stake in the issuer.</p> <ul style="list-style-type: none"> <li>• Quarterly financial reporting (but not MD&amp;A) should be required. Given the availability of accounting software it is not an onerous requirement for a company to produce quarterly statements.</li> <li>• Immediate disclosure of formal demands for payment from current creditors and suppliers, notices related to bankruptcy, insolvency or credit restructurings and the commencement of legal proceedings would be useful to investors and not costly for issuers to disclose.</li> <li>• Disclosure of a non-reporting issuer’s cash on hand position and anticipated statement on prospective cash holdings would be easy enough to disclose and could be useful to investors.</li> </ul>	
<b>Reports of exempt distribution</b>		
<p><b>Requirement to disclose category of “eligible investor” under which the investor falls</b></p>	<p><b><i>Commenters in favour of collecting information regarding category of eligible investor</i></b></p> <p>Several commenters agreed with the proposal to collect information regarding the category of eligible investor that each investor falls under, while others supported the collection of this information subject to certain caveats.</p> <p>One commenter had no objection to the collection of this information but stated that in the interest of harmonization the OSC and CSA should work together to create one form of report.</p> <p>One commenter noted that important policies are being determined without sufficient data and supported improvements to the ability to monitor the use of capital raising exemptions to better inform policy making in the future.</p> <p>One commenter stated the private markets are in need of more information to better calculate trends and market conditions and suggested a summary of the information (keeping specific details in confidence as proposed) be made available to industry participants via the OSC’s Bulletin.</p> <p>One commenter stated this would be appropriate but add category for Angel</p>	<p>We have not adopted the proposed new reports of exempt distribution that were published for comment (Form 45-106F10 and Form 45-106F11).</p> <p>The CSA has separately initiated a project to revise the current report of exempt distribution on Form 45-106F1 on a harmonized basis. Proposed amendments were published for comment on August 13, 2015.</p> <p>We have considered these comments as part of that initiative.</p>

Topic	Comments	OSC response
	<p>Investor too.</p> <p>One commenter agreed so long as the information will not appear in the public domain.</p> <p>While of the view that information regarding the category of eligible investor appears to be something that the securities commissions may wish to have to track use of the OM exemption, if this information is available from the exchanges in the case of listed issuers it should only be required in the report of exempt distribution from non-listed issuers.</p> <p><b>Commenters not in support of collecting information regarding category of “eligible investor”</b></p> <p>Several commenters did not support the collection of information regarding the category of eligible investor of investors purchasing securities under the OM exemption. Commenters noted the following:</p> <ul style="list-style-type: none"> <li>• While the collection of this information could be warranted if there was a specific research intent that could better the industry, without understanding the specific reasons why this is contemplated it seems to be overreaching by the regulator and the extra reporting is unwarranted.</li> <li>• The proposed mandatory requirement to file Form 45-106F11 adds additional compliance cost to SMEs. Accordingly, if the Form is introduced it should be voluntary.</li> </ul> <p><b>Harmonization</b></p> <p>Several commenters encouraged all members of the CSA to harmonize the form for reporting exempt distributions. One commenter indicated that localized versions of the Reports of Exempt Distribution will preclude achieving such a robust data set for setting policy based on objective criteria.</p> <p><b>Technology</b></p> <p>One commenter strongly urged all securities regulators to implement any necessary technology changes so as to require and obtain information electronically, noting that this will allow for easier manipulation and use of the data.</p>	



