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# Table of Contents

<p><b>Chapter 1 Notices .....6179</b></p> <p><b>1.1 Notices .....6179</b></p> <p>1.1.1 CSA Notice of Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages .....6179</p> <p>1.1.2 CSA Staff Notice 11-342 Notice of Local Amendments and Changes in Certain Jurisdictions .....6218</p> <p>1.1.3 OSC Notice of General Order – Ontario Instrument 45-506 Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order) .....6227</p> <p><b>1.2 Notices of Hearing ..... (nil)</b></p> <p><b>1.3 Notices of Hearing with Related Statements of Allegations ..... (nil)</b></p> <p><b>1.4 Notices from the Office of the Secretary .....6229</b></p> <p>1.4.1 Coinsquare Ltd. et al. ....6229</p> <p>1.4.2 Majd Kitmitto et al. ....6229</p> <p><b>1.5 Notices from the Office of the Secretary with Related Statements of Allegations ..... (nil)</b></p> <p><b>Chapter 2 Decisions, Orders and Rulings .....6231</b></p> <p><b>2.1 Decisions .....6231</b></p> <p>2.1.1 Auxly Cannabis Group Inc. and AltaCorp Capital Inc. ....6231</p> <p><b>2.2 Orders.....6237</b></p> <p>2.2.1 Ontario Instrument 45-506 Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order) .....6237</p> <p>2.2.2 Majd Kitmitto et al. ....6266</p> <p><b>2.3 Orders with Related Settlement Agreements..... (nil)</b></p> <p><b>2.4 Rulings ..... (nil)</b></p> <p><b>Chapter 3 Reasons: Decisions, Orders and Rulings .....6267</b></p> <p><b>3.1 OSC Decisions.....6267</b></p> <p>3.1.1 Coinsquare Ltd. et al. – ss. 127, 127.1 .....6267</p> <p><b>3.2 Director’s Decisions..... (nil)</b></p> <p><b>Chapter 4 Cease Trading Orders .....6271</b></p> <p>4.1.1 Temporary, Permanent &amp; Rescinding Issuer Cease Trading Orders .....6271</p> <p>4.2.1 Temporary, Permanent &amp; Rescinding Management Cease Trading Orders .....6271</p> <p>4.2.2 Outstanding Management &amp; Insider Cease Trading Orders .....6271</p>	<p><b>Chapter 5 Rules and Policies ..... (nil)</b></p> <p><b>Chapter 6 Request for Comments ..... 6273</b></p> <p>6.1.1 Proposed Amendments to OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions and Proposed Changes to Companion Policy 48-501CP – Request for Comments ..... 6273</p> <p><b>Chapter 7 Insider Reporting ..... 6291</b></p> <p><b>Chapter 9 Legislation..... (nil)</b></p> <p><b>Chapter 11 IPOs, New Issues and Secondary Financings..... 6343</b></p> <p><b>Chapter 12 Registrations..... 6351</b></p> <p>12.1.1 Registrants..... 6351</p> <p><b>Chapter 13 SROs, Marketplaces, Clearing Agencies and Trade Repositories ..... (nil)</b></p> <p><b>13.1 SROs ..... (nil)</b></p> <p><b>13.2 Marketplaces ..... (nil)</b></p> <p><b>13.3 Clearing Agencies ..... (nil)</b></p> <p><b>13.4 Trade Repositories ..... (nil)</b></p> <p><b>Chapter 25 Other Information ..... (nil)</b></p> <p><b>Index ..... 6353</b></p>
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# Chapter 1

## Notices

### 1.1 Notices

#### 1.1.1 CSA Notice of Amendments to National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

#### CSA Notice of

Amendments to National Instrument 45-106 *Prospectus Exemptions* and  
National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

and

Changes to Companion Policy 45-106CP *Prospectus Exemptions* and  
Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

relating to Syndicated Mortgages

August 6, 2020

#### Introduction

The Canadian Securities Administrators (the **CSA** or we) are making the following amendments and changes relating to syndicated mortgages (collectively, the **Amendments**):

- National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**); and
- Companion Policy 45-106CP *Prospectus Exemptions* (**45-106CP**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

The Amendments were originally published for comment on March 8, 2018 (the **2018 Proposal**) and revised proposals were published for a second comment period on March 15, 2019 (the **2019 Proposal**).

#### Substance and Purpose

The Amendments include changes to certain prospectus and registration exemptions available for the distribution of syndicated mortgages, including the following:

- removing the prospectus and registration exemptions under sections 2.36 of NI 45-106 and 8.12 of NI 31-103 (the **Mortgage Exemptions**) respectively for the distribution of syndicated mortgages in Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon;<sup>1</sup>
- introducing additional requirements to the offering memorandum prospectus exemption under section 2.9 of NI 45-106 (the **OM Exemption**) that will apply when the exemption is used to distribute syndicated mortgages; and
- amending the private issuer prospectus exemption under section 2.4 of NI 45-106 (the **Private Issuer Exemption**) so that it is not available for the distribution of syndicated mortgages.

<sup>1</sup> Syndicated mortgages are already excluded from the Mortgage Exemptions in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan.

### Summary of Changes to the 2018 Proposal

We received 26 comment letters in response to the 2018 Proposal.

As a result of the comments:

- Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador proposed dealer registration and prospectus exemptions, and Alberta and Québec proposed a prospectus exemption, for qualified syndicated mortgages, similar to the exemptions already available in British Columbia under British Columbia Rule 45-501 *Mortgages (BCI 45-501)*;
- Alberta proposed a prospectus exemption for syndicated mortgages distributed to permitted clients similar to the prospectus exemption for distributions of syndicated mortgages to “institutional investors” under BCI 45-501;
- we proposed changes to the Amendments related to the OM Exemption, including:
  - changing the date of a property appraisal to be within 6 months preceding the date the appraisal is delivered to the purchaser instead of 12 months;
  - eliminating the proposed mortgage broker certificate; and
  - providing additional guidance as to the identity of the issuer of a syndicated mortgage; and
- we changed the proposed effective dates so that all the amendments will come into effect at the same time, instead of having the prospectus-related amendments come into effect before the registration-related amendments.

These proposed changes were published for comment in the 2019 Proposal and are substantially included in the Amendments.

### Summary of Changes to the 2019 Proposal

We received 11 comment letters in response to the 2019 Proposal. The comments are summarized in Annex A to this notice.

The Amendments are substantially the same as the 2019 Proposal. As a result of the comments:

- we clarified the definition of a professional association;
- we included additional examples of potential risk factors in the instructions to Item 3 of Form 45-106F18 *Supplemental Disclosure for Syndicated Mortgages (Form 45-106F18)*;
- we revised Item 7 of Form 45-106F18 to include disclosure of the potential subordination of the syndicated mortgage and to clarify the calculation of the loan-to-value ratio;
- we changed the effective date to March 1, 2021; and
- certain jurisdictions are proposing additional changes to their local exemptions for syndicated mortgages, as described in Annex F for those jurisdictions.

### Impact on Investors

Investors in syndicated mortgages who purchase under the OM Exemption will be entitled to enhanced disclosure relating to their investment. We anticipate that this additional disclosure would result in more informed investment decisions and enable registrants involved in the distribution to better fulfil their obligations related to the distribution.

Investors will also benefit from the protections associated with the involvement of a registrant in the distribution in all jurisdictions.

### Anticipated Costs and Benefits of the Amendments

The anticipated costs and benefits of the Amendments are expected to be substantially the same as described in the March 2018 Proposal. In those jurisdictions that are adopting local amendments or changes, including an exemption for qualified syndicated mortgages, Annex F may contain further discussion.

## Alternatives Considered

We considered adopting the 2019 Proposal in the original form as well as the alternatives suggested by the commenters as detailed in Annex A.

## Local Matters

Annex F is being published in any local jurisdiction that is proposing related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It may also include additional information that is relevant to that jurisdiction only.

In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. Provided all ministerial approvals are obtained, the Amendments will come into force on March 1, 2021.

## Annexes

Annex A – Summary of Comments and Responses

Annex B – Amendments to National Instrument 45-106 *Prospectus Exemptions*

Annex C – Changes to Companion Policy 45-106CP *Prospectus Exemptions*

Annex D – Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex E – Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex F – Local Matters

## Questions

Please refer your questions to any of the following:

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## Notices

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## ANNEX A

## SUMMARY OF COMMENTS AND RESPONSES

Commenter
Appraisal Institute of Canada (Keith Lancaster)
The Canadian Advocacy Council for Canadian CFA Institute Societies
Canadian Foundation for Advancement of Investor Rights (Ermanno Pascutto and Vanisha Sukdeo)
Firm Capital Corporation (Eli Dadouch)
Foremost Financial Corporation (Evan Cooperman and Ricky Dogon)
MarshallZehr Group (Murray Snedden)
Ontario Mortgage Investment Companies Association (Adam Rose, Ricky Dogon and Robert Trager)
Ordre des évaluateurs agréés du Québec <sup>2</sup>
The Private Capital Markets Association (Craig Skauge, Diane Soloway, Frank Laferriere and Georgina Blanas)
PMC Funding (Stephen Lidsky)
Vector Financial Services Limited (Mitchell Oelbaum)

Number	Comment	Response
<i>Support for the objectives of the proposed amendments</i>		
1.	Six commenters support the general goals of enhancing investor protection and increasing harmonization in the regulation of syndicated mortgages. One commenter applauds the efforts of the CSA and its provincial partners in closing the gaps in syndicated mortgage-related investments in order to protect the public and mitigate risks related to mortgage fraud. One commenter agrees entirely with the underlying goals of the project to introduce additional investor protections related to the distribution of syndicated mortgages.	We thank the commenters for their support and input.

<sup>2</sup> Submitted in connection with the initial March 8, 2018 publication for comment.

Number	Comment	Response
2.	One commenter acknowledges the need for increased oversight of companies placing investors in loans that were not appropriate for them but thinks that the new requirements should be limited to “equity financings” without affecting private mortgage syndicators.	<p>Addressing concerns with the inappropriate distribution of high-risk investments in development projects under the existing prospectus and registration exemptions for mortgages is one of the purposes for undertaking this project. However, the primary rationale for the changes is to substantially harmonize the requirements for syndicated mortgages across the CSA.</p> <p>In Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon, excluding syndicated mortgages from the registration and prospectus exemptions for mortgages will align the treatment of these investments with the requirements that currently exist in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan.</p>
3.	One commenter notes that the public policy objective of the project to protect investors/lenders and avoid systemic risk that would result from syndicating equity style investments disguised as mortgage debt is commendable. The commenter supports this objective because it is good corporate practice and it is clearly in the long-term strategic interest of having a functioning marketplace for the industry that addresses proper credit adjudication tailored to investors’ risk tolerance. However, the commenter believes that absent amendments to expand the definition of qualified syndicated mortgage, the proposals will lead to a decrease in credit availability and have negative effects.	We thank the commenter for its support and input. With respect to the exemptions for qualified syndicated mortgages in certain jurisdictions, we are comfortable that these exemptions have been limited to mortgages that do not have the same investor protection concerns as the investments that the project is intended to focus on.
<i>Participation of retail investors</i>		
4.	One commenter suggests, in the context of the current Ontario mortgage legislation, that retail investors should be precluded entirely from investing in non-qualified syndicated mortgages.	<p>We acknowledge that there are concerns with non-qualified syndicated mortgages being offered to retail investors that do not qualify as accredited investors. However, we do not believe that it is appropriate to exclude these offerings entirely. The additional requirements under the offering memorandum prospectus exemption are intended to address the investor protection concerns that could arise when these products are marketed to retail investors.</p> <p>The other prospectus exemption that we expect may be used to sell non-qualified syndicated mortgages to retail investors is the family, friends and business associates prospectus exemption. Under this exemption, the requirement for a close relationship between the issuer and the purchaser is intended to ensure that retail investors are better equipped to assess the risk of the investment. In addition, the required report of exempt distribution will allow securities regulators to monitor the use of the family, friends and business associates exemption for syndicated mortgages.</p>

Number	Comment	Response
5.	<p>One commenter suggests that the existing annual limit on investments in non-qualified syndicated mortgages under Ontario mortgage legislation of \$60,000 per year for non-designated class investors effectively precludes an investor from investing in industrial or commercial first mortgages because the amounts are larger than \$60,000 and the requirements to syndicate are too onerous. The commenter suggests that the limit exposes investors to greater risk by limiting them to private mortgages of less than \$60,000.</p>	<p>In Ontario, we expect that many of the specific requirements related to non-qualified syndicated mortgages under mortgage legislation, including the \$60,000 limit, will not be continued after the effective date of the amendments.</p> <p>Investment limits may apply under the terms of the specific prospectus exemption relied on, such as the offering memorandum exemption in some jurisdictions. In addition, registrants involved in an offering of syndicated mortgages will be subject to standards regarding suitability and concentration of investments under their obligations to clients.</p>
<i>Risks of syndicated mortgages and comparisons to other securities</i>		
6.	<p>Four commenters suggest that syndicated mortgages are being mischaracterized as high-risk investments and that they should not be treated differently than other securities.</p>	<p>One of the primary purposes of the amendments in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon is to harmonize the requirements for syndicated mortgages with the rest of the CSA.</p> <p>We believe that specific requirements for syndicated mortgages under the offering memorandum prospectus exemption are appropriate given that this exemption is generally associated with sales to retail investors. In addition, we do not believe that it is appropriate for these products to be offered under the private issuer prospectus exemption. Syndicated mortgages offered under other exemptions, such as the accredited investor prospectus exemption, will be subject to the same requirements as other securities offered under these exemptions.</p>
<i>Transition period</i>		
7.	<p>One commenter suggests that the proposed effective date of December 31, 2019 for the changes to both the registration and prospectus exemptions for mortgages does not provide enough time for market participants and that the registration-related changes should be delayed for a further year to December 31, 2020.</p>	<p>The effective date of the amendments has been changed to March 1, 2021 to provide additional time for market participants.</p>
8.	<p>One commenter notes that there needs to be enough time for the existing providers and participants of this type of financing to adjust to the new licensing and regulatory regime. Existing financing commitments with ongoing funding requirements are difficult to change halfway through the term of the mortgage and putting a borrower into default because they are unable to meet the new standards only exposes the lender participants to increased risks.</p>	<p>We acknowledge that market participants will require time to adjust to the removal of exemptions that are currently available for the distribution of syndicated mortgages in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon. The requirements will apply only to syndicated mortgages distributed after the effective date of the amendments and any existing mortgages will be unaffected. However, future advances of funds from existing lenders will be subject to the availability of alternative prospectus exemptions for retail investors who do not qualify as accredited investors.</p>

Number	Comment	Response
<i>Compliance</i>		
9.	One commenter suggests that the regulatory compliance mechanisms should be increased to make sure that those involved with providing investments in syndicated mortgages are complying with the rules and are not misleading investors. Resources within the CSA and OSC should be allocated to encourage compliance and enforcing the rules applicable to syndicated mortgage investments once in place.	As is already the case in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, the oversight of syndicated mortgages will fall within the scope of our existing prospectus exempt market compliance and enforcement programs. All jurisdictions expect that information provided through reports of exempt distribution will be helpful in monitoring activity relating to syndicated mortgages.
<i>Multiple regulators for syndicated mortgages</i>		
10.	Five commenters suggest that a single regulator should oversee all mortgage capital raising activities, regardless of the characteristics of the mortgage and whether it is done by syndication or in a fund structure.	<p>The commenters refer primarily to the existing state of regulation in Ontario. Please refer to Annex F in Ontario for a discussion of the anticipated changes to local regulation.</p> <p>As discussed above, syndicated mortgages are currently subject to regulation by the securities regulatory authority in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan. We note that investments in mortgages through a fund structure or a mortgage investment entity are currently regulated in the same manner as any other security and are subject to the prospectus and registration requirements in all jurisdictions.</p>
11.	Four commenters suggest that dual regulation will result in duplication of licensing, insurance costs and working capital requirements and administration costs. The commenters suggest that multiple regulators are inconsistent with a reduction in regulatory burden.	We note that dual regulation of syndicated mortgages currently exists in several Canadian jurisdictions. The Amendments reflect the view that distributions of syndicated mortgages should be regulated by the securities regulatory authorities, because these investments are securities and potential investor protection concerns are present. The CSA will continue to work with local mortgage regulators to eliminate areas of overlap and duplication where possible.
12.	One commenter supports ongoing efforts to collaborate with other provincial regulators (such as the Financial Services Regulatory Authority of Ontario), and believes focus should be given to reducing duplicative regulation as it relates to mortgage activities.	We acknowledge the importance of collaboration and minimizing duplicative regulation.
13.	Four commenters note that investors frequently participate in both fund products and mortgage syndication. The commenters are concerned that there would be duplication in KYC and suitability procedures and an obligation to complete different forms. The commenters suggest that different requirements for syndicated mortgage investments and mortgage fund investments may create investor confusion.	Removal of syndicated mortgages from the prospectus and registration exemption for mortgages in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon will mean that in all jurisdictions, syndicated mortgages will be regulated in substantially the same way as distributions of other mortgage-related securities. As such, the requirements across different products will be harmonized.

Number	Comment	Response
14.	Four commenters also note that a potential for regulatory arbitrage is created if there are differences in licensing proficiencies and ongoing regulatory obligations. Alternatively, if the requirements are similar, the value of involving different regulators is questionable.	<p>We understand this comment to pertain to the regulation of parties that deal in or advise on syndicated mortgages. As stated elsewhere, this project proposes, among other things, to exclude syndicated mortgages from the registration exemption that is currently available in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon. Generally, the involvement of a party registered under securities legislation is an important protection for investors, particularly if the syndicated mortgage is high-risk and has complicated terms.</p> <p>We also note that there does not appear to be any confusion in Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, where the registration exemption for mortgages already excludes syndicated mortgages (and as a result the securities regulators regulate parties that deal in or advise on syndicated mortgages).</p>
15.	Four commenters suggest that a single regulator would provide a better basis for harmonization. The commenters note that fragmenting regulatory oversight between securities regulators and mortgage regulators in each jurisdiction is complicated and creates difficulties for national adoption.	We acknowledge that a single regulator could potentially result in less burden on regulated entities. The changes will substantially harmonize the securities law requirements for syndicated mortgages nationally. However, there will continue to be local differences because jurisdictions have different approaches to mortgage legislation.
<i>Definitions of syndicated mortgage, qualified syndicated mortgage and non-qualified syndicated mortgage</i>		
16.	Four commenters suggest that the definition of qualified syndicated mortgage in Ontario should be amended to adopt a provision to specifically permit administrators' fees in a similar manner as the definition under British Columbia Securities Commission Instrument 45-501.	The definition of qualified syndicated mortgage in Ontario, Alberta, New Brunswick, Nova Scotia and Québec does not preclude charging fees to investors. Certain jurisdictions have proposed changes to the local definition of qualified syndicated mortgages to clarify this matter. Please refer to Annex F for those jurisdictions.