Topic	Comments	OSC response
	<p><b>Other comments regarding investor information</b>            One commenter stated not all information is made available to issuers (such as email address or age of investor) and as most investor databases store date of birth, not age, providing an age range would be costly and administratively burdensome.</p>	
<b>Activity fees</b>		
<b>Proposed activity fees</b>	<p><b>Support for the proposed fees</b>            Eight commenters were of the view that the proposed fees are appropriate. One of these commenters stated that the fees charged should cover the true costs of enhanced compliance and monitoring programs.</p> <p><b>Opposition to the proposed fees</b>            Two commenters stated that the proposed fees are not appropriate. One of these commenters stated the proposed activity fees are excessive for SMEs and suggested reducing all fees in OSC Rule 13-502 <i>Fees</i> by 50%.</p> <p>One commenter stated that the OSC should consider reducing fees where possible as issuers looking to take advantage of the private markets are already inundated by fees. The commenter also noted that adding to the cost of capital ultimately affects the investors who must cover those fees.</p> <p><b>No additional fees</b>            Nine commenters stated that no other activity fees should be required.</p>	<p>We are sensitive to the concerns of SMEs regarding the cost of capital raising. However, we also believe that it is important that we monitor capital raising activity under any new prospectus exemptions. The purpose of requiring an activity fee for filing an exempt distribution report is cost recovery for compliance programs.</p> <p>Given that a broader group of retail investors will be able to access the exempt market through the OM exemption, the OSC is developing a compliance and oversight program to monitor distributions under the OM exemption.</p>
<b>Harmonization</b>	<p>Two commenters expressed frustration at the lack of harmonization across jurisdictions with respect to fees.</p>	<p>Due to the fact that each securities regulatory authority is a separate provincial body, with different governance structures and fee models, fees are determined by each securities regulatory authority.</p>

Topic	Comments	OSC response
<p><b>Data on fees</b></p>	<p>One commenter encouraged regulators to collect and publish data relating to the cost of administering and monitoring the exempt market, as well on the fees raised through filings. The commenter suggested it would be beneficial if the OSC could determine:</p> <ul style="list-style-type: none"> <li>• if participants are ultimately paying a proportionate share of fees relative to the regulatory costs generated by their distribution channel, and</li> <li>• which modes of capital raising are actually most efficient from an overall welfare perspective.</li> </ul> <p>Another commenter stated that the exempt market should be monitored to make sure exempt market participants are paying for their relative share of monitoring and compliance costs.</p>	<p>We thank commenters for these suggestions. The OSC publishes an annual report each year of its activities, which includes financial statements that contain information about the OSC's expenditures as well as fees collected by the OSC.</p>

## ANNEX G-4

## OM PROSPECTUS EXEMPTION

UNOFFICIAL CONSOLIDATION OF SELECT PROVISIONS OF  
NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

## PART 1 — DEFINITIONS AND INTERPRETATION

## Definitions

## 1.1 In this Instrument

“eligibility adviser” means

- (a) a person that is registered as an investment dealer and authorized to give advice with respect to the type of security being distributed, and
- (b) in Manitoba, also means a lawyer who is a practicing member in good standing with a law society of a jurisdiction of Canada or a public accountant who is a member in good standing of an institute or association of chartered accountants, certified general accountants or certified management accountants in a jurisdiction of Canada provided that the lawyer or public accountant must not
  - (i) have a professional, business or personal relationship with the issuer, or any of its directors, executive officers, founders, or control persons, and
  - (ii) have acted for or been retained personally or otherwise as an employee, executive officer, director, associate or partner of a person that has acted for or been retained by the issuer or any of its directors, executive officers, founders or control persons within the previous 12 months;

“eligible investor” means

- (a) a person whose
  - (i) net assets, alone or with a spouse, in the case of an individual, exceed \$400 000,
  - (ii) net income before taxes exceeded \$75 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or
  - (iii) net income before taxes, alone or with a spouse, in the case of an individual, exceeded \$125 000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year,
- (b) a person of which a majority of the voting securities are beneficially owned by eligible investors or a majority of the directors are eligible investors,
- (c) a general partnership of which all of the partners are eligible investors,
- (d) a limited partnership of which the majority of the general partners are eligible investors,
- (e) a trust or estate in which all of the beneficiaries or a majority of the trustees or executors are eligible investors,
- (f) an accredited investor,
- (g) a person described in section 2.5 [*Family, friends and business associates*], or

- (h) in Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, a person that has obtained advice regarding the suitability of the investment and, if the person is resident in a jurisdiction of Canada, that advice has been obtained from an eligibility adviser.