Number	Comment	Response
17.	<p>Four commenters suggest that the definition of qualified syndicated mortgage should include any syndicated mortgage that:</p> <ul style="list-style-type: none"> <li>• is negotiated or arranged through a mortgage broker;</li> <li>• the total debt, together with all other debt secured against the property that has equal or greater priority does not exceed 90% of the fair market value of the property, excluding any value that may be attributed to proposed or pending development of the property;</li> <li>• aside from reasonable administration fees, has a rate of interest payable under the mortgage that is equal to the rate of interest payable under the debt obligation; and</li> <li>• does not pay commissions to source the capital to fund the mortgage, where the result is that less than 100% of lender/ investor capital is used to fund the mortgage.</li> </ul>	<p>In Ontario, Alberta, New Brunswick, Nova Scotia and Québec, the rationale for the exemptions for qualified syndicated mortgages is that they are not expected to present significant investor protection concerns and do not require the investor to be able to understand the business of the borrower in order to make an investment decision. Accordingly, the definition is limited to existing properties that are primarily residential.</p> <p>The above jurisdictions do not agree that a definition that would include development projects, or commercial and industrial properties, is appropriate.</p> <p>In addition, it is not necessary to require that the mortgages be negotiated by or arranged through a mortgage broker as an element of the definition of qualified syndicated mortgage, because the involvement of a registered mortgage broker is required as a condition of the exemptions for qualified syndicated mortgages.</p> <p>The exemptions for qualified syndicated mortgages do not preclude fees being charged, as long as they are disclosed to the investor.</p>
18.	<p>One commenter suggests that the category of non-qualified syndicated mortgages includes many types of investments that should be regulated differently. For example, the commenter notes that construction and development financing raise different concerns than financing of stabilized assets, raw land or residential properties and should be treated differently. The commenter notes that the multiple funding draws involved in construction financing raise unique issues that are not present for mortgages on existing properties.</p>	<p>The fact that syndicated mortgages include a wide range of types of investments, with potentially different characteristics, supports removing them from the general prospectus and registration exemptions for mortgages, in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon.</p>
19.	<p>One commenter suggests that any syndicated mortgage that is not for a development project of 5 or more units should be a qualified syndicated mortgage. The commenter also suggests that only loans where the future value of the property is projected to be something different than the current value or loans where the lender's priority can change without their knowledge or consent should be excluded from being a qualified syndicated mortgage.</p>	<p>The narrow definition of qualified syndicated mortgages is deliberate. They are intended to be secured by a more straightforward type of existing property (primarily residential). It is not appropriate that the definition be broadened to include other types of property or projects, such as development projects or commercial or industrial property. Please refer to Annex F for details regarding the specific terms of the applicable definition of qualified syndicated mortgage.</p>
20.	<p>One commenter suggests that there is no reason to consider commercial or industrial properties as riskier investments than residential properties and questions their exclusion from the definition of a qualified syndicated mortgage.</p>	<p>Investments in properties that are primarily commercial or industrial are more likely to require an understanding of the risks relating to an operating business and have not been included in the definition of qualified syndicated mortgage for this reason.</p>
21.	<p>One commenter suggests that small construction projects, such as infill homes or renovations, should not be excluded from being a qualified syndicated mortgage, because these are not speculative development projects that may never be built.</p>	<p>As noted by commenters, there are complexities associated with development projects. Accordingly, development projects, even of a small number of units, should not be included in the definition of qualified syndicated mortgage.</p>

Number	Comment	Response
22.	<p>One commenter suggests allowing mortgage brokerages who are not syndicating equity or high-risk debt investments to be regulated by one regulator. The commenter also suggests adopting the following definitions of “syndicated mortgage” and “qualified syndicated mortgage”:</p> <p>“syndicated mortgage” should be defined as a mortgage debt investment that a mortgage brokerage would allocate to more than one investor who is not</p> <ul style="list-style-type: none"> <li>(i) a regulated financial institution;</li> <li>(ii) public reporting issuers;</li> <li>(iii) pooled mortgage funds, mortgage corporation or mutual fund trust that have a board of directors approving investments; and</li> <li>(iv) board of directors, members of management, employees and related parties, including related corporate entities to individuals affiliated with the mortgage brokerage and to the entities under (i), (ii), and (iii).</li> </ul> <p>“qualified syndicated mortgage” should be defined as not being a non-qualified syndicated mortgage. The commenter suggests that this term should include a syndicated mortgage investment that for all intents and purposes represents the required equity for a real estate development that has been disguised and treated as mortgage debt security, if a mortgage brokerage has been paid a commission to solicit investors.</p>	<p>The definition of syndicated mortgage is an existing definition that is used in securities legislation, including NI 45-106 and NI 31-103. In addition, the current definition of syndicated mortgage corresponds with the ordinary meaning of the term and it would not be appropriate to define the security by reference to the type of potential investors.</p> <p>We note that the classes of investors that are referred to by the commenter substantially correspond to the investors that would be able to purchase a syndicated mortgage under the accredited investor prospectus exemption or the family, friends and business associates prospectus exemption.</p> <p>As discussed above, it is not appropriate to include all syndicated mortgages, other than the highest-risk investments, within the definition of qualified syndicated mortgage because some of these investments are more appropriately regulated in the same manner as other securities offered in the prospectus exempt market.</p>
23.	<p>One commenter notes that there will be differences in the exemptions for qualified syndicated mortgages across the country as a result of the differences in provincial mortgage regulation. They encourage the CSA to seek harmonization of prospectus exemptions whenever possible to help ease the compliance burden on issuers and improve understanding of the exempt market amongst investors.</p>	<p>We acknowledge that there will be differences in the exemptions for qualified syndicated mortgages due, in part, to differences in provincial mortgage legislation and the manner in which mortgage investments are overseen in the different jurisdictions. However, the definitions of qualified syndicated mortgages are substantially harmonized.</p>

Number	Comment	Response
<i>Reports of Exempt Distribution</i>		
24.	<p>Four commenters suggest that the administrative burden of complying with the requirement to file reports of exempt distribution for the distribution of syndicated mortgage investments is a significant financial and administrative cost. These commenters also request clarification as to why the timing of the filing of a report of exempt distribution is outside the scope of this project.</p>	<p>The requirement to file a report of exempt distribution in connection with the use of certain prospectus exemptions is a routine and longstanding requirement of securities law in Canada.</p> <p>Generally, we do not see any policy reason to treat the distribution of syndicated mortgage investments differently from distributions of other types of investments, such as investments in mortgage investment entities, real estate investment trusts and investment entities that invest in real estate development projects.</p> <p>The report of exempt distribution provides Canadian securities regulators with important information about financing activities being conducted in their jurisdictions and serves an important investor protection function in that it allows the securities regulators to monitor the use of these exemptions for compliance with the securities law requirements.</p> <p>The CSA is considering potential changes to the timing for the filing of reports of exempt distribution as a separate initiative.</p> <p>Please refer to Annex F for details regarding additional exemptions in certain jurisdictions that do not require reports of exempt distribution.</p>
25.	<p>Four commenters note that construction mortgages have different draws and different investors participate at each stage, which could trigger multiple reports of exempt distribution.</p>	<p>We note that multiple draws are a feature of many types of offerings in the prospectus exempt market and are not aware of any reason to treat the timing of the filing of a report of exempt distribution for a syndicated mortgage investment differently from other types of investments, such as investments in mortgage investment entities, real estate investment trusts and investment entities that invest in real estate development projects.</p>



Number	Comment	Response
26.	<p>Four commenters suggest that:</p> <ul style="list-style-type: none"> <li>• Construction mortgages should require one filing at an initial funding and subsequent advances should not trigger additional reports of exempt distribution.</li> <li>• Reports of exempt distribution should be filed on a monthly basis and reflect all activities in the month.</li> <li>• If the 10-day filing timeline is maintained, issuers should be able to batch all activities in the 10-day period into a single report.</li> <li>• The filing fees should be reduced.</li> <li>• Trades involving permitted investors should not trigger a report of exempt distribution.</li> </ul>	<p>We thank the commenters for these suggestions. We note that depending on the structure of the transaction, subsequent advances of funds under a mortgage may constitute a new distribution of securities and trigger a report of exempt distribution.</p> <p>We confirm that issuers are free to disclose all distributions made in a 10-day period in a single report under the current requirements.</p> <p>In most CSA jurisdictions, a distribution of a non-qualified syndicated mortgage to an accredited investor will trigger a report of exempt distribution, including investors that are permitted clients as defined in NI 31-103. However, this is not required in certain jurisdictions as described in Annex F for those jurisdictions.</p>
<i>Identifying the issuer of a syndicated mortgage</i>		
27.	<p>Four commenters suggest that establishing the issuer of a syndicated mortgage remains unclear and further clarification should be provided.</p>	<p>We note that the need to determine who is the issuer of a debt security is not a new obligation, as issuers and other market participants have needed to identify the issuer of a debt security under other prospectus exemptions for purposes such as filing reports of exempt distribution.</p> <p>We recognize that there may be a variety of industry practices in terms of how syndicated mortgages are structured and offered to investors and we have included the guidance in section 3.8 of the Companion Policy to NI 45-106 to assist market participants in this regard.</p> <p>If a market participant is having difficulty in identifying the issuer of a syndicated mortgage in connection with a particular transaction, we recommend that they consult with CSA staff in their jurisdiction.</p> <p>CSA staff have established and regularly consult with various advisory committees in relation to issues of concern to market participants and are willing to consult with mortgage industry market participants if there is a continuing concern on this point.</p> <p>CSA staff may also publish staff guidance in the form of frequently asked questions if we continue to receive questions on this point.</p>

Number	Comment	Response
<i>Exemptions for mortgage funds and sophisticated investors</i>		
28.	Four commenters suggest that mortgage funds and sophisticated syndicated mortgage investors do not need additional protections and a specific prospectus exemption should be provided for these investors.	<p>To the extent that a mortgage fund or a sophisticated mortgage investor meets the definition of “accredited investor” in section 1.1 of NI 45-106 or section 73.3 of the <i>Securities Act</i> (Ontario), an issuer may distribute a syndicated mortgage to such an investor in reliance on the accredited investor prospectus exemption.</p> <p>Certain jurisdictions are proposing local exemptions that may apply to the types of investors identified by the commenters. Please refer to the applicable Annex F for additional details.</p>
<i>Appraisals</i>		
29.	Two commenters support the change to the proposed appraisal requirement under the offering memorandum exemption that would require an issuer to deliver an appraisal that was prepared within 6 months of the date it is delivered to a prospective purchaser, instead of within 12 months, because markets can change drastically in a short period of time.	We thank the commenters for their support and input.
30.	One commenter suggests consideration of whether a new appraisal should be triggered if there is an event that has a material adverse impact on the value of the property.	<p>We changed the requirement for an appraisal to value the property as of a date that is within 6 months of the date that the appraisal is delivered to the purchaser from the original proposal of 12 months to address potential changes in the value of a property.</p> <p>In addition, an event that has a material adverse impact on the value of the property related to a syndicated mortgage would likely be a material fact that is required to be disclosed to potential investors. The offering memorandum prospectus exemption requires that the offering memorandum not contain a misrepresentation, including a misrepresentation by omission. An issuer would not be able to continue to rely on the exemption to distribute securities if the appraised value disclosed under item 8 of Form 45-106F18 in the offering memorandum materially misstated the value of the property.</p>
31.	One commenter suggests that the requirement under subsection 2.9(19.3) of NI 45-106 to disclose the material factors or assumptions used to determine any value other than the appraised value, should also require a description of the inherent risks and limitations of the assumptions relied upon.	Once disclosed, investors will be able to assess the risks and limitations associated with the assumptions used. The other requirements of subsection (19.3) such as the requirement to disclose the fair market value set out in the appraisal, and the independence or lack of independence of the party that determined the value put forward by the issuer, will allow investors to make an informed investment decision.

Number	Comment	Response
32.	One commenter suggests that the proposed appraisal requirement overstates the importance of an “as is” valuation in construction or development projects. The commenter suggests that a more comprehensive leverage schedule that reflects the value-added activities over the course of the project would be more appropriate than a simple loan-to-value ratio based on the current value.	There is no prohibition on updating appraisals as frequently as desired. In addition, alternative values may be provided under the offering memorandum prospectus exemption provided that certain requirements are met.
33.	One commenter notes that for mortgage defaults for uncompleted construction or development projects, liquidating the project is not likely in the best interests of the mortgage investors, because it will come with a significant discount that cannot be determined in advance. The commenter suggests there should be a mechanism that allows existing investors to advance further funds to complete the project.	We note that there is no limitation that would prevent additional distributions to raise additional financing for distressed projects. However, if the issuer is relying on the offering memorandum prospectus exemption, it would likely be required to provide an amended offering memorandum to the new investors and satisfy the appraisal requirement.
<i>Qualified appraiser</i>		
34.	One commenter suggests that qualified appraisers should be required to have professional liability insurance appropriate to the valuation assignment.	We expect that professional associations will set standards for their members regarding appropriate liability insurance. We do not see this as a function of securities regulation.
<i>Professional association</i>		
35.	One commenter suggests that the element of the definition of “professional association” that a professional association “disciplines, suspends or expels its members if misconduct occurs” may be too narrow. They suggest a change to refer instead to “having the power to discipline, suspend or expel its members if it becomes aware that misconduct has occurred.”	We have revised the definition to require that the professional association have the ability to suspend or expel a member.
36.	One commenter notes that, in Québec, a professional order is different than a professional association because orders are delegated a public mandate by the Minister of Justice. The commenter suggested adding a specific reference to professional orders to the prior version of the proposed definition of professional association.	We have broadened the language used in the definition of professional association to make it clear that a professional order may be included. As indicated in the proposed guidance included in the Companion Policy to NI 45-106, we consider that l’Ordre des évaluateurs agréés du Québec falls within the definition of a professional association.
<i>Independence</i>		
37.	One commenter notes that proposed subsection 2.9(19) of NI 45-106 states that: “For the purposes of subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage if there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser’s judgment regarding the preparation of an appraisal for a property.” They suggest explicitly referring to circumstances which could reasonably be perceived to potentially interfere with the appraiser’s judgment.	The current interpretation of independence is consistent with the interpretation of independence under National Instrument 43-101 <i>Standards of Disclosure for Mineral Projects</i> and National Instrument 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i> . The test for independence has generally worked well under those instruments and additional examples do not appear to be necessary.

Number	Comment	Response
38.	<p>One commenter recommends expanding the proposed guidance in subsection 3.8(13) of the Companion Policy to NI 45-106 on determining independence to include additional relationships that could compromise independence, such as whether additional services are provided by the valuation firm or services are provided by a related entity.</p>	<p>We agree that additional services provided by the valuation firm or services provided by a related entity could be circumstances that would disqualify a qualified appraiser from being independent. The examples provided in the Companion Policy guidance are not exhaustive and are consistent with the guidance provided in other instruments.</p>
<i>Audited financial statements</i>		
39.	<p>One commenter questions the value of audited financial statements for distributions of syndicated mortgages given the following:</p> <ul style="list-style-type: none"> <li>• Lenders are primarily asset-based and focused on the value of the security supporting the mortgage.</li> <li>• Additional value gained from an audit may be limited, particularly if the borrower is a newly created special purpose vehicle. The requirement could lead to structuring to limit the borrowers that are party to the loan and the security for the mortgage.</li> <li>• Audited financial statements are not required where the lenders are OSFI-regulated entities, which erodes the competitive position of non-bank lenders.</li> <li>• IFRS financial statements may be overly burdensome since most companies use accounting standards for private enterprises.</li> </ul>	<p>We note that audited financial statements are required to be provided only for syndicated mortgages distributed under the offering memorandum exemption. We do not see any reason why syndicated mortgages should be treated differently than other securities distributed under this exemption. For distributions under other exemptions, such as the accredited investor exemption, the issuer has the flexibility to determine what disclosure will be provided to satisfy the requirements of prospective investors.</p>
<i>Proposed Form 45-106F18 Supplemental Offering Memorandum Disclosure for Syndicated Mortgages (Form 45-106F18)</i>		
40.	<p>One commenter notes that the addition of Form 45-106F18 is useful because it requires the addition of disclosure of the speculative nature of an investment in a syndicated mortgage. However, they are concerned that the risk disclosure does still not go far enough because many retail investors lack sufficient financial literacy to be proficient in financial matters associated with investments in syndicated mortgages. They suggest that there should be clear instructions and notations about the risks involved in investing in syndicated mortgages.</p>	<p>Item 3 of Form 45-106F18 requires a bold statement concerning the risk of syndicated mortgages together with a description of any risk factors associated with the offering.</p>
41.	<p>One commenter suggests that subsection (1) of Item 2 of proposed Form 45-106F18, which requires disclosure of the period over which funds will be raised and the factors that determine when they will be raised, should also require disclosure of committed capital amounts, as well as a prior cash call schedule, if ongoing capital raises include progress draw mortgages or investments subject to cash calls. The commenter notes that such disclosure is consistent with suggested client reporting practices as set out in ASC Notice 33-705 <i>Exempt Market Dealer Sweep</i>, May 10, 2017 (ASC Notice 33-705) under the heading "Reporting to Clients".</p>	<p>We note that an obligation to advance future payments in connection with an investment is a material term that would be required to be disclosed in an offering memorandum used under the offering memorandum prospectus exemption, regardless of the specific nature of the security offered. Accordingly, a specific requirement for syndicated mortgages is not necessary. However, we agree that it may be appropriate for a dealer to stress the potential impact of future cash calls in client disclosure and discussions regarding the suitability of an investment.</p>