1.1.1 In this Instrument, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan

“date of transition to IFRS” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“exempt market dealer” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“first IFRS financial statements” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“investment dealer” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“new financial year” means the financial year of an issuer that immediately follows a transition year;

“old financial year” means the financial year of an issuer that immediately precedes a transition year;

“OM marketing materials” means a written communication, other than an OM standard term sheet, intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that contains material facts relating to an issuer, securities or an offering;

“OM standard term sheet” means a written communication intended for prospective purchasers regarding a distribution of securities under an offering memorandum delivered under section 2.9 [*Offering memorandum*] that

- (a) is dated,
- (b) includes the following legend, or words to the same effect, on the first page:
- “This document does not provide disclosure of all information required for an investor to make an informed investment decision. Investors should read the offering memorandum, especially the risk factors relating to the securities offered, before making an investment decision.”,
- (c) contains only the following information in respect of the issuer, the securities or the offering:
- (i) the name of the issuer;
  - (ii) the jurisdiction or foreign jurisdiction in which the issuer’s head office is located;
  - (iii) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;
  - (iv) a brief description of the business of the issuer;
  - (v) a brief description of the securities;
  - (vi) the price or price range of the securities;
  - (vii) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;
  - (viii) the names of any agent, finder or other intermediary, whether registered or not, involved with the offering and the amount of any commission, fee or discount payable to them;
  - (ix) the proposed or expected closing date of the offering;
  - (x) a brief description of the use of proceeds;
  - (xi) the exchange on which the securities are proposed to be listed, if any, provided that the OM standard term sheet complies with the requirements of securities legislation for listing representations;

- (xii) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;
  - (xiii) in the case of preferred shares, a brief description of any dividends payable on the securities;
  - (xiv) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;
  - (xv) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;
  - (xvi) in the case of restricted securities, a brief description of the restriction;
  - (xvii) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;
  - (xviii) whether the securities are redeemable or retractable;
  - (xix) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;
  - (xx) contact information for the issuer or any registrant involved, and
- (d) for the purposes of paragraph (c), “brief description” means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the OM standard term sheet;

“portfolio manager” has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“SEC issuer” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

“specified derivative” has the same meaning as in National Instrument 44-102 *Shelf Distributions*;

“structured finance product” has the same meaning as in National Instrument 25-101 *Designated Rating Organizations*;

“transition year” means the financial year of an issuer in which the issuer has changed its financial year end;

“U.S. laws” has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*.

## PART 2 — PROSPECTUS EXEMPTIONS

### DIVISION 1 — CAPITAL RAISING EXEMPTIONS

#### Offering memorandum

**2.9 (1)** In British Columbia and Newfoundland and Labrador, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal, and
- (b) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
  - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
  - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15).

**(2)** In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the purchaser is an eligible investor or the acquisition cost to the purchaser does not exceed \$10 000,

- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
  - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
  - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and
- (d) if the issuer is an investment fund, the investment fund is
  - (i) a non-redeemable investment fund, or
  - (ii) a mutual fund that is a reporting issuer.

**(2.1)** In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a purchaser if

- (a) the purchaser purchases the security as principal,
- (b) the acquisition cost of all securities acquired by a purchaser who is an individual under this section in the preceding 12 months does not exceed the following amounts:
  - (i) in the case of a purchaser that is not an eligible investor, \$10 000;
  - (ii) in the case of a purchaser that is an eligible investor, \$30 000;
  - (iii) in the case of a purchaser that is an eligible investor and that received advice from a portfolio manager, investment dealer or exempt market dealer that the investment is suitable, \$100 000,
- (c) at the same time or before the purchaser signs the agreement to purchase the security, the issuer
  - (i) delivers an offering memorandum to the purchaser in compliance with subsections (5) to (13), and
  - (ii) obtains a signed risk acknowledgement from the purchaser in compliance with subsection (15), and
- (d) the security distributed by the issuer is not either of the following:
  - (i) a specified derivative;
  - (ii) a structured finance product.

**(2.2)** The prospectus exemption described in subsection (2.1) is not available

- (a) in Alberta, Nova Scotia and Saskatchewan, to an issuer that is an investment fund, unless the issuer is a non-redeemable investment fund or a mutual fund that is a reporting issuer, or
- (b) in New Brunswick, Ontario and Québec, to an issuer that is an investment fund.