Number	Comment	Response
42.	<p>One commenter suggests adding mandatory disclosure of additional items about the mortgage and loan terms as well as disclosure of related risks and potential mitigation efforts.</p> <p>The commenter suggests that additional risk-related disclosure is needed because issuers may engage in high credit risk transactions such as unsecured lending and lending that involves high interest rate spreads over risk-free bond rates.</p>	<p>We note that the examples of the potential risk factors described in the instructions to Item 3 of Form 45-106F18 are not exhaustive and issuers are required to disclose all material risk factors. We have added additional examples corresponding to certain of the suggested risk factors.</p> <p>We also note that the Amendments are aimed at syndicated mortgages, which are secured against real property. The amendments are not intended to address unsecured lending or other debt products.</p>
43.	<p>One commenter proposes an explicit requirement to state any connection or relationship under Item 4 [Administration of the Mortgage] of proposed Form 45-106F18, in addition to the qualifications of the service provider. If any known conflicts of interest or operational risks exist, such as those that may relate to the servicing of the loan, they can be disclosed here in addition to the risk disclosure section under Item 3.</p>	<p>Conflicts of this nature are addressed in Item 16 of Form 45-106F18.</p>
44.	<p>One commenter suggests that the description of the property in Item 6 of proposed Form 45-106F18 should include disclosure for any past material adjustments to valuations of the property and the reasons for such adjustments. These material adjustments may occur for various reasons, including changes in the valuation firm or changes to the underlying assumptions (i.e., cap rate/discount rates) used.</p>	<p>We expect that a current valuation prepared by a qualified appraiser will include adequate disclosure regarding the material factors and assumptions underlying the valuation, including a discussion of changes in value if appropriate. We have not made the proposed change in order to avoid any potential conflicts with the standards prescribed by the applicable professional association.</p>
45.	<p>One commenter suggests specific requirements to disclose the following factors in the description of the syndicated mortgage under Item 7 of proposed Form 45-106F18:</p> <ul style="list-style-type: none"> <li>• Information that may result in an impairment of the mortgage loan security, the debt service ratio, and material events that may impact the payments, such as availability of insurance for natural disasters, if applicable.</li> <li>• The Form will require disclosure of the loan-to-value (LTV) ratio of the property, calculated on an aggregate basis using the loan value of the syndicated mortgage and all other mortgages or encumbrances with priority over the syndicated mortgage and the appraised value of the property. Perhaps in the future, the CSA may wish to build on terms such as LTV in order to harmonize risk methodology for syndicated mortgages that will allow investors to better assess the viability of the mortgage.</li> <li>• Duration of leases. By including such a term, the issuer will be able to better evaluate a lender's suitability and investment horizon by matching it to the duration or length of the lease.</li> <li>• Explain high credit risk in plain language to investors.</li> </ul>	<p>We believe that required risk factor disclosure addresses these concerns. However, we have mandated additional disclosure under Item 7 of Form 46-106F18 to address the concerns raised regarding the loan-to-value ratio.</p>

Number	Comment	Response
46.	One commenter suggests stress testing assumptions should be a required factor in an appraisal. We are of the opinion that stress testing assumptions provide valuable information to potential investors. In connection with a firm's KYP responsibility, ASC Notice 33-705 suggests that stress testing encompasses economic and financial variables that may have an impact on the issuer's performance (e.g., interest rate levels, unemployment rate, commodity prices and exchange rates).	We acknowledge the commenter's concerns. However, we believe the specific methodologies for an appraisal should be prescribed by the professional association or order to which the qualified appraiser belongs.
<i>Common administration software</i>		
47.	One commenter suggests that ideally the regulator needs the industry to operate on an administration software tailored to manage, track and distribute required information (both initial underwriting information and ongoing reporting requirements) for all stakeholders involved.	We acknowledge the benefit of common standards that such administration software could provide. However, we do not believe that it would be appropriate for securities regulators to mandate the use of specific software in these circumstances.

ANNEX B

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 by adding the following definitions:***

“professional association” means an association or other organization, whether incorporated or not, of real property appraisers that

- (a) has its head office in Canada,
- (b) admits its members on the basis of their academic qualifications, experience and ethical fitness,
- (c) requires its members to meet standards of competence and comply with a code of ethics it has established or endorsed,
- (d) requires or encourages its members to engage in continuing professional development, and
- (e) under the powers conferred by statute or under an agreement, may suspend or expel its members if misconduct occurs;

“qualified appraiser” means an individual who

- (a) regularly performs property appraisals for compensation,
- (b) is a member of a professional association and holds the designation, certification or licence to act as an appraiser for the class of property appraised, and
- (c) is in good standing with the professional association referred to in paragraph (b);

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage;.

3. ***Section 2.4 is amended by***

(a) ***adding “or a syndicated mortgage” after “a short-term securitized product” in subsection (4), and***

(b) ***adding the following subsection:***

- (6) In Ontario, subsection 73.4(2) of the *Securities Act* (Ontario) does not apply to a distribution of a short-term securitized product or a syndicated mortgage..

4. ***Subsection 2.5(3) is amended by deleting “ or, in Ontario, a distribution under subsection 73.4(2) of the Securities Act (Ontario)”.***

5. ***Section 2.9 is amended by***

(a) ***replacing “10” in paragraph (11.1)(d) with “(10)”, and***

(b) ***adding the following subsections:***

- (19) For the purposes of subsections (19.1) and (19.3), a qualified appraiser is independent of an issuer of a syndicated mortgage if there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser’s judgment regarding the preparation of an appraisal for a property.
- (19.1) Subsections (1), (2) and (2.1) do not apply to a distribution of a syndicated mortgage by an issuer unless, at the same time or before the issuer delivers an offering memorandum to the purchaser in accordance with subsections (1), (2) or (2.1), the issuer delivers to the purchaser an appraisal of the property subject to the syndicated mortgage that

- (a) is prepared by a qualified appraiser who is independent of the issuer,
  - (b) includes a certificate signed by the qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member,
  - (c) provides the appraised fair market value of the property subject to the syndicated mortgage, without considering any proposed improvements or proposed development, and
  - (d) provides the appraised fair market value of the property as at a date that is within 6 months preceding the date that the appraisal is delivered to the purchaser.
- (19.2)** An issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) must not make a representation of, or give an opinion as to, the value of a property subject to the syndicated mortgage in any communication related to the distribution under the exemption, unless the issuer has a reasonable basis for that value.
- (19.3)** If an issuer of a syndicated mortgage relying on an exemption set out in subsection (1), (2) or (2.1) discloses in any communication related to the distribution under the exemption any representation of, or opinion as to, the value of a property subject to the syndicated mortgage, other than the appraised fair market value disclosed in the appraisal referred to in subsection (19.1), the issuer must also disclose in that communication,
- (a) with equal or greater prominence as the representation or opinion, the appraised fair market value referred to in subsection (19.1),
  - (b) the material factors or assumptions used to determine the representation or opinion, and
  - (c) whether or not the representation or opinion was determined by a qualified appraiser who is independent of the issuer.
- (19.4)** The issuer must file a copy of an appraisal delivered under subsection (19.1) with the securities regulatory authority concurrently with the filing of the offering memorandum..

**6. Section 2.36 is amended by**

- (a) **repealing subsection (1),**
- (b) **replacing “Except in Ontario, and subject” in subsection (2) with “Subject”, and**
- (c) **replacing subsection (3) with the following:**
  - (3) Subsection (2) does not apply to the distribution of a syndicated mortgage..

**7. Section 6.4 is amended by adding the following subsection**

- (3) Despite subsections (1) and (2), an offering memorandum for the distribution of a syndicated mortgage under section 2.9 [*Offering memorandum*] must be prepared in accordance with Form 45-106F2 and Form 45-106F18..

**8. The following form is added after Form 45-106F17:**

**Form 45-106F18**

**Supplemental Offering Memorandum Disclosure for Syndicated Mortgages**

**INSTRUCTIONS:**

1. Provide all disclosure required under Form 45-106F2 Offering Memorandum for Non-Qualifying Issuers, as supplemented by this form, including information about the borrower under the syndicated mortgage. Where the headings in Form 45-106F2 and this form are the same, provide all of the required disclosure under the Form 45-106F2 heading.



2. You do not need to follow the order of items in this form. Information required in this form that has already been disclosed in response to the requirements of Form 45-106F2 need not be repeated.

3. You do not need to respond to any item in this form that is inapplicable.

4. Certain items in this form require disclosure about the issuer of a syndicated mortgage and the borrower under a syndicated mortgage. In some cases, the borrower is the issuer of the syndicated mortgage. In these circumstances, the terms "issuer" and "borrower" are interchangeable and there is no requirement to duplicate information.

5. In this form, the distribution of a syndicated mortgage is also referred to as the "offering". The lenders or investors in a syndicated mortgage are also referred to in this form as the "purchasers".

6. In this form, "principal holder" means each person who beneficially owns, or directly or indirectly has control or direction over, 10% or more of any class of voting securities of another person. If a principal holder is not an individual, in addition to the other disclosure requirements, provide the information required for the principal holder for any person that beneficially owns, or directly or indirectly has control or direction over more than 50% of the voting rights of the principal holder.

7. In this form, "related party" has the meaning set out in the General Instructions to Form 45-106F2.

8. Where this form requires an issuer to indicate that copies of a document are available on request, the issuer must provide a copy of such document when requested.

### Item 1 – Description of the Offering

(1) Provide the following information about the investment being offered and the legal rights of the purchaser:

- (a) the nature of the investment, i.e., whether it is a participation in a mortgage, an assignment of a participation in a mortgage, a mortgage unit or some other direct or indirect interest or participation in a mortgage over real property and the legal rights of the purchaser attaching to the investment;
- (b) the rights of the purchaser on default by the borrower and the rights of the purchaser to share in the proceeds of any recovery from the borrower, in particular the purchaser's voting rights and whether the purchaser has the right to institute individual legal action against the borrower and, if not, the person or persons who may institute or coordinate the institution of legal action against the borrower;
- (c) if the issuer of the syndicated mortgage is not the borrower under the syndicated mortgage, the rights of the purchaser against the issuer of the syndicated mortgage on default by the borrower, if any;
- (d) any other material information about the investment or the legal rights of the purchaser.

(2) Describe the project and the plans for the use of the funds.

### Item 2 – Raising of Funds

(1) If the funds to be raised through the offering are required to be raised in stages, disclose the period over which the funds will be raised and the factors that determine when they will be raised.

(2) If there are any arrangements under which any part of the funds raised will only become available to the borrower if certain conditions are fulfilled, describe those conditions, the procedure for the return of funds to the purchaser if the conditions are not met and any deduction or penalty imposed on the borrower or any other person for not meeting the conditions. Disclose details of the arrangements made for, and the persons responsible for, the supervision of the trust or escrow account or the investment of unreleased funds, and the investment policy to be followed.

### Item 3 – Other Risk Factors Specific to Syndicated Mortgages

(1) State in bold:

**Investments in syndicated mortgages are speculative and involve a high degree of risk. You should be aware that this investment has not only the usual risks associated with the financial ability of the borrower to make repayments, but also additional risks associated with syndication.**

(2) If the syndicated mortgage includes a personal covenant, guarantee or other financial commitment, state in bold:

**The ability of the person providing the personal covenant, guarantee or other financial commitment to perform under the personal covenant, guarantee or other financial commitment will depend on the financial strength of the person. There is no assurance that the person will have the financial ability to be able to satisfy the person's obligations under the personal covenant, guarantee or other financial commitment. You might not receive any return from your investment or the initial amount invested.**

(3) Disclose any material risk factors associated with the offering.

*INSTRUCTIONS:*

*Potential risk factors include, but are not limited to, any of the following:*

- (a) *the reliance on the ability of the borrower to make payments under the mortgage;*
- (b) *the financial strength of any person offering a personal covenant, guarantee or other financial commitment;*
- (c) *the ability to raise further funds as progress in development or construction takes place;*
- (d) *changes in land value;*
- (e) *unanticipated construction and development costs or delays;*
- (f) *the expertise of the parties involved in administering the syndicated mortgage or operations involving the property;*
- (g) *the ability to recover one's investment in the event of foreclosure;*
- (h) *operational risks involving the businesses of any tenants of the property;*
- (i) *restrictions on the ability of purchasers to take action individually if the borrower defaults;*
- (j) *whether there are other liabilities secured against the mortgaged property and their maturity schedule;*
- (k) *the ranking of the syndicated mortgage in relation to other mortgages and liabilities secured against the mortgaged property, including any potential for future subordination;*
- (l) *conflicts of interest between the borrower, purchasers, issuer or others involved in the offering;*
- (m) *inadequate insurance coverage;*
- (n) *inability to change the trustee (if any);*
- (o) *the restrictions imposed by securities legislation on the resale of the syndicated mortgage and the resulting lack of liquidity.*

**Item 4 – Administration of the Mortgage**

(1) Describe how the syndicated mortgage will be administered as well as all parties involved, including the name, address, contact person and any relevant licences or registration held by each party.

(2) Provide the following information about the specific responsibilities of all parties involved in the administration of the syndicated mortgage:

- (a) collection responsibility for payments due under the syndicated mortgage;
- (b) commencement of legal action on default;
- (c) follow-up on insurance expirations or cancellations;

- (d) all other material matters of administration to be provided by the person administering the syndicated mortgage.

(3) Describe the material terms of any administration agreement related to the syndicated mortgage.

(4) Disclose all fees and expenses to be charged to the purchaser under the administration agreement and how they are to be calculated.

(5) Disclose that copies of the administration agreement are available from the issuer on request and explain how to request a copy.

**Item 5 – Trust or Other Agreement**

(1) Disclose whether there is any trust or other agreement that provides for any person to make advances of the funds to the borrower and to distribute the proceeds of repayments made by the borrower.

(2) Provide the following information about any agreement disclosed under subsection (1):

- (a) whether the purchaser is required to grant a power of attorney to the trustee and the terms of that power of attorney;
- (b) all fees and expenses to be charged to the purchaser under the agreement;
- (c) the specific responsibilities of all parties to the agreement regarding the following:
  - (i) the opening of a trust account into which all investment proceeds must be paid until advanced to the borrower and into which all proceeds received in repayment of the syndicated mortgage must be paid before distribution to the purchasers;
  - (ii) details of how payments related to the syndicated mortgage will be made;
  - (iii) the mechanism for replacing the trustee and the procedures for dispute resolution;
- (d) any other material terms of the agreement.

(3) Disclose that copies of any agreement disclosed under subsection (1) are available from the issuer on request and explain how to request a copy.

**Item 6 – Property Subject to the Mortgage**

Provide the following information about the property subject to the mortgage:

- (a) the address and legal description;
- (b) the past, current and intended use;
- (c) any proposed improvements;
- (d) the date of acquisition of the property and the purchase price paid;
- (e) the details, including the purchase price, of any other transactions involving the property known to the borrower, any related party of the borrower or any of their respective partners, directors, officers or principal holders;
- (f) if the borrower is not the issuer of the syndicated mortgage, the details, including the purchase price, of any other transactions involving the property known to the issuer, any related party of the issuer or any of their respective partners, directors, officers or principal holders;
- (g) any material contractual arrangements relating to the property;
- (h) any insurance policies applicable to the property and their status;
- (i) any material claims or litigation;

- (j) any known contamination or environmental concerns;
- (k) any other material facts.

**Item 7 – Description of the Syndicated Mortgage**

(1) Provide the following information about the syndicated mortgage:

- (a) the principal amount, term, amortization period, interest rate, maturity date, any prepayment entitlement, the ranking of the syndicated mortgage (i.e., first, second, etc.) and any ability of the borrower to subordinate the syndicated mortgage to other indebtedness or to require the purchaser to consent to the subordination of the syndicated mortgage;
- (b) the material terms and relative priority of any other mortgages or liabilities secured against the mortgaged property;
- (c) the loan-to-value ratio of the property, calculated on an aggregate basis using the following formula:

$$A \div B$$

where A is the aggregate of the following:

- (i) the loan value of the syndicated mortgage and
- (ii) the loan value of all other mortgages or liabilities secured against the mortgaged property with priority that is equal to or greater than the syndicated mortgage, assuming in all cases that the maximum amount of any such mortgage or liability is fully drawn,

and B is the appraised value of the property described under item 8;

- (d) the impact on the loan-to-value ratio of any potential future subordination of the syndicated mortgage;
- (e) the aggregate dollar amount of the funds being raised under the offering;
- (f) the status of the syndicated mortgage, including whether there are any arrears and, if so, the amount and due dates of outstanding payments;
- (g) the means by which the repayments by the borrower will be distributed and the procedure for establishing the proportion to which each purchaser is entitled to share in the distribution;
- (h) the source of funds that the borrower will use to make payments on the syndicated mortgage, including any reserve accounts or other fund maintained by the borrower or any other person;
- (i) any other material terms.

(2) Describe the material terms of any commitment letter, or other commitment document, that sets out the terms of the commitment to advance funds to the borrower.

(3) Disclose that copies of the commitment letter, or other commitment document, are available from the issuer on request and explain how to request a copy.

**Item 8 – Appraisal**

(1) Provide the following information about the most recent appraisal of the value of the property subject to the mortgage, prepared by a qualified appraiser in accordance with subsection 2.9(19.1) of National Instrument 45-106 *Prospectus Exemptions*:

- (a) the method used;
- (b) all assumptions made;
- (c) any qualifications or limitations;

(d) the date of the valuation.

(2) Describe the most recent assessment of the property subject to the mortgage, including existing improvements by any provincial or municipal assessment authority.

#### **Item 9 – Exemptions**

Disclose any statutory or discretionary exemption from the registration requirement that is being relied upon by any person involved in the offering of the syndicated mortgage.

#### **Item 10 – Guarantees or Other Similar Financial Commitments**

(1) Summarize the terms of any personal covenant, guarantee or other financial commitment provided in connection with the syndicated mortgage. Explain how the personal covenant, guarantee or financial commitment works.

(2) Disclose that copies of the personal covenant, guarantee or other financial commitment are available from the issuer on request and explain how to request a copy.

(3) Describe the business experience of the person providing any personal covenant, guarantee or other financial commitment.

(4) Describe the financial resources of the person providing the personal covenant, guarantee or other financial commitment. The description must enable a reasonable purchaser applying reasonable effort to understand the person's ability to meet the obligations under the personal covenant, guarantee or other financial commitment.

(5) Disclose whether the purchasers will be entitled to ongoing disclosure of the financial position of the person providing any personal covenant, guarantee or other financial commitment during the period of the personal covenant, guarantee or other financial commitment, and the nature, verification, timing and frequency of any disclosure that will be provided to purchasers.

#### **Item 11 – Organization of Mortgage Broker, Mortgage Brokerage or Mortgage Agency**

State the laws under which any firm acting as a mortgage broker, mortgage brokerage or mortgage agency is organized and the date of formation of the mortgage broker, mortgage brokerage or mortgage agency.

#### **Item 12 – Borrower Information**

If the borrower is not the issuer of the syndicated mortgage, provide the disclosure required under items 2, 3, 4 and 12 of Form 45-106F2 *Offering Memorandum for Non-Qualifying Issuers* as if the borrower were the issuer of the syndicated mortgage.

#### **Item 13 – Developer**

If the property subject to the syndicated mortgage is being developed, state the laws under which the developer is organized and the date of formation of the developer. Describe the business of the developer and any prior experience of the developer in similar projects.

#### **Item 14 – Mortgage Broker, Mortgage Brokerage or Mortgage Agency, Partners, Directors, Officers and Principal Holders**

(1) Disclose the name, municipality of residence and principal occupation for the 5 years preceding the date of the offering memorandum of any individual mortgage broker involved in the offering and the partners, directors, officers and any principal holders of any firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering.

(2) Disclose any penalty or sanction, including the reason for it and whether it is currently in effect, that has been in effect during the 10 years preceding the date of the offering memorandum, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

(a) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;

- (b) a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.

(3) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets that has been in effect during the 10 years preceding the date of the offering memorandum with respect to any of the following:

- (a) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (b) a director, officer or principal holder of a firm acting as a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

**Item 15 – Developer, Partners, Directors, Officers and Principal Holders**

(1) Disclose the name and address of any developer of the property subject to the syndicated mortgage.

(2) Disclose any penalty or sanction, including the reason for it and whether it is currently in effect, that has been in effect during the 10 years preceding the date of the offering memorandum, or any cease trade order that has been in effect for a period of more than 30 consecutive days during the 10 years preceding the date of the offering memorandum against any of the following:

- (a) a developer of the property subject to the syndicated mortgage;
- (b) a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the penalty or sanction.

(3) Disclose any declaration of bankruptcy, voluntary assignment in bankruptcy, proposal under any bankruptcy or insolvency legislation, proceedings, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets that has been in effect during the 10 years preceding the date of the offering memorandum with respect to any of the following:

- (a) a developer of the property subject to the syndicated mortgage;
- (b) a director, officer or principal holder of a developer of the property subject to the syndicated mortgage;
- (c) any issuer of which a person referred to above was a director, officer or principal holder at the time of the declaration, assignment, proposal, proceedings, arrangement, compromise or appointment.

**Item 16 – Conflicts of Interest**

(1) Describe any existing or potential conflicts of interest among any of the following:

- (a) the borrower;
- (b) the issuer;
- (c) a mortgage broker, mortgage brokerage or mortgage agency involved in the offering;
- (d) a developer of the property subject to the syndicated mortgage;
- (e) any partners, directors, officers or principal holders of the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency, or developer;

- (f) the trustee, administrator of the mortgage, or any other person providing goods or services to the borrower, issuer, mortgage broker, mortgage brokerage or mortgage agency or developer in connection with the syndicated mortgage.

(2) Describe any direct or indirect interest in the property subject to the syndicated mortgage, the borrower or the business of the borrower held by any of the following:

- (a) any mortgage broker, mortgage brokerage or mortgage agency, developer, trustee or administrator involved in the offering;
- (b) a director, officer or principal holder of a person or company listed above.

**Item 17 – Material Contracts**

(1) To the extent not already disclosed elsewhere in the offering memorandum, describe each material contract relating to the offering or the syndicated mortgage that is in force or is to be entered into by the borrower, issuer, mortgage broker, mortgage brokerage, mortgage agency or developer, or any related party of the foregoing.

(2) Disclose that copies of the material contracts are available from the issuer on request and explain how to request a copy.

**Item 18 – Disclosure of Fees**

(1) Disclose whether a mortgage broker, mortgage brokerage or mortgage agency has provided a disclosure statement under mortgage legislation to the borrower concerning all fees, by whatever name those fees are called, to be charged to the borrower. Disclose that copies of the disclosure statement are available from the issuer on request and explain how to request a copy.

(2) If no mortgage broker, mortgage brokerage or mortgage agency has provided a disclosure statement to the borrower, describe the fees, by whatever name those fees are called, that are to be charged to the borrower, how they are to be calculated and paid and when any person involved in the distribution is entitled to payment.

(3) Disclose all fees, by whatever name those fees are called, to be paid by the purchaser, directly or indirectly, in connection with the syndicated mortgage.

**Item 19 – Registration Documentation**

State:

In addition to all other documentation received, the purchaser should request from the borrower, issuer or any mortgage broker, mortgage brokerage or mortgage agency involved in the distribution, the following documentation:

- (a) a copy of the certificate of mortgage interest or assignment of the mortgage or any other document evidencing the investment;
- (b) a copy of any confirmation signed by any secured party with priority over the syndicated mortgage confirming the outstanding balance of its encumbrance over the property and confirming that the borrower is not in arrears with any payments;
- (c) written confirmation of valid insurance on the property and disclosure of the interest of the purchaser in the insurance;
- (d) written confirmation that there are no outstanding arrears or delinquent municipal property taxes on the property;
- (e) a state of title certificate or equivalent, showing the registration of the syndicated mortgage;
- (f) a copy of any administration agreement or trust indenture;
- (g) a copy of any agreement the purchaser entered into in connection with the distribution of the syndicated mortgage..

9. (1) This Instrument comes into force on March 1, 2021.
- (2) In Ontario, despite subsection (1), this Instrument comes into force on the later of the following:
- (a) March 1, 2021; and
  - (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.
- (3) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after March 1, 2021, these regulations come into force on the day on which they are filed with the Registrar of Regulations.



**ANNEX C**

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

**1. Companion Policy 45-106CP Prospectus Exemptions is changed by this Document.**

**2. Section 3.8 is changed by adding the following subsections:**

(11) Issuer of a syndicated mortgage

The offering memorandum exemption may only be used by an issuer to distribute a security of its own issue. Accordingly, only the issuer of a syndicated mortgage may use the offering memorandum exemption to distribute the syndicated mortgage.

Where a borrower enters into a mortgage with two or more persons participating as lenders under the debt obligation secured by the mortgage or enters into a mortgage with a view to the subsequent syndication of that mortgage to two or more purchasers, lenders or investors, the borrower is the issuer of the syndicated mortgage. Consequently, the obligations to comply with the conditions of the exemption and reporting requirements (including the filing of a report of exempt distribution) would fall on the borrower.

There may be circumstances where a person other than the borrower may be an issuer of a syndicated mortgage. For example, where an existing or committed mortgage is syndicated among lenders by a party not acting on behalf of the borrower, that party will generally be an issuer of the syndicated mortgage. The determination of the identity of the issuer, or issuers, of a syndicated mortgage will depend on the facts and circumstances of the transaction.

Where a person other than the borrower is the issuer of a syndicated mortgage, the ability of the issuer to rely on the offering memorandum exemption for the distribution of the syndicated mortgage will be dependent upon the issuer providing the required information regarding the borrower, including financial statements, in the offering memorandum. The issuer's certificate that the offering memorandum does not contain a misrepresentation will extend to any information provided about the borrower under the syndicated mortgage.

(12) Professional association

The definition of "qualified appraiser" in section 1.1 of the Instrument requires a qualified appraiser to be a member of a professional association. The Appraisal Institute of Canada, The Canadian National Association of Real Estate Appraisers and l'Ordre des évaluateurs agréés du Québec are examples of organizations that meet the definition of "professional association" in section 1.1 of the Instrument.

(13) Independent qualified appraiser for syndicated mortgages

Subsection 2.9(19) of the Instrument provides the test that the issuer of a syndicated mortgage and a qualified appraiser must apply to determine whether a qualified appraiser is independent of the issuer. The following are examples of when we would consider that a qualified appraiser is not independent. These examples are not a complete list. We would consider that a qualified appraiser is not independent of an issuer if the qualified appraiser satisfies any of the following:

- (a) is an employee, insider or director of the issuer;
- (b) is an employee, insider or director of a related party of the issuer;
- (c) is a partner of any person in paragraph (a) or (b);
- (d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer;
- (e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property;
- (f) is an employee, insider or director of another issuer that has a direct or indirect interest in the property that is the subject of the appraisal or in an adjacent property;

- (g) has or expects to have, directly or indirectly, an ownership, royalty or other interest in the property that is the subject of the appraisal or in an adjacent property;
- (h) has received the majority of their income, either directly or indirectly, in the three years preceding the date of the appraisal from the issuer or a related party of the issuer.

(14) Appraisals

Subsection 2.9(19.1) of the Instrument requires the issuer to deliver an appraisal of the property subject to a syndicated mortgage. The appraisal must disclose the fair market value of the property, without taking into account any proposed improvements or proposed development. The fair market value of the property, as it currently exists, is important information for prospective purchasers to understand the protection afforded by the security interest in the property subject to the syndicated mortgage in the event of a default by the borrower..

**3. Section 4.7 is changed by deleting the first paragraph.**

4. (1) These changes become effective on March 1, 2021.

(2) In Ontario, despite subsection (1), the changes become effective on the later of the following:

- (a) March 1, 2021; and
- (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.

ANNEX D

AMENDMENTS TO  
NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS,  
EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. ***National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.***
2. ***Section 8.12 is amended by:***
  - (a) ***replacing*** “In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, subsection (2)” ***in subsection (3) with*** “Subsection (2)”, ***and***
  - (b) ***repealing subsection (4).***
3. (1) This Instrument comes into force on March 1, 2021.  
(2) In Ontario, despite subsection (1), this Instrument comes into force on the later of the following:
  - (a) March 1, 2021; and
  - (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.(3) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after March 1, 2021, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX E

CHANGES TO  
COMPANION POLICY 31-103CP REGISTRATION REQUIREMENTS,  
EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. ***Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations is changed by this Document.***

2. ***Section 3.3 is changed by adding the following to the end of Relevant securities industry experience:***

In limited circumstances, relevant securities industry experience may include experience obtained during employment at a firm that has relied on a registration exemption. For example, experience obtained at a registered or licensed mortgage broker, mortgage brokerage, mortgage agency or mortgage dealer under applicable legislation may be considered relevant if the experience can be demonstrated to be relevant to the category applied for. In these circumstances, the regulator may also impose terms and conditions on the individual or the registered firm sponsoring the individual in order to limit their specific activities..

3. (1) These changes become effective on March 1, 2021.

(2) In Ontario, despite subsection (1), the changes become effective on the later of the following:

(a) March 1, 2021; and

(b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.

## ANNEX F

### LOCAL MATTERS (ONTARIO)

#### Introduction

Ontario prospectus and registration exemptions related to syndicated mortgages were published for comment on March 15, 2019. As a result of the comments received on those proposed exemptions and the Amendments generally, the Ontario Securities Commission (**OSC**) is publishing for comment additional amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (**OSC Rule 45-501**) to clarify the definition of “qualified syndicated mortgage” and to expand the proposed exemptions related to mortgages, as discussed below.

The comment period will expire on **September 21, 2020**. Please see “Request for Comment” below.

#### Regulation of Syndicated Mortgages in Ontario

Several of the comments on the Amendments we received related to the potential for overlapping regulation of syndicated mortgages by the OSC under the *Securities Act* (Ontario) (the **Act**) and by the Financial Services Regulatory Authority of Ontario (**FSRA**) under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (the **MBLAA**). Although there may in some cases be elements of dual regulation for mortgage brokerages that distribute syndicated mortgages, we expect that changes to the current regulation of syndicated mortgages in Ontario will minimize the impact on market participants. We understand the disclosure forms currently required under the MBLAA will no longer be required for syndicated mortgages that will be overseen by the OSC under the Act.<sup>3</sup> The combination of expected changes under the MBLAA regulations and the proposed local Ontario securities law exemptions will generally result in a syndicated mortgage being primarily regulated by either FSRA under the MBLAA regime or by the OSC under the securities regime, with minimal overlap.

We are working with staff of FSRA and the Government of Ontario with a view to coordinating the coming into force of the Amendments, including the final version of the local Ontario exemptions, with other changes to mortgage regulation in Ontario. We anticipate delivering the Amendments to the Minister of Finance as a single package once all of the proposals are finalized.

#### Proposed Ontario Prospectus and Registration Exemptions

In response to concerns raised by commenters, we are proposing changes to the local Ontario exemptions included in the Amendments, including changes to the definition of qualified syndicated mortgage and expanding the exemptions as discussed below.

##### *Qualified Syndicated Mortgages Exemptions*

The proposed prospectus and registration exemptions for qualified syndicated mortgages will result in FSRA maintaining oversight of qualified syndicated mortgage distributions. The definition of qualified syndicated mortgage is intended to limit the scope of these products to lower-risk mortgages on primarily residential property that are similar to conventional mortgages. In particular, the exclusion of mortgages for financing the construction or development of property is a key limitation intended to limit the risk of these mortgages. The definition also excludes mortgages with a loan-to-value ratio of greater than 90%.

We received comments suggesting that the scope of the mortgages included within the definition of qualified syndicated mortgage should be expanded. We also received comments that the terms of the definition suggested that reasonable administration fees could not be charged in connection with a qualified syndicated mortgage. We are proposing changes to the definition of qualified syndicated mortgage to further clarify that it is intended to capture lower-risk products. The changes include:

- clarifying the 90% loan-to-value requirement by indicating that any other obligations with equal or greater priority to the syndicated mortgage must be treated as fully drawn for the purposes of the calculation;
- excluding syndicated mortgages that are subject to future subordination without the consent of the lenders;
- clarifying the drafting of the definition; and
- deleting unnecessary elements of the definition that were potentially confusing and that suggested that administration fees could not be charged.

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<sup>3</sup> Report to The Minister of Finance on the Legislative Review of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, dated September 30, 2019, p. 4, <https://www.fin.gov.on.ca/en/consultations/mblaa-report-september2019.html>.

The revised definition of qualified syndicated mortgage is set out in Schedule 1 to this Annex.

#### *Syndicated Mortgages Sold to Permitted Clients*

The comments we received on the proposed definition of qualified syndicated mortgage suggested that the narrow scope of this definition could result in a reduction of available financing for small business and could subject mortgage brokerages who do not deal with retail investors to unnecessary regulatory burden.

We do not think it is appropriate to expand the scope of the qualified syndicated mortgage definition to include potentially higher-risk products because they may be sold to retail investors without any specific limits or disclosure requirements. As an alternative to expanding the definition of qualified syndicated mortgage, we are proposing to include syndicated mortgages sold to permitted clients within the scope of the proposed prospectus and registration exemptions. These expanded exemptions are intended to maintain access to capital for small business and to minimize the burden on mortgage brokerages that do not deal with retail investors.

We have proposed using the existing definition of permitted client as the threshold for institutional and high-net-worth investors. This definition was designed to capture investors that are permitted to waive the requirement for a registrant to take reasonable steps to ensure that the purchase or sale of a security is suitable for its client.

The expanded exemptions will allow the primary oversight of syndicated mortgages sold to institutions and high-net-worth investors to remain with FSRA. Mortgage brokerages that deal in mortgages and syndicated mortgages only with permitted clients will not be required to register with the OSC and the distributions of these products to permitted clients will be exempt from the prospectus requirement.

The first trade of a security acquired under the prospectus exemption for the sale of syndicated mortgages to a permitted client is proposed to be designated as a distribution. The rationale for this requirement is to ensure that any subsequent resale of a syndicated mortgage acquired by a permitted client under the exemption will be made in accordance with the terms of a prospectus exemption. Accordingly, while resales to other permitted clients or accredited investors may continue on an exempt basis, sales to retail investors will be limited by the availability of prospectus exemptions.

#### *Mortgage Exemptions*

As a result of the Amendments, the mortgage exemptions in sections 2.36 of NI 45-106 and 8.12 of NI 31-103 are expected to apply in Ontario. We are also including exemptions related to the sale of mortgages by mortgage brokerages licensed under MBLAA in the local Ontario prospectus and registration exemptions rule OSC Rule 45-501. We have proposed to include these exemptions in OSC Rule 45-501 in order to reduce regulatory burden for mortgage brokerages licensed under MBLAA by providing a single consolidated set of exemptions related to mortgages that apply to them. This change is intended to avoid requiring Ontario mortgage brokerages to refer to three separate rules and to potentially consider compliance with, or the availability of exemptions to, mortgage brokerage legislation in other jurisdictions for mortgages on properties located in other Canadian jurisdictions. Since the exemptions are limited to mortgage brokerages licensed under MBLAA, they are not expected to have any impact on investors.

The proposed expanded exemptions are set out in Schedule 1 to this Annex.

#### **Reports of Exempt Distribution**

We received several comments related to the regulatory burden associated with the obligation to file reports of exempt distribution for non-qualified syndicated mortgages. As set out in Annex A, we do not see any rationale to treat prospectus exempt distributions of non-qualified syndicated mortgages differently than those of other securities. However, both the frequency of filing reports of exempt distribution and the fees associated with those filings in Ontario are being considered under separate initiatives. We expect that any changes made to the general requirements for non-investment fund issuers to file reports of exempt distribution will reduce the impact of this requirement on issuers of non-qualified syndicated mortgages.

We are not proposing to require reports of exempt distribution for the prospectus exemptions for qualified syndicated mortgages or syndicated mortgages sold to permitted clients. Since these distributions will be overseen by FSRA, we expect that reporting for these transactions will be addressed by requirements under the MBLAA.