**(2.3)** The investment limits described in subparagraphs (2.1)(b)(ii) and (iii) do not apply if the purchaser is

- (a) an accredited investor, or
- (b) a person described in subsection 2.5(1) [*Family, friends and business associates*].

**(3)** In Manitoba, Northwest Territories, Nunavut, Prince Edward Island and Yukon, this section does not apply to a distribution of a security to a person described in paragraph (a) of the definition of "eligible investor" in section 1.1 [*Definitions*] if that person was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2).

**(3.0.1)** In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, this section does not apply to a distribution of a security to a person that was created, or is used, solely to purchase or hold securities in reliance on the exemption from the prospectus requirement set out in subsection (2.1).

**(3.1)** Subsections (1), (2) and (2.1) do not apply to a distribution of a short-term securitized product.

(4) No commission or finder's fee may be paid to any person, other than a registered dealer, in connection with a distribution to a purchaser in the Northwest Territories, Nunavut and Yukon under subsection (2).

(5) An offering memorandum delivered under this section must be in the required form.

(5.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, an offering memorandum delivered under subsection (2.1)

- (a) must incorporate by reference, by way of a statement in the offering memorandum, OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution, and
- (b) is deemed to incorporate by reference OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective purchaser before the termination of the distribution.

(5.2) A portfolio manager, investment dealer or exempt market dealer must not distribute OM marketing materials unless the OM marketing materials have been approved in writing by the issuer.

(6) If the securities legislation where the purchaser is resident does not provide a comparable right, an offering memorandum delivered under this section must provide the purchaser with a contractual right to cancel the agreement to purchase the security by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement to purchase the security.

(7) If the securities legislation where the purchaser is resident does not provide statutory rights of action in the event of a misrepresentation in an offering memorandum delivered under this section, the offering memorandum must contain a contractual right of action against the issuer for rescission or damages that

- (a) is available to the purchaser if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the purchaser relied on the misrepresentation,
- (b) is enforceable by the purchaser delivering a notice to the issuer
  - (i) in the case of an action for rescission, within 180 days after the purchaser signs the agreement to purchase the security, or
  - (ii) in the case of an action for damages, before the earlier of
    - (A) 180 days after the purchaser first has knowledge of the facts giving rise to the cause of action, or
    - (B) 3 years after the date the purchaser signs the agreement to purchase the security,
- (c) is subject to the defence that the purchaser had knowledge of the misrepresentation,
- (d) in the case of an action for damages, provides that the amount recoverable
  - (i) must not exceed the price at which the security was offered, and
  - (ii) does not include all or any part of the damages that the issuer proves does not represent the depreciation in value of the security resulting from the misrepresentation, and
- (e) is in addition to, and does not detract from, any other right of the purchaser.

(8) An offering memorandum delivered under this section must contain a certificate that states the following: "This offering memorandum does not contain a misrepresentation."

(9) If the issuer is a company, a certificate under subsection (8) must be signed

- (a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity,

- (b) on behalf of the directors of the issuer, by
  - (i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or
  - (ii) all the directors of the issuer, and
- (c) by each promoter of the issuer.

**(10)** If the issuer is a trust, a certificate under subsection (8) must be signed by

- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
- (b) each trustee and the manager of the issuer.

**(10.1)** If a trustee or the manager that is signing the certificate of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
  - (i) by the chief executive officer and the chief financial officer of the trustee or the manager, and
  - (ii) on behalf of the board of directors of the trustee or the manager, by
    - (A) any two directors of the trustee or the manager, other than the persons referred to in subparagraph (i), or
    - (B) all of the directors of the trustee or the manager,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection (11.1) in relation to an issuer that is a limited partnership, or
- (d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to act on behalf of the trustee or the manager.