#### **Short-term Securitized Products**

As detailed in the 2018 Proposal, the Amendments remove the Private Issuer Exemption for the distribution of short-term securitized products to harmonize the treatment of short-term securitized products in Ontario with the other CSA jurisdictions.

## Amendments to the Act

Bill 177 received Royal Assent on December 14, 2017. It includes amendments to the Act to remove the existing prospectus and registration exemptions for the distribution of mortgages. As a result, the amended form of the Mortgage Exemptions included in the Amendments will apply in Ontario. These amendments come into force on proclamation, which we expect will correspond to the time at which the Amendments come into force on March 1, 2021.

## Impact on Investors

The anticipated impact on investors is set out in the attached notice. With respect to the exemptions for qualified syndicated mortgages or syndicated mortgages sold to permitted clients, there will be no change from the current regime under the Amendments. As these types of mortgages are likely more similar to conventional mortgages or involve only institutional or high-net-worth investors, we believe that it is appropriate for them to continue to be exempt from the prospectus and registration requirements.

For syndicated mortgages that are not qualified syndicated mortgages and that are sold to investors other than permitted clients, the current requirements under the MBLAA will be replaced by the requirements of the Act.

Prescribed disclosure specific to syndicated mortgages, the obligation to obtain an independent professional appraisal of the property subject to a syndicated mortgage, and investment limits will be required only for distributions under the OM Exemption. Distributions of syndicated mortgages under other prospectus exemptions, such as the accredited investor prospectus exemption (the **AI Exemption**) or the family, friends and business associates prospectus exemption (the **FFBA Exemption**) will be subject to the same requirements as the distribution of other types of securities.

Market intermediaries that are in the business of distributing syndicated mortgages under prospectus exemptions will be subject to the dealer registration requirement under the Act and will have the same obligations to their clients as for other types of securities.

## Anticipated Costs and Benefits

### *Costs of compliance with prospectus exemptions*

As discussed above, the anticipated costs of the Amendments are expected to be offset by the repeal of the amended regulations under the MBLAA that came into force on July 1, 2018. For the distribution of non-qualified syndicated mortgages under prospectus exemptions other than the OM Exemption, we expect the costs of distribution will be decreased as a result of the implementation of the Amendments and the changes to the MBLAA regulations, since the current requirements for an appraisal and detailed disclosure will no longer be required. We expect that this will include all distributions to designated class investors under MBLAA, who would be eligible to purchase under the AI Exemption and a portion of retail investors who would be eligible to purchase under other prospectus exemptions, such as the FFBA Exemption.

While overall costs of complying with disclosure requirements will decrease, firms will be required to pay fees to file reports of exempt distribution. Reports of exempt distribution are necessary to permit oversight of offerings of non-qualified syndicated mortgages and the additional cost is expected to be less than the reduction in disclosure costs.

Since issuers of syndicated mortgages that do not rely on the OM Exemption will not be required to provide prescribed disclosure and a property appraisal, there is a potential loss of the benefits of such disclosure to purchasers of syndicated mortgages. As with the distribution of other securities under prospectus exemptions such as the AI Exemption and the FFBA Exemption, the disclosure to be provided will be a matter left to negotiation between the issuer and potential investors in the offering.

For distributions of non-qualified syndicated mortgages under the OM Exemption, we expect that there will be a minimal impact on the level of disclosure for the offering these products. The appraisal requirement and supplemental disclosure requirements included as part of the Amendments for the OM Exemption are substantially similar to the current requirements under the MBLAA regulations. Accordingly, both the offering costs and the potential benefits to investors are expected to remain substantially unchanged following the implementation of the Amendments. However, costs related to the requirement to file reports of exempt distribution for distributions under the OM Exemption are expected to result in a small increase in offering costs. These costs are necessary to permit oversight of the distribution of non-qualified syndicated mortgages.

For the distribution of qualified syndicated mortgages or any syndicated mortgages sold to permitted clients by licensed mortgage brokerages, there will be no change to the current requirements and no additional costs.

### *Costs of compliance with the registration requirement*

Firms that are currently in the business of trading in non-qualified syndicated mortgages in Ontario with investors other than permitted clients will be required to either register as a dealer or retain a registered dealer in connection with the distribution of non-qualified syndicated mortgages after the Amendments come into effect. Based on data published by FSRA, there were approximately 67 firms that dealt in non-qualified syndicated mortgages in 2018.

Approximately 13 of these firms are also active in distributing other mortgage-related securities, such as securities of mortgage investment entities and are either registered as an exempt market dealer or have an existing relationship with an exempt market dealer. Others may deal only with permitted clients and will continue to be exempt from registration.

The remaining firms are likely to incur additional costs to either retain a dealer or register as a dealer as follows, unless they deal only with permitted clients:

- Costs of retaining a registered exempt market dealer: Dealers typically charge commissions in the range of between 2% and 10% of the capital raised.
- Costs related to registering as an exempt market dealer:  
Initial registration in Ontario, results in the following approximate costs:
  - Registration fees: \$1,300 for the firm, \$200 per registered individual and \$100 per permitted individual;
  - Advisory costs related to the application and implementing compliance systems, including a policies and procedures manual: \$15,000 to \$20,000;
  - Audited financial statements: \$5,000 to \$15,000; and
  - Financial institutional bond for insurance: \$2,000.
- Ongoing costs for registrants:
  - Annual participation fee based on the firm's Ontario revenue attributable non-qualified syndicated mortgage activity with a minimum fee of \$835;
  - Audited annual financial statements: \$10,000 to \$15,000; and
  - Financial institutional bond for insurance: \$2,000.

The costs of retaining service providers for legal and compliance services assume the firms retain specialized third parties to assist. Firms may opt to not engage these service providers, which would reduce costs. We also anticipate that there will be overlap with existing systems that these firms would have implemented as licensed mortgage brokerages, which will reduce the incremental cost of compliance with securities legislation.

There will be no changes in the requirements to licensed mortgage brokerages that deal only in qualified syndicated mortgages or that deal only with permitted clients.

### *Benefits of the proposed changes*

The primary benefit of the proposed changes will be that investors, other than permitted clients, who purchase non-qualified syndicated mortgages will deal with registrants who meet the same standards and are subject to the same compliance regime as registrants dealing in other exempt market investments.

### **Unpublished Materials**

In adopting the Amendments, we have not relied on any significant unpublished study, report or other written materials.

### **Authority for Amendments**

In Ontario, the rule-making authority for the Amendments is as follows:

- NI 45-106: paragraph 20 of subsection 143(1) of the Act.



## Notices

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- NI 31-103: paragraph 8 of subsection 143(1) of the Act.
- OSC Rule 45-501:
  - prospectus exemption: paragraph 20 of subsection 143(1) of the Act.
  - specifying that a trade in securities acquired under an exemption is a distribution: paragraph 48 of subsection 143(1) of the Act.
  - registration exemption: paragraph 8 of subsection 143(1) of the Act.

### Request for Comment

We welcome your comments on the proposed amendments to OSC Rule 45-501 set out in Schedule 1 to this Annex. Please submit your comments in writing on or before **September 21, 2020**.

Please deliver your comments to:

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
E-Mail: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Please note that comments received will be made publicly available and posted on the OSC Website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). We cannot keep submissions confidential because Ontario securities legislation requires publication of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

**SCHEDULE 1 TO ANNEX F**

**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 1.1 is amended by adding the following definitions:**

“qualified syndicated mortgage” means a syndicated mortgage that satisfies all of the following:

- (a) the syndicated mortgage secures a debt obligation on property that satisfies all of the following:
  - (i) it is used primarily for residential purposes;
  - (ii) it includes no more than four units;
  - (iii) it includes no more than one unit that is used for non-residential purposes;
- (b) the syndicated mortgage does not secure a debt obligation incurred for the construction or development of property;
- (c) at the time the syndicated mortgage is arranged, the amount of the debt it secures, together with all other debt secured by mortgages on the property that have priority over, or the same priority as, the syndicated mortgage, assuming in all cases that the maximum amounts of any such mortgages are fully drawn, does not exceed 90 per cent of the fair market value of the property relating to the mortgage, excluding any value that may be attributed to proposed or pending development of the property;
- (d) the syndicated mortgage cannot be subordinated to future financing without the consent of each lender;
- (e) there is no existing agreement that requires the lenders of the syndicated mortgage to consent to future subordination of the syndicated mortgage;
- (f) no person or company has the ability to consent to future subordination of the syndicated mortgage on behalf of the lenders of the syndicated mortgage without obtaining the consent of each lender;

“syndicated mortgage” means a mortgage in which two or more persons participate, directly or indirectly, as a lender in a debt obligation that is secured by the mortgage;.

**3. Part 2 is amended by adding the following section:**

**2.10 Mortgages –**

(1) The prospectus requirement does not apply to a distribution of

- (a) a mortgage, other than a syndicated mortgage, on real property in a jurisdiction of Canada,
- (b) a qualified syndicated mortgage on real property in a jurisdiction of Canada, or
- (c) a syndicated mortgage on a real property in a jurisdiction of Canada to a permitted client,

by a person or company that is registered or licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

(2) The first trade in a security acquired under paragraph (1)(c) is a distribution..

**4. Part 3 is amended by adding the following section:**

**3.5 Mortgages –** The dealer registration requirement does not apply in respect to a trade in

- (a) a mortgage, other than a syndicated mortgage, on real property in a jurisdiction of Canada,
- (b) a qualified syndicated mortgage on real property in a jurisdiction of Canada, or
- (c) a syndicated mortgage on a real property in a jurisdiction of Canada with a permitted client,

by a person or company that is registered or licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

5. This Instrument comes into force on the later of the following:

- (a) March 1, 2021; and
- (b) the day on which sections 4 and 5 of Schedule 37 to Bill 177, *Stronger, Fairer Ontario Act (Budget Measures), 2017* are proclaimed into force.

1.1.2 CSA Staff Notice 11-342 Notice of Local Amendments and Changes in Certain Jurisdictions



CSA Staff Notice 11-342  
Notice of Local Amendments and Changes in Certain Jurisdictions

August 6, 2020

From time to time, a local jurisdiction may amend a national or multilateral instrument or change a policy or companion policy that affects activity only in that jurisdiction. The CSA recognize that such a local amendment or change may nonetheless be of interest or importance beyond the local jurisdiction and CSA staff are issuing this Notice to identify amendments and changes implemented in British Columbia, Ontario and Québec. For public convenience, CSA members in other jurisdictions will update the text of the applicable material on their websites to reflect these local amendments and changes.

The local amendments and changes referred to in this notice comprise those shown in Annexes A to G. These local amendments or changes are to the following instruments:

- National Instrument 14-101 *Definitions* (British Columbia);
- National Instrument 24-101 *Institutional Trade Matching and Settlement* (Ontario);
- National Instrument 31-103 *Registrant Requirements, Exemptions and Ongoing Registrant Obligations* (Québec);
- National Instrument 41-101 *General Prospectus Requirements* (British Columbia);
- Companion Policy 45-106 *Prospectus Exemptions* (Québec);
- Multilateral Instrument 91-101 *Derivatives: Product Determination* (British Columbia); and
- Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (British Columbia).

The text of rule and policy consolidations on the websites of CSA members will be updated, as necessary, to reflect these local amendments and changes. You may direct questions regarding this Notice to:

Sylvia Pateras  
Autorité des marchés financiers  
Tel: 514-395-0337, extension 2536  
sylvia.pateras@lautorite.qc.ca

Rajeeve Thakur  
Alberta Securities Commission  
Tel: 403-297-2488  
rajeeve.thakur@asc.ca

Sonne Udemgba  
Financial and Consumer Affairs Authority of Saskatchewan  
Tel: 306-787-5879  
sonne.udemgba@gov.sk.ca

Wendy Morgan  
Financial and Consumer Services  
Commission (New Brunswick)  
Tel: 506-643-7202  
wendy.morgan@fcnb.ca

Steven Dowling  
Office of the Superintendent of Securities,  
Prince Edward Island  
Tel: 902-368-4551  
sddowling@gov.pe.ca

Noreen Bent  
British Columbia Securities Commission  
Tel: 604-899-6741  
nbent@bcsc.bc.ca

Chris Besko  
The Manitoba Securities Commission  
Tel: 204-945-2561  
Chris.Besko@gov.mb.ca

Oren Winer  
Ontario Securities Commission  
Tel: 416-593-8250  
owiner@osc.gov.on.ca

H. Jane Anderson  
Nova Scotia Securities Commission  
Tel: 902-424-0179  
jane.anderson@novascotia.ca

Renee Dyer  
Office of the Superintendent of Securities NL  
Tel: 709-729-4909  
ReneeDyer@gov.nl.ca

**Notices**

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Jeff Mason  
Office of Superintendent of Securities, Nunavut  
Tel: 867-975-6591  
JMason@gov.nu.ca

Rhonda Horte  
Office of the Yukon Superintendent of Securities  
Tel: 867-667-5466  
rhonda.horte@gov.yk.ca

Thomas Hall  
Department of Justice  
Government of the Northwest Territories  
Tel: 867-767-9260 ext. 82180  
tom\_hall@gov.nt.ca

**ANNEX A**

**Local Amendment to National Instrument 14-101  
Definitions in British Columbia**

**Section 1.1 (3) of National Instrument 14-101 Definitions is amended by adding British Columbia to the definition of “exchange contract” as follows:**

“**exchange contract**” means, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a derivative

- (a) that is traded on an exchange,
- (b) that has standardized terms and conditions determined by that exchange, and
- (c) for which a clearing agency substitutes, through novation or otherwise, the credit of the clearing agency for the credit of the parties to the derivative;

This amendment became effective in British Columbia on March 27, 2020.

**ANNEX B**

**Local Amendment to National Instrument 24-101  
*Institutional Trade Matching and Settlement in Ontario***

**Part 4 of National Instrument 24-101 Institutional Trade Matching and Settlement is amended by adding the following section:**

- 4.1.1 Moratorium:** In Ontario, despite subsection 2(1) of Ontario Securities Commission Rule 11-501 *Electronic Delivery Of Documents To The Ontario Securities Commission*, section 4.1 does not apply to a registered firm beginning on July 1, 2020 and ending on July 1, 2023..

This amendment became effective in Ontario on July 1, 2020.

**ANNEX C**

**Local Amendments to National Instrument 31-103  
Registration requirements, exemptions and ongoing registrant obligations in Québec**

**Section 9.4 National Instrument 31-103 Registration requirements, exemptions and ongoing registrant obligations is amended by replacing subsections (1.2) and (1.3) with the following:**

- (1.2)** In Québec, the requirements listed in paragraphs (a) to (g), paragraphs (i) to (m) and paragraphs (p.1) to (x) of subsection (1) do not apply to a mutual fund dealer to the extent equivalent requirements to those listed in these subparagraphs are applicable to the mutual fund dealer under the regulations in Québec.
- (1.3)** Despite subsections (1) and (2), in Québec, only the exemptions from the requirements specified in paragraphs (m.2), (m.3), (n), (n.1) and (n.2) of subsection (1) apply to a mutual fund dealer that is also registered as a mutual fund dealer in another jurisdiction if the mutual fund dealer complies with the corresponding MFDA provisions that are in effect..

***Subsection 9.4(3) is repealed.***

***Subsection 9.4(4) is repealed.***

These amendments became effective in Québec on December 31, 2019.



ANNEX D

Local Amendments to National Instrument 41-101  
*General Prospectus Requirements* in British Columbia

*Part 3C of National Instrument 41-101: General Prospectus Requirements is amended*

(a) *by adding the following subsection to section 3C.6:*

(4) Subsection (1) does not apply in British Columbia., and

(b) *by adding the following subsection to section 3C.7:*

(7) In British Columbia, for the purpose of subsection (1), “**statutory right of action**” means section 135 of the *Securities Act* (British Columbia)..

These amendments became effective in British Columbia on December 7, 2018.

**ANNEX E**

**Local Change to Companion Policy 45-106  
*Prospectus Exemptions in Québec***

***Section 5.1 of Companion Policy 45-106 Prospectus Exemptions is changed by replacing the last sentence of the second paragraph of subsection 2 with the following:***

In Québec, the securities regulatory authority considers that access to personal information meets the test set out in the legislation and consequently, this information would not be made publicly available..

This change became effective in Québec on February 28, 2020.

**ANNEX F**

**Local Amendments to Multilateral Instrument 91-101  
Derivatives: Product Determination in British Columbia**

**Section 1 of Multilateral Instrument 91-101 Derivatives: Product Determination, is amended**

- (a) in subsection (4) by striking out “British Columbia” and in paragraph (b) (ii) and (iv) by striking out “British Columbia”, and**
- (b) in subsection (5) (a) by adding “British Columbia,” after “Alberta,” and in paragraph (b) by striking out “British Columbia,”.**

These amendments became effective in British Columbia on March 27, 2020.

ANNEX G

***Local Amendment to Multilateral Instrument 96-101:  
Trade Repositories and Derivatives Data Reporting in British Columbia***

***Multilateral Instrument 96-101: Trade Repositories and Derivatives Data Reporting is amended in section 1 (5) (a) by striking out “British Columbia.”***

This amendment became effective in British Columbia on March 27, 2020.

**1.1.3 OSC Notice of General Order – Ontario Instrument 45-506 Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)**

**Notice of General Order**

**Ontario Instrument 45-506**

***Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)***

The Ontario Securities Commission (the **Commission**) is providing relief from the requirement to be registered as a dealer (the **Registration Exemption**) and from the requirement to file a prospectus (the **Prospectus Exemption**) in respect of a start-up crowdfunding distribution, subject to conditions.

**Description of Order**

The order provides that an issuer may rely on the Prospectus Exemption in respect of a start-up crowdfunding distribution of securities if the distribution is facilitated through a funding portal that satisfies the Registration Exemption or that is registered in Ontario as an investment dealer or exempt market dealer, provided that certain conditions are satisfied, including that:

- (i) The distribution is of the issuer's eligible securities;
- (ii) The issuer is not a reporting issuer or an investment fund;
- (iii) The issuer prepares an offering document that is made available to purchasers on the funding portal's platform;
- (iv) The aggregate amount raised by the issuer in the distribution does not exceed \$250,000 and the issuer completes no more than two start-up crowdfunding distributions in a calendar year; and
- (v) Each purchaser invests no more than \$1,500 (or no more than \$5,000 if the purchaser has obtained positive suitability advice from a registered dealer).

A person or company that operates a funding portal may rely on the Registration Exemption to facilitate a start-up crowdfunding distribution, provided that certain conditions are satisfied, including that the funding portal:

- (i) Has its head office in Canada and is not registered under securities legislation in any jurisdiction of Canada;
- (ii) Does not advise a purchaser about the merits of an investment or recommend or represent that an eligible security is a suitable investment for the purchaser;
- (iii) Does not receive a commission, fee or other similar payment from a purchaser;
- (iv) Only facilitates or proposes to facilitate crowdfunding distributions;
- (v) Completes certain funding portal information forms and delivers these to the Commission; and
- (vi) Has policies and procedures to meet certain other conditions in the order.

The order also provides that a firm registered in the category of investment dealer or exempt market dealer may operate a funding portal that facilitates the distribution of securities under the Prospectus Exemption provided that it meets the conditions in the order.

Detail on these conditions, as well as the other conditions necessary to be satisfied for reliance on the Registration Exemption and the Prospectus Exemption, are included in the order.

**Reasons for the Order**

Having considered the interests of investors and the financing needs of early-stage businesses and other small enterprises, the Commission is granting the Registration Exemption and the Prospectus Exemption in order to allow for crowdfunding distributions of securities. The order, which provides exemptions that are substantially similar to local exemptions available in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia, is intended to provide access to new sources of capital for start-ups and small and medium sized enterprises. The order is particularly relevant in the current COVID-19 business environment, when it may be especially challenging for these categories of businesses to access capital.

The Registration Exemption and the Prospectus Exemption each apply only if the conditions contained in the order are met, and the Commission is therefore satisfied that it would not be prejudicial to the public interest to grant the order.

On February 27, 2020, the Commission published Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (the **Proposed Instrument**) and related materials for a comment period that ended on July 13, 2020. The Registration Exemption and the Prospectus Exemption are intended to provide interim relief until such time as the Canadian Securities Administrators have had an opportunity to consider comments, finalize and, subject to Ministerial approval, implement the start-up crowdfunding regime contemplated in the Proposed Instrument.

On May 28, 2020, the Commission granted relief to issuers from the requirement to file a prospectus in respect of crowdfunding distributions of securities through the funding portal operated by Silver Maple Ventures, Inc. (known as “FrontFundr”), which is registered as an exempt market dealer in Ontario (the **May Order**). This order revokes the May Order. Provided that the conditions of the order are satisfied, the Prospectus Exemption is available to all issuers in respect of start-up crowdfunding distributions facilitated through a funding portal that is relying on the Registration Exemption or operated by an investment dealer or exempt market dealer.

#### **Day on which the Order Ceases to Have Effect**

The order comes into effect on July 30, 2020 (the **Effective Date**) and remains in effect until the earlier of the date on which the Commission adopts the Proposed Instrument or the date that is 18 months from the Effective Date.

1.4 Notices from the Office of the Secretary

1.4.2 Majd Kitmitto et al.

1.4.1 Coinsquare Ltd. et al.

FOR IMMEDIATE RELEASE  
July 31, 2020

FOR IMMEDIATE RELEASE  
July 30, 2020

COINSQUARE LTD.,  
COLE DIAMOND,  
VIRGILE ROSTAND and  
FELIX MAZER,  
File No. 2020-21

MAJD KITMITTO,  
STEVEN VANNATTA,  
CHRISTOPHER CANDUSSO,  
CLAUDIO CANDUSSO,  
DONALD ALEXANDER (SANDY) GOSS,  
JOHN FIELDING, and  
FRANK FAKHRY,  
File No. 2018-70

**TORONTO** – The Commission issued its Oral Reasons for Approval of a Settlement in the above named matter.

**TORONTO** – The Commission issued an Order in the above named matter.

A copy of the Oral Reasons for Approval of a Settlement dated July 21, 2020 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

A copy of the Order dated July 31, 2020 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

For Media Inquiries:

For Media Inquiries:

[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

For General Inquiries:

For General Inquiries:

1-877-785-1555 (Toll Free)  
[inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)

1-877-785-1555 (Toll Free)  
[inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)

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## Chapter 2

# Decisions, Orders and Rulings

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### 2.1 Decisions

#### 2.1.1 Auxly Cannabis Group Inc. and AltaCorp Capital Inc.

##### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriters, acting as agents for the issuer, to enter into an equity distribution agreement to make "at the market" (ATM) distributions of common shares over the facilities of the TSXV or other marketplace in Canada – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – Issuer will issue a news release announcing the equity distribution agreement and file the agreement on SEDAR – Application for relief from prospectus delivery requirement – Delivery of prospectus not practicable in circumstances of an ATM distribution – Relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – Application for relief from certain prospectus form requirements – Relief granted to permit modified forward-looking certificate language – Relief granted on terms and conditions set out in decision document – Decision will terminate 25 months after the issuance of a receipt for the shelf prospectus – Decision and application also held in confidence by decision makers until the earlier of the date the issuer enters into an equity distribution agreement, waives confidentiality, or 90 days from the date of the decision.

##### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71(1), 140, 147.

National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1, Item 20 of Form 44-101F1.

National Instrument 44-102 Shelf Distributions, ss. 5.5, 6.7, Part 9, s. 11.1, ss. 2.1, 2.2 of Appendix A.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

April 3, 2020

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
BRITISH COLUMBIA  
AND  
ONTARIO  
(the Jurisdictions)

AND

IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS  
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF  
AUXLY CANNABIS GROUP INC.  
(the Issuer)

AND

ALTACORP CAPITAL INC.  
(the Agent, together with the Issuer, the Filers)

DECISION

## Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for the following relief (the Exemption Sought):

- (a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the Delivery Requirement) does not apply to the Agent or any other registered investment dealer acting on behalf of the Agent as a selling agent (each, a Selling Agent) in connection with any at-the-market distribution (each, an ATM Distribution), as defined in National Instrument 44-102 *Shelf Distributions* (NI 44-102) of common shares of the Issuer (the Shares) under an equity distribution agreement (the Equity Distribution Agreement) to be entered into by the Issuer and the Agent;
- (b) that the requirements (collectively, the Form Requirements) to include in a base shelf prospectus or any prospectus supplement thereto, as applicable:
  - (i) the statements specified in items 2 and 3 of section 5.5 of NI 44-102;
  - (ii) a forward-looking issuer certificate of the Issuer in the form specified in section 2.1 of Appendix A to NI 44-102;
  - (iii) a forward-looking underwriter certificate of the Agent in the form specified in section 2.2 of Appendix A to NI 44-102; and
  - (iv) a statement respecting purchasers' statutory rights of withdrawal and remedies for rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus*,

do not apply to a shelf prospectus of the Issuer providing for the distribution of securities of the issuer, including the Shares (the Shelf Prospectus), any applicable prospectus supplement (the Prospectus Supplement) or to any amendments thereto to be filed in respect of the sale of Shares under an ATM Distribution.

The Decision Makers have also received a request from the Filers for a decision that the application and this decision be kept confidential and not made public until the earliest of (i) the date on which the Filers enter into the Equity Distribution Agreement, (ii) the date on which either of the Filers advise the Decision Makers that there is no longer any need to hold the application and this decision in confidence, and (iii) the date that is 90 days after the date of this decision (the Confidentiality Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that section 4.7 of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

## Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined in this decision.

## Representations

¶ 3 This decision is based on the following facts represented by the Filers:

### *The Issuer*

1. the Issuer is a corporation currently existing under the *Business Corporations Act* (British Columbia); the head office of the Issuer is located in Vancouver, British Columbia;

## Decisions, Orders and Rulings

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2. the Shares are listed on the TSX Venture Exchange;
3. the Issuer is a reporting issuer or the equivalent under the securities legislation of each province of Canada other than Quebec, and it is contemplated that upon filing and being receipted for the Shelf Prospectus, the Issuer will be a reporting issuer in each province and territory of Canada;
4. the Issuer is not in default of securities legislation in any jurisdiction of Canada;

### *The Agent*

5. the Agent is registered as an investment dealer under the securities legislation in each province or territory of Canada;
6. the Agent is not in default of securities legislation in any jurisdiction of Canada;

### *Proposed ATM Distribution*

7. subject to mutual agreement on terms and conditions, the Issuer proposes to enter into the Equity Distribution Agreement with the Agent, providing for the sale from time to time by the Issuer through the Agent, as agent, of Shares under ATM Distributions under the base shelf prospectus procedures prescribed by Part 9 of NI 44-102;
8. before making any ATM Distributions, the Issuer will have filed the Shelf Prospectus (and will have received a final receipt for the Shelf Prospectus from the Decision Makers) and the Prospectus Supplement in each province and territory of Canada to qualify the sale of Shares under the Equity Distribution Agreement; the Prospectus Supplement will describe the terms of the ATM Distribution, including the terms of the Equity Distribution Agreement, and otherwise supplement the disclosure in the Shelf Prospectus;
9. if the Equity Distribution Agreement is entered into, the Issuer will promptly: (a) issue and file a news release announcing the Equity Distribution Agreement and indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and specifying where and how purchasers of Shares under an ATM Distribution may obtain copies; and (b) file the Equity Distribution Agreement on SEDAR;
10. the Issuer will not, during the period that the final receipt for the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Shares that exceeds 10% of the aggregate market value of the outstanding Shares calculated in accordance with section 9.2 of NI 44-102, as at the last trading day of the month before the month in which the first ATM Distribution is made;
11. the Issuer will conduct ATM Distributions only through the Agent, as agent, directly or through a Selling Agent, and only through the TSXV or any other "marketplace" (as defined in National Instrument 21-101 *Marketplace Operation*) in Canada (Marketplace);
12. the aggregate number of Shares sold on the TSXV or any other Marketplace under an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Shares on the all Marketplaces on that day;
13. the Agent will act as the sole underwriter on behalf of the Issuer in connection with the sale of Shares on a Marketplace under the Equity Distribution Agreement, directly by the Agent or through one or more Selling Agents, and will be the only person or company paid an agency fee or commission by the Issuer in connection with such sales; the Agent will sign an underwriter's certificate in the Prospectus Supplement filed on SEDAR in the form set out in Section 29 below;
14. the Agent will effect ATM Distributions on a Marketplace either itself or through a Selling Agent; if sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on behalf of the Agent; a purchaser's rights and remedies under Canadian securities legislation against the Agent, as underwriters of an ATM Distribution, will not be affected by a decision to effect the sale directly or through a Selling Agent;
15. the Equity Distribution Agreement will require that, at the time of each sale of Shares under an ATM Distribution, the Issuer represents to the Agent that the Shelf Prospectus, as supplemented by the Prospectus Supplement, including the documents incorporated by reference in the Shelf Prospectus (which will include any news release that has been designated and filed as a Designated News Release as defined and outlined below) and any applicable amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, the Prospectus), contains full, true and plain disclosure of all material facts relating to the Issuer and the Shares being distributed; the Issuer would, therefore, be unable to proceed with sales under an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Issuer or the Shares;

16. after the date of the Prospectus Supplement and before the termination of any ATM Distribution, if the Issuer disseminates a news release disclosing information that, in the Issuer's determination, constitutes a "material fact" (as defined in the Legislation), the Issuer will identify such news release as a "designated news release" for the purposes of the Prospectus; this designation will be made on the face page of the version of such news release filed on SEDAR (any such news release, a Designated News Release); the Prospectus Supplement will provide that any such Designated News Release will be deemed to be incorporated by reference into the Shelf Prospectus; a Designated News Release will not be used to update disclosure in the Prospectus by the Issuer in the event of a "material change" (as defined in the Legislation);
17. if, after the Issuer delivers a notice to the Agent directing the Agent to sell Shares on the Issuer's behalf under the Equity Distribution Agreement (a Sell Notice), the sale of the Shares specified in the Sell Notice, taking into consideration prior sales under all previous ATM Distributions, would constitute a material fact or material change, the Issuer will suspend sales under the Equity Distribution Agreement until either (i) it had disseminated and filed a Designated News Release, in the case of a material fact, or has filed a material change report or amended the Prospectus, or (ii) circumstances have changed such that the sales would no longer constitute a material fact or material change;
18. in determining whether the sale of the Shares specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation (i) the parameters of the Sell Notice, including the number of Shares proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution, (ii) the percentage of outstanding Shares that the number of Shares proposed to be sold under the Sell Notice represents, (iii) sales under prior Sell Notices, (iv) the trading volume and volatility of the Shares, (v) recent developments in the business, affairs and capital structure of the Issuer, and (vi) prevailing market conditions generally;
19. it is in the interest of both the Issuer and the Agent to minimize the market impact of sales under an ATM Distribution; the Agent will monitor closely the market's reaction to trades made under an ATM Distribution in order to evaluate the likely market impact of future trades; the Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices; if the Agent has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Shares, the Agent will recommend against effecting the trade at that time;

*Disclosure of Shares Sold*

20. for each financial period in which the Issuer conducts an ATM Distribution, it will disclose in its annual and interim financial statements and related management discussion and analysis filed on SEDAR the number and average selling price of Shares distributed under the ATM Distribution in accordance with the Prospectus, and the commission and gross and net proceeds for such sales;

*Prospectus Delivery Requirement*

21. under the Delivery Requirement, a dealer effecting a trade of securities offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits;
22. the delivery of a prospectus is not practicable in the circumstances of an ATM Distribution because neither the Agent nor any Selling Agent, as applicable, effecting the trade will know the identity of the purchasers;
23. the Shelf Prospectus and the Prospectus Supplement (together with all documents incorporated by reference therein) will be filed and readily available electronically via SEDAR to all purchasers under ATM Distribution; as stated in section 9 above, the Issuer will issue a news release that specifies where and how copies of the Shelf Prospectus and the Prospectus Supplement can be obtained;
24. the liability of an issuer or an agent (and others) for misrepresentation in a prospectus under the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Delivery Requirement, as purchasers of securities offered under a prospectus during the period of distribution have a right of action for damages or rescission without regard to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus;

*Withdrawal Right and Right of Action for Non-Delivery*

25. under the Legislation, an agreement to purchase securities in respect of a distribution to which the prospectus requirement applies is not binding on the purchaser if a dealer receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any

amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the Withdrawal Right);

26. under the Legislation, a purchaser of securities to whom a prospectus was required to be sent or delivered in compliance with the Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Delivery Requirement (the Right of Action for Non-Delivery);
27. neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of an ATM Distribution because of the impracticability of delivering the Prospectus to a purchaser of Shares thereunder;

*Prospectus Form Requirements*

28. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following issuer certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such issuer certificate to supersede and replace any issuer certificate contained in the Shelf Prospectus solely with regard to the ATM Distribution:

*The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement, as required by the securities legislation of each of the provinces and territories of Canada.*

29. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following underwriter certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102):

*To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement, as required by the securities legislation of each of the provinces and territories of Canada.*

30. a different statement of purchasers' rights than that required by the Legislation is necessary in order to allow the Prospectus to accurately reflect the relief granted from the Delivery Requirement; accordingly, the Prospectus Supplement will state the following, with the date reference completed:

*Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Shares under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Shares and will not have remedies of rescission or, in some jurisdictions, revision of the price or damages for non-delivery of the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the Shares purchased by such purchaser because the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the Shares purchased by the purchaser will not be delivered as permitted under a decision document dated \*, 2020 and granted under National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.*

*Securities legislation in certain of the provinces and territories of Canada also provides a purchaser with remedies for rescission or, in some jurisdictions, revision of the price or damages if the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the securities purchased by a purchaser contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation in the jurisdictions that a purchaser of Shares under an at-the-market distribution may have against the Issuer or the Agent for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the securities purchased by a purchaser contain a misrepresentation remain unaffected by the non-delivery of the prospectus and the decision document referred to above.*

*Purchasers should refer to any applicable provisions of the securities legislation of the purchaser's province or territory and the decision document referred to above for the particulars of these rights or consult with a legal adviser.*

31. the Prospectus Supplement will disclose that, in respect of ATM Distributions under the Prospectus Supplement, the statement prescribed in section 30 above supersedes and replaces the statement of purchasers' rights contained in the Shelf Prospectus;
32. the statements required by items 2 and 3 of section 5.5 of NI 44-102 to be included in the Shelf Prospectus will be qualified by including the additional words ", except in cases where an exemption from the prospectus delivery requirement has been obtained"; and
33. the Issuer has not yet publicly announced its intention to enter into the Equity Distribution Agreement; premature disclosure of this intention may have an adverse effect on the Issuer.

**Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

- (a) during the 60-day period ending not earlier than 10 days prior to the commencement of an ATM Distribution, the Shares have traded, in total, on one or more Marketplaces, as reported on a consolidated market display:
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day;
- (b) the Issuer does not, during the period that the final receipt for the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Shares that exceeds 10% of the aggregate market value of Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made;
- (c) the Issuer makes the disclosure described in sections 20, 28, 29, 30, 31 and 32;
- (d) the Issuer complies with the representations in sections 3, 4, 8, 9, 11, 12, 15, 16, 17 and 18; and
- (e) the Agent complies with the representations in sections 5, 6, 11, 12, 13, 14 and 19.

This decision will terminate 25 months from the date of the receipt for the Shelf Prospectus.

The further decision of the Decision Makers is that the Confidentiality Relief is granted.

"John Hinze"  
Director, Corporate Finance  
British Columbia Securities Commission

**2.2 Orders**

**2.2.1 Ontario Instrument 45-506 Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)**

**Ontario Securities Commission**

**Ontario Instrument 45-506**

***Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)***

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective July 30, 2020 Ontario Instrument 45–506 entitled “Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)” is made.