**(10.2)** Despite subsections (10) and (10.1), if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.

**(10.3)** Despite subsections (10) and (10.1), if the trustees of an issuer, other than an investment fund, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the certificate of the issuer if at least two individuals who perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

**(11)** If the issuer is a limited partnership, a certificate under subsection (8) must be signed by

- (a) each individual who performs a function for the issuer similar to any of those performed by the chief executive officer or the chief financial officer of a company, and
- (b) each general partner of the issuer.

**(11.1)** If a general partner of the issuer is

- (a) an individual, the individual must sign the certificate,
- (b) a company, the certificate must be signed
  - (i) by the chief executive officer and the chief financial officer of the general partner, and
  - (ii) on behalf of the board of directors of the general partner, by



- (A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or
- (B) all of the directors of the general partner,
- (c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this subsection applies to each general partner required to sign,
- (d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection 10 in relation to an issuer that is a trust, or
- (e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person or company with authority to act on behalf of the general partner.

**(12)** If an issuer is not a company, trust or limited partnership, a certificate under subsection (8) must be signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in subsections (9), (10), (10.1), (10.2), (10.3), (11) and (11.1).

**(13)** A certificate under subsection (8) must be true

- (a) at the date the certificate is signed, and
- (b) at the date the offering memorandum is delivered to the purchaser.

**(14)** If a certificate under subsection (8) ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the security from the purchaser unless

- (a) the purchaser receives an update of the offering memorandum,
- (b) the update of the offering memorandum contains a newly dated certificate signed in compliance with subsection (9), (10), (10.1), (10.2), (10.3), (11) or (11.1) and
- (c) the purchaser re-signs the agreement to purchase the security.

**(15)** A risk acknowledgement under subsection (1), (2) or (2.1) must be in the required form and an issuer relying on subsection (1), (2) or (2.1) must retain the signed risk acknowledgment for 8 years after the distribution.

**(16)** The issuer must

- (a) hold in trust all consideration received from the purchaser in connection with a distribution of a security under subsection (1), (2) or (2.1) until midnight on the 2nd business day after the purchaser signs the agreement to purchase the security, and
- (b) return all consideration to the purchaser promptly if the purchaser exercises the right to cancel the agreement to purchase the security described under subsection (6).

**(17)** The issuer must file a copy of an offering memorandum delivered under this section and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

**(17.1)** In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the issuer must file with the securities regulatory authority a copy of all OM marketing materials required or deemed to be incorporated by reference into an offering memorandum delivered under this section,

- (a) if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum, or
- (b) if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being delivered or made reasonably available to a prospective purchaser.

**(17.2)** OM marketing materials filed under subsection (17.1) must include a cover page clearly identifying the offering memorandum to which they relate.

**(17.3)** Subsections (17.4) to (17.21) apply to issuers that rely on subsection (2.1) and that are not reporting issuers in any jurisdiction of Canada.

**(17.4)** In Alberta, an issuer must, within 120 days after the end of each of its financial years, file with the securities regulatory authority annual financial statements and make them reasonably available to each holder of a security acquired under subsection (2.1).

**(17.5)** In New Brunswick, Ontario, Québec and Saskatchewan, an issuer must, within 120 days after the end of each of its financial years, deliver annual financial statements to the securities regulatory authority and make them reasonably available to each holder of a security acquired under subsection (2.1).

**(17.6)** In Nova Scotia, an issuer must, within 120 days after the end of each of its financial years, make reasonably available annual financial statements to each holder of a security acquired under subsection (2.1).

**(17.7)** Despite subsections (17.4), (17.5) and (17.6), as applicable, if an issuer is required to file, deliver or make reasonably available annual financial statements for a financial year that ended before the issuer distributed securities under subsection (2.1) for the first time, those annual financial statements must be filed in Alberta, delivered in New Brunswick, Ontario, Québec and Saskatchewan or made reasonably available in Nova Scotia, as applicable, on or before the later of

- (a) the 60<sup>th</sup> day after the issuer first distributes securities under subsection (2.1), and
- (b) the deadline in subsection (17.4), (17.5) or (17.6), as applicable, to file, deliver or make reasonably available the annual financial statements.

**(17.8)** The annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must include

- (a) a statement of comprehensive income, a statement of changes in equity, and a statement of cash flows for
  - (i) the most recently completed financial year, and
  - (ii) the financial year immediately preceding the most recently completed financial year, if any,
- (b) a statement of financial position as at the end of each of the periods referred to in paragraph (a),
- (c) in the following circumstances, a statement of financial position as at the beginning of the financial year immediately preceding the most recently completed financial year:
  - (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
  - (ii) the issuer
    - (A) applies an accounting policy retrospectively in its annual financial statements,
    - (B) makes a retrospective restatement of items in its annual financial statements, or
    - (C) reclassifies items in its annual financial statements,
- (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS, and
- (e) notes to the annual financial statements.

**(17.9)** If the annual financial statements referred to in subsection (17.8) present the components of profit or loss in a separate income statement, the separate income statement must be displayed immediately before the statement of comprehensive income referred to in subsection (17.8).

**(17.10)** The annual financial statements referred to in subsection (17.8) must be audited.

**(17.11)** Despite subsection (17.10), for the first annual financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6), comparative information relating to the preceding financial year is not required to be audited if it has not been previously audited.

**(17.12)** Any period referred to in subsection (17.8) that has not been audited must be clearly labelled as unaudited.

**(17.13)** In Alberta, New Brunswick, Ontario, Québec and Saskatchewan, if an issuer decides to change its financial year end by more than 14 days, it must deliver to the securities regulatory authority and make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

- (a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5), and
- (b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsections (17.4) and (17.5).

**(17.14)** In Nova Scotia, if an issuer decides to change its financial year end by more than 14 days, it must make reasonably available to each holder of a security acquired under subsection (2.1) a notice containing the information set out in subsection (17.15) as soon as practicable and, in any event, no later than the earlier of

- (a) the deadline, based on the issuer's old financial year end, for the next annual financial statements referred to in subsection (17.6), and
- (b) the deadline, based on the issuer's new financial year end, for the next annual financial statements referred to in subsection (17.6).

**(17.15)** The notice referred to in subsections (17.13) and (17.14) must state

- (a) that the issuer has decided to change its financial year end,
- (b) the reason for the change,
- (c) the issuer's old financial year end,
- (d) the issuer's new financial year end,
- (e) the length and ending date of the periods, including the comparative periods, of the annual financial statements referred to in subsections (17.4), (17.5) and (17.6) for the issuer's transition year and its new financial year, and
- (f) the filing deadline for the annual financial statements for the issuer's transition year.

**(17.16)** If a transition year is less than 9 months in length, the issuer must include as comparative financial information to its annual financial statements for its new financial year

- (a) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its transition year,
- (b) a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows, and notes to the financial statements for its old financial year,
- (c) in the following circumstances, a statement of financial position as at the beginning of the old financial year:
  - (i) the issuer discloses in its annual financial statements an unreserved statement of compliance with IFRS, and
  - (ii) the issuer
    - (A) applies an accounting policy retrospectively in its annual financial statements,
    - (B) makes a retrospective restatement of items in its annual financial statements, or
    - (C) reclassifies items in its annual financial statements, and
- (d) in the case of the issuer's first IFRS financial statements, the opening IFRS statement of financial position at the date of transition to IFRS.

(17.17) A transition year must not exceed 15 months.

(17.18) An SEC issuer satisfies subsections (17.13), (17.14) and (17.16) if

- (a) it complies with the requirements of U.S. laws relating to a change of fiscal year, and
- (b) it delivers a copy of all materials required by U.S. laws relating to a change in fiscal year to the securities regulatory authority at the same time as, or as soon as practicable after, they are filed with or furnished to the SEC and, in any event, no later than 120 days after the end of its most recently completed financial year.

(17.19) The financial statements of an issuer referred to in subsections (17.4), (17.5) and (17.6) must be accompanied by a notice of the issuer disclosing in reasonable detail the use of the aggregate gross proceeds raised by the issuer under section 2.9 in accordance with Form 45-106F16, unless the issuer has previously disclosed the use of the aggregate gross proceeds in accordance with Form 45-106F16.