July 30, 2020

“Grant Vingoe”  
Acting Chair

“Tim Moseley”  
Vice-Chair

**Authority under which the order is made:**

**Act and section:** *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 45-506

***Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)***  
**(the Order)**

**Background**

1. Subsection 25(1) of the *Securities Act* (Ontario) (the **Act**) provides that, unless a person or company is exempt from the requirement in that subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,
  - a) is registered in accordance with Ontario securities law as a dealer, or
  - b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer (the **Registration Requirement**).
2. A funding portal that trades in securities may be registered or rely on the exemption from the Registration Requirement in this Order or another exemption from the Registration Requirement under Ontario securities law.
3. Subsection 53(1) of the Act provides that no person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director (the **Prospectus Requirement**).
4. Under subsection 143.11(2) of the Act, if the Ontario Securities Commission (the **Commission**) considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to paragraph (b) of subsection 143.11(3) of the Act.
5. On May 28, 2020, pursuant to subsection 143.11(2) of the Act, the Commission granted relief (the **May Order**) substantially similar to the relief from the Prospectus Requirement provided in this Order. However, because the May Order was granted upon application submitted by Silver Maple Ventures Inc. in respect of its funding portal known as “FrontFundr” (**FrontFundr**), the May Order is limited to distributions by issuers through FrontFundr only.
6. On February 27, 2020, the Commission published for comment Proposed National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions* (the **Proposed Instrument**) and related materials. The comment period for the Proposed Instrument ended on July 13, 2020. This Order is intended to provide interim relief until such time as the Canadian Securities Administrators have had an opportunity to consider comments, finalize and, subject to Ministerial approval, implement the start-up crowdfunding regime contemplated in the Proposed Instrument.
7. In light of COVID-19 and having considered the interests of investors and the financing needs of early stage businesses and other small enterprises, the Commission is satisfied that, subject to the conditions of this Order, it would not be prejudicial to the public interest to provide, on an interim basis, exemptions from the Registration Requirement and the Prospectus Requirement to allow start-up crowdfunding distributions.

**Interpretation**

8. Terms defined in the Act or National Instrument 14-101 *Definitions* have the same meaning if used in this Order, unless otherwise defined.
9. In this Order:
  - “annual working capital certification” means a completed Form 5 *Start-Up Crowdfunding – Annual Working Capital Certification* attached as Appendix 5 to this Order;
  - “closing of the distribution” means, at the discretion of the issuer, any time after the minimum offering amount is reached;
  - “corresponding start-up crowdfunding order” means an order issued or a rule adopted by another securities regulatory authority or regulator, the terms of which are substantially similar to this Order.



“eligible security” means:

- (a) a common share,
- (b) a non-convertible preference share,
- (c) a security convertible into a security referred to in (a) or (b),
- (d) a non-convertible debt security linked to a fixed or floating interest rate, and
- (e) a unit of a limited partnership;

“funding portal” means a person or company through which a start-up crowdfunding distribution is made;

“funding portal – individual information form” means a completed Form 4 *Start-Up Crowdfunding – Funding Portal – Individual Information* attached as Appendix 4 to this Order;

“funding portal information form” means a completed Form 3 *Start-Up Crowdfunding – Funding Portal Information* attached as Appendix 3 to this Order;

“issuer group” means

- (a) the issuer,
- (b) an affiliate of the issuer, and
- (c) any other issuer
  - (i) that is engaged in a common enterprise with the issuer or with an affiliate of the issuer, or
  - (ii) whose business is founded or organized, directly or indirectly, by the same person or persons who founded or organized the issuer;

“minimum offering amount” means the minimum amount disclosed in the offering document;

“offering document” means a completed Form 1 *Start-up Crowdfunding - Offering Document*, including any amendment to the offering document, attached as Appendix 1 to this Order;

“participating jurisdictions” means British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia and any other jurisdiction whose securities regulatory authority or regulator has adopted a corresponding start-up crowdfunding order;

“principal” means a promoter, director, officer or control person;

“risk warning” means the Form 2 *Start-up Crowdfunding - Risk Acknowledgement*, attached as Appendix 2 to this Order; and

“start-up crowdfunding distribution” means a distribution through a funding portal of an eligible security that is exempt from the prospectus requirement under this Order or a corresponding start-up crowdfunding order.

## **Order**

10. The May Order is revoked.

## **Exemption from the Registration Requirement for funding portals**

11. (1) The decision of the Commission is that, pursuant to subsection 143.11(2) of the Act, an exemption from the Registration Requirement is granted to a funding portal in respect of a distribution by an issuer if all of the following apply:
- (a) the funding portal is not registered under securities legislation in any jurisdiction of Canada;

- (b) the funding portal does not advise a purchaser about the merits of an investment or recommend or represent that an eligible security is a suitable investment for the purchaser;
- (c) the funding portal does not receive a commission, fee or other similar payment from a purchaser;
- (d) the funding portal only facilitates or proposes to facilitate crowdfunding distributions;
- (e) at least 30 days before the first date the funding portal facilitates a crowdfunding distribution, the funding portal delivered to the Commission all of the following documents:
  - a. a completed funding portal information form certified by an authorized individual of the funding portal;
  - b. a completed funding portal – individual information form for each principal of the funding portal that contains a certification signed by that principal;
- (f) the funding portal has its head office in Canada;
- (g) the funding portal has policies and procedures reasonably designed to prevent a person or company from accessing its platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
  - a. is not a registered dealer under securities legislation in any jurisdiction of Canada, and
  - b. will not, and is not authorized to, provide advice about
    - i. the suitability of any security for investment by the person or company, or
    - ii. the merits of any investment;
- (h) the following is disclosed on the funding portal's platform:
  - a. a statement that the funding portal is not registered in any capacity under securities legislation in any jurisdiction of Canada and is relying on the exemption in this Order from the Registration Requirement;
  - b. a statement that the funding portal will hold each purchaser's assets
    - i. separate and apart from the funding portal's own property,
    - ii. in trust for the purchaser, and
    - iii. in the case of cash, in a designated trust account at a Canadian financial institution; and
  - c. the policies and procedures that the funding portal will follow for notifying each purchaser if the funding portal becomes insolvent or discontinues operations, and how the funding portal will return the assets to the purchaser;
- (i) the funding portal holds each purchaser's assets
  - a. separate and apart from the funding portal's own property,
  - b. in trust for the purchaser, and
  - c. in the case of cash, in a designated trust account at a Canadian financial institution;
- (j) the funding portal has policies and procedures for handling funds, in relation to a crowdfunding distribution, sufficient to provide reasonable assurance that the funding portal will comply with the conditions at paragraph 11(1)(i);
- (k) the funding portal does not close a crowdfunding distribution on its platform unless the funding portal receives, through the funding portal's platform, payment for the distribution of each eligible security from the purchaser of such security;

- (l) when an issuer provides the funding portal with its completed offering document and risk warning, the funding portal has policies and procedures reasonably designed to make these documents available to each purchaser through its platform;
  - (m) the funding portal has policies and procedures to prevent a purchaser from subscribing to a crowdfunding distribution unless the purchaser first completes the risk warning and confirms that the purchaser has read and understands the issuer's completed offering document;
  - (n) the funding portal has policies and procedures for promptly notifying each purchaser of an issuer's crowdfunding distribution of
    - a. any amendment to that issuer's completed offering document, and
    - b. the purchaser's right to withdraw from the agreement to purchase the security by delivering a notice to the funding portal under paragraph 12(j);
  - (o) the funding portal has policies and procedures to return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 12(j) from that purchaser;
  - (p) if an issuer has not raised the minimum offering amount by the 90th day after the issuer's completed offering document is first made available on the funding portal's platform, or if an issuer notifies the funding portal that it is withdrawing its crowdfunding distribution, then no later than five business days after such occurrence, the funding portal
    - a. notifies the issuer, and each purchaser of that issuer's crowdfunding distribution, that funds have been returned or are in the process of being returned, and
    - b. takes reasonable steps to return, or cause to be returned, all funds to each purchaser of that issuer's crowdfunding distribution;
  - (q) if each 48 hours period in paragraph 12(j) has elapsed, then the funding portal
    - a. releases, or causes to be released, all funds due to the issuer at the closing of the distribution, and
    - b. no later than fifteen days after the closing of the distribution
      - i. notifies each purchaser that the funds have been released to the issuer, and
      - ii. provides the issuer with all information required to comply with the issuer's obligation in paragraph 12(q); and
  - (r) neither the funding portal, nor any of its principals, is or has been the subject of an order, judgement, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government agency, administrative agency, self-regulatory organization, civil court, or administrative court in the last 10 years related to a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct;
  - (s) neither the funding portal, nor any of its principals, is or has been a principal of an entity that is or has been subject to an order, judgement, decree, sanction, administrative penalty or settlement agreement described in paragraph 11(1)(r);
  - (t) the funding portal has policies and procedures to promptly notify the Commission, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers, in the event that the funding portal becomes insolvent or discontinues operations; and
  - (u) the funding portal is not insolvent.
11. (2) A funding portal relying on the exemption in subsection 11(1) must:
- (a) maintain for a period of eight years from the date a record is created, books and records at its head office that accurately record its financial affairs and client transaction, and demonstrate the extent of the funding portal's compliance with this Order;

- (b) notify the Commission of each change to the information previously submitted in a document referred to in paragraph 11(1)(e) by delivering an amendment to the document no later than 30 days after the change;
- (c) take reasonable steps to confirm that the majority of the directors of the funding portal ordinarily reside in Canada;
- (d) disclose on its platform, for each principal of the funding portal, the full legal name, municipality and jurisdiction of residence, business mailing and email address and business telephone number of each principal of the funding portal;
- (e) take reasonable steps to confirm that the head office of an issuer is in Canada before allowing that issuer to post a crowdfunding distribution on the funding portal's platform;
- (f) not allow a person or company to access the funding portal's platform unless the person or company acknowledges that the person or company is accessing a platform of a funding portal that:
  - i. is not a registered dealer under securities legislation in any jurisdiction of Canada, and
  - ii. will not, and is not authorized to, provide advice about
    - (A) the suitability of any security for investment by the person or company, or
    - (B) the merits of any investment;
- (g) not close a crowdfunding distribution on its platform unless the funding portal has made the applicable offering document and risk warning available to each purchaser through the funding portal's platform;
- (h) not close a crowdfunding distribution on its platform unless each purchaser completes the risk warning and confirms that the purchaser has read and understands the issuer's completed offering document;
- (i) upon receiving notice from an issuer that the issuer has amended its completed offering document, promptly notify each purchaser of that issuer's crowdfunding distribution of
  - i. the amendment; and
  - ii. the purchaser's right to withdraw from the agreement to purchase the eligible security by delivering a notice under paragraph 12(j)
- (j) return all funds to a purchaser within five business days of receiving a withdrawal notification under paragraph 12(j) from that purchaser;
- (k) deliver to the Commission a completed annual working capital certification within 10 days of the calendar year end; and
- (l) upon becoming insolvent or discontinuing operations, promptly notify the Commission, and any purchasers for which it holds assets, of the process the funding portal will use to return the assets to these purchasers.

**Exemption from the Prospectus Requirement for issuers**

- 12. The decision of the Commission is that, pursuant to subsection 143.11(2) of the Act, an exemption from the Prospectus Requirement is granted in respect of a distribution by an issuer if:
  - (a) the distribution is of its own eligible security;
  - (b) the distribution and payment for the eligible security is facilitated through a funding portal that is:
    - (i) relying on the exemption in subsection 11(1), or
    - (ii) operated by an exempt market dealer or investment dealer provided that the issuer has obtained written confirmation from the registered dealer that:

- (A) it has filed either a completed Form 33-109F5 *Change of Registration Information* or Form 33-109F6 *Firm Registration* that describes its business as including operating a funding portal under this Order;
- (B) the funding portal meets or will meet the conditions set out in paragraphs 11(1)(k), 11(1)(p), 11(1)(q), 11(2)(c), 11(2)(g), 11(2)(h), 11(2)(i) and 11(2)(j); and
- (C) prior to allowing any person entry to its platform, requires the person to acknowledge that they are entering a website of a funding portal:
  - (a) that is operated by an investment dealer or an exempt market dealer, as applicable, under Canadian securities legislation, and
  - (b) that will provide advice about the suitability of the eligible security;
- (c) the issuer is not a reporting issuer or an investment fund in any jurisdiction of Canada or foreign jurisdiction;
- (d) the head office of the issuer is located in a participating jurisdiction;
- (e) the aggregate funds raised in any start-up crowdfunding distribution by any person or company in the issuer group does not exceed \$250,000;
- (f) the issuer group completes no more than two start-up crowdfunding distributions in a calendar year;
- (g) the distribution occurs no later than the 90th day after the first date the offering document is made available on the funding portal's platform;
- (h) the issuer uses an offering document to conduct the distribution and provides the offering document to the funding portal for the purpose of making it available to a purchaser through the funding portal's platform;
- (i) the issuer amends the offering document in the event the offering document is no longer true and provides it to the funding portal as soon as practicable for the purpose of making it available to a purchaser through the funding portal's platform;
- (j) the issuer provides a purchaser with a contractual right to withdraw an offer to purchase an eligible security that may be exercised by the purchaser delivering a notice to the funding portal within 48 hours of (i) the purchaser's subscription or (ii) the funding portal notifying the purchaser that the offering document has been amended;
- (k) the offering document discloses how the issuer intends to use the funds raised and the minimum offering amount to close the distribution;
- (l) the issuer raises the minimum offering amount described in the offering document, which may be reduced by the amount of any concurrent distribution made under a prospectus exemption other than the prospectus exemption set out in this Order and a corresponding start-up crowdfunding order, provided that the funds from the concurrent distribution are unconditionally available to the issuer;
- (m) no concurrent start-up crowdfunding distribution is made by any person or company in the issuer group for the purpose described in the offering document;
- (n) no commission, fee or other amounts are paid to the issuer group or any of their principals, employees or agents with respect to the distribution;
- (o) a principal of the issuer group is not a principal of the funding portal;
- (p) each purchaser invests no more than:
  - a. \$1,500; or
  - b. \$5,000, provided that the purchaser has obtained advice from a registered dealer that such investment is suitable for that person;

- (q) within 30 days after the closing of the distribution, the issuer delivers or causes to be delivered to each purchaser a confirmation setting out the following:
  - a. the date of subscription and the closing of the distribution;
  - b. the quantity and description of the eligible security purchased;
  - c. the price per eligible security paid by the purchaser; and
  - d. the total commission, fee and any other amounts paid by the issuer to the funding portal in respect of the start-up crowdfunding distribution;
- (r) the issuer that distributes a security under this Order must file no later than the 30th day after the closing of the distribution:
  - (i) the offering document; and
  - (ii) a report in Form 45-106F1 *Report of Exempt Distribution*.

**Resale restrictions**

- 13. The decision of the Commission is that the first trade of a security acquired under this Order is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

**Effective date and term**

This decision comes into effect on this 30th day of July, 2020 and will cease to be effective on the earlier of the following:

- (a) the date that is 18 months after the date of this Order unless extended by the Commission, and
- (b) the effective date of the Proposed Instrument.

Appendix 1

Form 1  
Start-Up Crowdfunding - Offering Document

GENERAL INSTRUCTIONS:

(1) **Filing Instructions**

An issuer relying on the start-up crowdfunding prospectus exemption is required to file the offering document no later than the 30th day after the closing of the distribution as follows:

- **In all participating jurisdictions (except British Columbia and Ontario)** – file this form through the System for Electronic Document Analysis and Retrieval (SEDAR) in accordance with National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR).
- **In British Columbia** – through BCSC eServices at <http://www.bcsc.bc.ca>.
- **In Ontario** – through the OSC Electronic Filing Portal at <https://www.osc.gov.on.ca/filings>.

This offering document and all amendments must be filed where the issuer has made a start-up crowdfunding distribution, as well as in the participating jurisdiction where the issuer's head office is located.

- (2) This offering document must be completed and certified by an authorized individual on behalf of the issuer.
- (3) Draft this offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms.
- (4) Conform as closely as possible to the format set out in this form. Address the items in the order set out below. No variation of headings, numbering or information set out in the form is allowed and all are to be displayed as shown.
- (5) This offering document is to be provided to your funding portal which has to make it available on its website. If the information contained in this offering document no longer applies or is no longer true, you must immediately amend the document and send the new version to the funding portal.
- (6) For information on how to complete this form and for information relating to the filing of this form, please refer to the Start-up Crowdfunding Guide for Businesses available on the website of the securities regulatory authority or regulator of the participating jurisdictions.

**Item 1: RISKS OF INVESTING**

- 1.1 Include the following statement, in bold type:

**“No securities regulatory authority or regulator has assessed reviewed or approved the merits of these securities or reviewed this offering document. Any representation to the contrary is an offence. This is a risky investment.”**

**Item 2: THE ISSUER**

- 2.1 Provide the following information for the issuer:
- (a) Full legal name as it appears in the issuer's organizing documents,
  - (b) Head office address,
  - (c) Telephone,
  - (d) Fax, and
  - (e) Website URL.
- 2.2 Provide the following information for a contact person of the issuer who is able to answer questions from purchasers and security regulatory authority or regulator:

- (a) Full legal name (first name, middle name and last name),
- (b) Position held with the issuer,
- (c) Business address,
- (d) Business telephone,
- (e) Fax, and
- (f) Business e-mail.

**Item 3: BUSINESS OVERVIEW**

3.1 Briefly explain, in a few lines, the issuer's business and why the issuer is raising funds.

Include the following statement, in bold type:

**"A more detailed description of the issuer's business is provided below."**

**Item 4: MANAGEMENT**

4.1 Provide the information in the following table for each promoter, director, officer and control person of the issuer:

Full legal name municipality of residence and position at issuer	Principal occupation for the last five years	Expertise, education, and experience that is relevant to the issuer's business	Number and type of securities of the issuer owned	Date securities were acquired and price paid for the securities	Percentage of the issuer's securities held as of the date of this offering document

4.2 State whether each person listed in item 4.1 or the issuer, as the case may be:

- (a) has ever, pled guilty to or been found guilty of:
  - (i) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) of Canada,
  - (ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
  - (iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
  - (iv) an offence under the criminal legislation of any other foreign jurisdiction,
- (b) is or has been the subject of an order (cease trade or otherwise), judgment, decree, sanction, or administrative penalty imposed by a government agency, administrative agency, self-regulatory organization, civil court, or administrative court of Canada or a foreign jurisdiction in the last ten years related to his or her involvement in any type of business, securities, insurance or banking activity,
- (c) is or has been the subject of a bankruptcy or insolvency proceeding,
- (d) is a director or executive officer of an issuer that is or has been subject to a proceeding described in paragraphs (a), (b) or (c) above.