(17.20) In New Brunswick, Nova Scotia and Ontario, an issuer must make reasonably available to each holder of a security acquired under subsection (2.1) a notice of each of the following events in accordance with Form 45-106F17, within 10 days of the occurrence of the event:

- (a) a discontinuation of the issuer's business;
- (b) a change in the issuer's industry;
- (c) a change of control of the issuer.

(17.21) An issuer is required to make the disclosure required respectively by subsections (17.4), (17.5), (17.6), (17.19) and (17.20) until the earliest of

- (a) the date the issuer becomes a reporting issuer in any jurisdiction of Canada, and
- (b) the date the issuer ceases to carry on business.

(17.22) In Ontario, an issuer that is not a reporting issuer in Ontario that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (Ontario).

(17.23) In New Brunswick, an issuer that is not a reporting issuer in New Brunswick that distributes securities in reliance on the exemption in subsection (2.1) is designated a market participant under the *Securities Act* (New Brunswick).

(18) Repealed. [B.C. Reg. 86/2011, s. (e).].

## PART 6 — REPORTING REQUIREMENTS

### Report of exempt distribution

6.1 (1) Subject to subsection (2) and section 6.2 [*When report not required*], issuers that distribute their own securities and underwriters that distribute securities they acquired under section 2.33 must file a report if they make the distribution under one or more of the following exemptions:

- (a) section 2.3 [*Accredited investor*] or, in Ontario, section 73.3 of the *Securities Act* (Ontario) [*Accredited investor*];
- (b) section 2.5 [*Family, friends and business associates*];
- (c) subsection 2.9(1), (2) or (2.1) [*Offering memorandum*];
- (d) section 2.10 [*Minimum amount investment*];
- (e) section 2.12 [*Asset acquisition*];
- (f) section 2.13 [*Petroleum, natural gas and mining properties*];
- (g) section 2.14 [*Securities for debt*];

- (h) section 2.19 [*Additional investment in investment funds*];
- (i) section 2.30 [*Isolated distribution by issuer*];
- (j) section 5.2 [*TSX Venture Exchange offering*].

(2) The issuer or underwriter must file the report in the jurisdiction where the distribution takes place no later than 10 days after the distribution.

#### **Required form of offering memorandum**

**6.4 (1)** The required form of offering memorandum under section 2.9 [*Offering memorandum*] is Form 45-106F2.

(2) Despite subsection (1), a qualifying issuer may prepare an offering memorandum in accordance with Form 45-106F3.

#### **Required form of risk acknowledgement**

**6.5 (0.1)** The required form of risk acknowledgement under subsection 2.3(6) [*Accredited investor*] is Form 45-106F9.

(1) The required form of risk acknowledgement under subsection 2.9(15) [*Offering memorandum*] is Form 45-106F4.

(1.1) In Alberta, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan, the required form of risk acknowledgement for individual investors includes Schedule 1 *Classification of Investors Under the Offering Memorandum Exemption* and Schedule 2 *Investment Limits for Investors Under the Offering Memorandum Exemption* to Form 45-106F4.

(2) In Saskatchewan, the required form of risk acknowledgement under section 2.6 [*Family, friends and business associates – Saskatchewan*] is Form 45-106F5.

### **PART 8 – TRANSITIONAL, COMING INTO FORCE**

**8.4.1** Transition – offering memorandum exemption – update of offering memorandum – Despite subsection 2.9(5.1), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, an issuer is not required to update an offering memorandum that was filed in the local jurisdiction before April 30, 2016, solely to incorporate the statement required under paragraph 2.9(5.1)(a), unless the offering memorandum would otherwise be required to be updated pursuant to subsection 2.9(14) or Instruction B.12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers*.

**8.4.2** Transition – offering memorandum exemption – marketing materials – Despite paragraph 2.9(17.1)(a), in Alberta, New Brunswick, Nova Scotia, Québec and Saskatchewan, OM marketing materials that relate to an offering memorandum that was filed in the local jurisdiction before April 30, 2016 and that are delivered or made reasonably available after April 30, 2016 must be filed within 10 days from the earlier of delivery to, or being made reasonably available to, a prospective purchaser.

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