**Item 5: START-UP CROWDFUNDING DISTRIBUTION**

5.1 Provide the name of the funding portal the issuer is using to conduct its start-up crowdfunding distribution.



## Decisions, Orders and Rulings

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- 5.2 List the name of all the participating jurisdictions (Canadian province or territory) where the issuer intends to raise funds and make this offering document available.
- 5.3 Provide the following information with respect to the start-up crowdfunding distribution:
- (a) the date before which the issuer must have raised the minimum offering amount for the closing of the distribution (no later than 90 days after the date this offering document is made available on the funding portal), and
  - (b) the date(s) and description of any amendment(s) made to this offering document, if any.
- 5.4 Indicate the type of eligible securities offered.
- 5.5 The eligible securities offered provide the following rights (choose all that apply):
- Voting rights,
  - Dividends or interests (describe any right to receive dividends or interest),
  - Rights on dissolution,
  - Conversion rights (describe what each security is convertible into),
  - Other (describe the rights).
- 5.6 Provide a brief summary of any other material restrictions or conditions that attach to the eligible securities being offered, such as tag-along, drag along or pre-emptive rights.
- 5.7 In a table, provide the following information:

	Total amount (\$)	Total number of eligible securities issuable
Minimum offering amount		
Maximum offering amount		
Price per eligible security		

- 5.8 Indicate the minimum investment amount per purchaser, if any.
- 5.9 Include the following statement, in bold type:
- “Note: The minimum offering amount stated in this offering document may be satisfied with funds that are unconditionally available to [insert name of issuer] that are raised by concurrent distributions using other prospectus exemptions without having to amend this offering document.”**

### Item 6: ISSUER’S BUSINESS

- 6.1 Describe the issuer’s business. Provide details about the issuer’s industry and operations.
- 6.2 Describe the legal structure of the issuer and indicate the jurisdiction where the issuer is incorporated or organized.
- 6.3 Indicate where the issuer’s articles of incorporation, limited partnership agreement, shareholder agreement or similar document are available to purchasers.
- 6.4 Indicate which statement(s) best describe the issuer’s operations (select all that apply):
- Has never conducted operations,
  - Is in the development stage,
  - Is currently conducting operations,
  - Has shown profit in the last financial year.

6.5 Indicate whether the issuer has financial statements available. If yes, include the following statement, in bold type:

**“Information for purchasers: If you receive financial statements from an issuer conducting a start-up crowdfunding distribution, you should know that those financial statements have not been provided to or reviewed by a securities regulatory authority or regulator. They are not part of this offering document. You should ask the issuer which accounting standards were used to prepare the financial statements and whether the financial statements have been audited. You should also consider seeking advice of an accountant or an independent financial adviser about the information in the financial statements.”**

6.6 Describe the number and type of securities of the issuer outstanding as at the date of the offering document. If there are securities outstanding other than the eligible securities being offered, please describe those securities.

**Item 7: USE OF FUNDS**

7.1 Provide information on all funds previously raised and how they were used by the issuer.

7.2 Using the following table, provide a detailed breakdown of how the issuer will use the funds from this start-up crowdfunding distribution. If any of the funds will be paid directly or indirectly to a promoter, director, officer or control person of the issuer, disclose in a note to the table the name of the person, the relationship to the issuer and the amount. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of funds listed in order or priority	Total amount (\$)	
	Assuming minimum offering amount	Assuming maximum offering amount

**Item 8: PREVIOUS START-UP CROWDFUNDING DISTRIBUTIONS**

8.1 For each start-up crowdfunding distribution in which the issuer and each promoter, director, officer and control person of the issuer have been involved in any of the participating jurisdictions in the past five years, provide the information below:

- (a) the full legal name of the issuer that made the distribution,
- (b) the name of the funding portal, and
- (c) whether the distribution successfully closed, was withdrawn by the issuer or did not close because the minimum offering amount was not reached and the date on which any of these occurred.

**Item 9: COMPENSATION PAID TO FUNDING PORTAL**

9.1 Describe the commission, fee and any other amounts expected to be paid by the issuer to the funding portal for this start-up crowdfunding distribution.

**Item 10: RISK FACTORS**

10.1 Describe in order of importance, starting with the most important, the main risks of investing in the issuer's business for the purchasers.

**Item 11: REPORTING OBLIGATIONS**

11.1 Describe the nature and frequency of any disclosure of information the issuer intends to provide to purchasers after the closing of the distribution and explain how purchasers can access this information.

**Item 12: RESALE RESTRICTIONS**

12.1 Include the following statement, in bold type:

**“The securities you are purchasing are subject to a resale restriction. You may never be able to resell the securities.”**

**Item 13: PURCHASERS' RIGHTS**

13.1 Include the following statement, in bold type:

**“If you purchase these securities, your rights may be limited and you will not have the same rights that are attached to a prospectus under applicable securities legislation. For information about your rights you should consult a lawyer.**

**You can cancel your agreement to purchase these securities. To do so, you must send a notice to the funding portal within 48 hours of your subscription. If there is an amendment to this offering document, you can cancel your agreement to purchase these securities by sending a notice to the funding portal within 48 hours of receiving notice of the amendment.**

**The offering of securities described in this offering document is made pursuant to a start-up crowdfunding registration and prospectus exemptions order issued by the securities regulatory authority or regulator in each participating jurisdiction exempting the issuer from the prospectus requirement.**

**[If the funding portal is not operated by a registered dealer in any of the participating jurisdictions where you intend to raise funds, add the phrase “and the funding portal from the registration requirement” after the words “prospectus requirement” in the above paragraph].”**

**Item 14: DATE AND CERTIFICATE**

14.1 Include the following statement, in bold type:

**“On behalf of the issuer, I certify that the statements made in this offering document are true.”**

14.2 Provide the signature, date of the signature, name and position of the authorized individual certifying this offering document.

14.3 If this offering document is signed electronically, include the following statement, in bold type:

**“I acknowledge that I am signing this offering document electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding.”**

**Questions:**

Refer any questions to the following participating jurisdictions:

<p><b>Ontario</b> Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8 Toll free: 1-877-785-1555 E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a> <a href="http://www.osc.ca">www.osc.ca</a></p>	<p><b>New Brunswick</b> Financial and Consumer Services Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Toll free: 1-866-933-2222 E-mail: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a> <a href="http://www.fcnb.ca">www.fcnb.ca</a></p>
<p><b>Alberta</b> The Alberta Securities Commission Suite 600, 250-5th Street SW Calgary, Alberta T2P 0R4 Telephone: 403-297-6454 E-mail: <a href="mailto:registration@asc.ca">registration@asc.ca</a> <a href="http://www.asc.ca">www.asc.ca</a></p>	<p><b>Nova Scotia</b> Nova Scotia Securities Commission Suite 400, 5251 Duke Street Halifax, Nova Scotia B3J 1P3 Telephone: 902-424-7768 Toll free in Nova Scotia: 1-855-424-2499 E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a> <a href="http://nssc.novascotia.ca">nssc.novascotia.ca</a></p>
<p><b>British Columbia</b> British Columbia Securities Commission P.O. Box 10142, Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: 604-899-6854 Toll free in Canada: 1-800-373-6393 E-mail: <a href="mailto:portal@bcsc.bc.ca">portal@bcsc.bc.ca</a> <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a></p>	<p><b>Québec</b> Autorité des marchés financiers Direction de l'encadrement des intermédiaires 800, rue du Square-Victoria, 4th floor P.O. Box 246, Tour de la Bourse Montréal, Québec H4Z 1G3 Telephone: 514-395-0337 Toll free in Québec: 1-877-525-0337 E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a> <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a></p>
<p><b>Manitoba</b> The Manitoba Securities Commission 500 - 400 St Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: 204-945-2548 Toll free in Manitoba: 1-800-655-2548 E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a> <a href="http://www.mbsecurities.ca">www.mbsecurities.ca</a></p>	<p><b>Saskatchewan</b> Financial and Consumer Affairs Authority of Saskatchewan Securities Division Suite 601 – 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: 306-787-5645 E-mail: <a href="mailto:registrationfcaa@gov.sk.ca">registrationfcaa@gov.sk.ca</a></p>

Appendix 2

Form 2  
**Start-Up Crowdfunding - Risk Acknowledgement**

Issuer Name:

Type of Eligible Security offered:

**WARNING!**  
**BUYER BEWARE: This investment is risky.**  
**Don't invest unless you can afford to lose all the money you pay for this investment.**

	Yes	No
<b>1. Risk acknowledgment</b>		
<b>Risk of loss</b> – Do you understand that this is a risky investment and that you may lose all the money you pay for this investment?		
<b>No income</b> – Do you understand that you may not earn any income, such as dividends or interest, on this investment?		
<b>Liquidity risk</b> – Do you understand that you may never be able to sell this investment?		
<b>Lack of information</b> – Do you understand that you may not be provided with any ongoing information about the issuer and/or this investment?		
<b>2. No approval and no advice</b> [ <i>Instructions: Delete “no advice” if the funding portal is operated by a registered dealer.</i> ]		
<b>No approval</b> – Do you understand that this investment has not been reviewed or approved in any way by a securities regulator?		
<b>No advice</b> – Do you understand that you will not receive advice about your investment? [ <i>Instructions: Delete if the funding portal is operated by a registered dealer.</i> ]		
<b>3. Limited legal rights</b>		
<b>Limited legal rights</b> – Do you understand that you will not have the same rights as if you purchased under a prospectus or through a stock exchange?  If you want to know more, you may need to seek professional legal advice.		
<b>4. Purchaser’s acknowledgement</b>		
<b>Investment risks</b> – Have you read this form and do you understand the risks of making this investment?		
<b>Offering document</b> – Before you invest, you should read the offering document carefully. The offering document contains important information about this investment. If you have not read the offering document or if you do not understand the information in it, you should not invest.  Have you read and do you understand the information in the offering document?		
<b>First and last name:</b>		
<b>Electronic signature:</b> By clicking the [I confirm] button, I acknowledge that I am signing this form electronically and agree that this is the legal equivalent of my handwritten signature. I will not at any time in the future claim that my electronic signature is not legally binding. The date of my electronic signature is the same as my acknowledgement.		

**5. Additional information**

- **You have 48 hours to cancel your purchase by sending a notice to the funding portal at:** *[Instructions: Provide email address or fax number where purchasers can send their notice. Describe any other manner for purchasers to cancel their purchase.]*
- **If you want more information about your local securities regulation, go to [www.securities-administrators.ca](http://www.securities-administrators.ca).** Securities regulators do not provide advice on investment.
- **To check if the funding portal is operated by a registered dealer, go to [www.aretheyregistered.ca](http://www.aretheyregistered.ca)** *[Instructions: Delete if the funding portal is not operated by a registered dealer.]*

Appendix 3

Form 3  
Start-Up Crowdfunding – Funding Portal Information Form

**GENERAL INSTRUCTIONS:**

- (1) *This form must be typed, printed, signed and delivered via e-mail with any attachments and all corresponding Start-Up Crowdfunding - Funding Portal - Individual Information Forms to the securities regulatory authority or regulator of each of the participating jurisdictions where the funding portal facilitates or intends to facilitate a start-up crowdfunding distribution at the e-mail address(es) provided on the last page of this form.*
- (2) *This form must be completed and certified by an authorized individual on behalf of the funding portal.*
- (3) *Question 7 and questions 9 to 16: Please check the appropriate space provided. If your answer to any of these questions is “Yes”, you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Responses must consider all time periods.*
- (4) *An attachment in response to any question must be signed and dated by the authorized individual certifying this form.*
- (5) *If a change occurs and the form and documents filed with the securities regulatory authority or regulator are no longer up to date, or the information they contain is no longer true, you must complete a new form setting out the change, and deliver it to the securities regulatory authority or regulator of each applicable participating jurisdiction as soon as practicable.*
- (6) *For funding portal information, please refer to the Start-up Crowdfunding Guide for Funding Portals available on the website of the securities regulatory authority or regulator of the participating jurisdictions.*
- (7) *The securities regulatory authority or regulator to which this form is delivered may request the funding portal to provide supporting documents. Please refer to Start-up Crowdfunding Guide for Funding Portals for examples of supporting documents.*

**FUNDING PORTAL INFORMATION**

1. Provide the following information regarding the funding portal:
  - (a) Full legal name of the funding portal as it appears on the funding portal's organizing documents;
  - (b) Name that the funding portal will be operating under;
  - (c) Website URL;
  - (d) Head office address<sup>1</sup>;
  - (e) Telephone;
  - (f) Fax; and
  - (g) E-mail address.
2. Provide the following information regarding the contact person for the funding portal:
  - (a) Full legal name (first name, middle name and last name);
  - (b) Business address;
  - (c) Telephone;
  - (d) Fax; and

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<sup>1</sup> If the funding portal's head office is not located in one of the participating jurisdictions, then, unless exemptive relief is obtained, the funding portal may be in violation of the dealer registration requirement in that jurisdiction. Please refer to the *Start-up Crowdfunding Guide for Funding Portals* for more information.

- (e) E-mail address.
3. Provide the following information regarding each promoter, director, officer and control person of the funding portal. Use an attachment if necessary. Any attachment must be initialed by the authorized individual certifying this form.
- (a) Full legal name (first name, middle name and last name); and
- (b) Position(s) held.
4. Provide the name of each participating jurisdiction where the funding portal is delivering this form.
5. Provide the date the funding portal expects to begin to facilitate start-up crowdfunding distributions in the participating jurisdictions named in item 4 above.
6. If the funding portal is already relying on start-up crowdfunding registration and prospectus exemptions in any participating jurisdiction, provide the name(s) of the participating jurisdiction(s) and the date the Funding Portal Information Form was delivered to the securities regulatory authority or regulator.
7. Has the funding portal ever been notified by a securities regulatory authority or regulator that it cannot rely on the start-up crowdfunding registration and prospectus exemptions?
- Yes  No
- If yes, you must provide details.
8. Describe the legal structure of the funding portal and indicate the jurisdiction where the funding portal is incorporated or organized. Some participating jurisdictions may require additional documents. Please refer to the *Start-up Crowdfunding Guide for Funding Portals* for more information.

**CRIMINAL DISCLOSURE**

9. Has the funding portal ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from:
- (a) a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) (Canada),
- (b) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
- (c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
- (d) an offence under the criminal legislation of any other foreign jurisdiction.
- Yes  No
- If yes, you must provide details.
10. Are there any outstanding or stayed charges against the funding portal alleging a criminal offence that was committed?
- Yes  No
- If yes, you must provide details.

**CIVIL DISCLOSURE**

11. Has the funding portal ever been the subject of an order, judgment, decree, sanction, or administrative penalty in Canada or a foreign jurisdiction in the last ten years related to its involvement in any type of business, securities, insurance or banking activity?
- Yes  No
- If yes, you must provide details.



## Decisions, Orders and Rulings

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12. Are there currently any outstanding civil actions alleging fraud, theft, deceit, misrepresentation, or similar misconduct against the funding portal?

Yes  No

If yes, you must provide details.

13. Has the funding portal ever been a defendant or respondent in any civil proceeding in which fraud, theft, deceit, misrepresentation, or similar misconduct is, or was, successfully established in a judgement?

Yes  No

If yes, you must provide details.

### FINANCIAL DISCLOSURE

14. Has the funding portal ever had a petition in bankruptcy issued or made a voluntary assignment in bankruptcy or any similar proceeding?

Yes  No

If yes, you must provide details.

15. Has the funding portal made a proposal under any legislation relating to bankruptcy or insolvency or any similar proceeding?

Yes  No

If yes, you must provide details.

16. Has the funding portal ever been subject to, or initiated any proceedings, arrangement or compromise with creditors? This includes having a receiver, receiver-manager, administrator or trustee appointed by or at the request of creditors, privately, through court process or by order of a regulatory authority, to hold funding portal assets.

Yes  No

If yes, you must provide details.

17. Provide details on the process and procedure for handling all funds in relation to the start-up crowdfunding distribution in a designated trust account at a Canadian financial institution, including:

- (a) the name of the Canadian financial institution the funding portal will use;
- (b) the names of the signatories on this account and their role with the funding portal;
- (c) details of how the funds held in this account will be separate and apart from the funding portal's own property;
- (d) a copy of the trust agreement, or details surrounding the establishment of this account. If the funding portal does not have a trust agreement or an account, please explain;
- (e) details regarding how funds will flow:
  - i. from purchasers to the funding portal's account;
  - ii. from the funding portal's account to the issuer in the event that the start-up crowdfunding distribution closes; and
  - iii. from the funding portal's account back to the purchasers in the event that the start-up crowdfunding distribution does not close or the purchaser has exercised their right of withdrawal.

### FUNDING PORTAL WEBSITE

18. Provide access to the funding portal's website in a test environment when complete and ready for viewing.

**COLLECTION AND USE OF INFORMATION**

The information required under this form is collected, used and disclosed by the securities regulatory authority or, where applicable, regulator of the participating jurisdictions under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

By submitting this form, the funding portal:

- acknowledges that the securities regulatory authority or regulator may collect personal information about the individuals referred to in this form or information about the funding portal,
- confirms that the individuals referred to in this form have been notified that their personal information is disclosed on this form, the legal reason for doing so, how it will be used and who to contact for more information, and
- consents to the posting on the website of the securities regulatory authority or regulator of:
  - i. the name that the funding portal will be operating under,
  - ii. the website address for the funding portal, and
  - iii. the funding portal's reliance on a dealer registration exemption.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or regulator in any participating jurisdiction in which this form is delivered. Contact information is listed at the end of this form.

**CERTIFICATION**

By signing this form, the funding portal undertakes:

- to comply with all of the applicable conditions set out in the start-up crowdfunding registration and prospectus exemptions of each participating jurisdiction where this form is delivered, and
- to provide upon request to the securities regulatory authority or regulator of a participating jurisdiction access to the books and records maintained at its head office in accordance with the start-up crowdfunding registration and prospectus exemptions.

On behalf of the funding portal, I certify that the statements made in this form are true and complete.

Full legal name of funding portal:

\_\_\_\_\_

Signature of authorized individual:

\_\_\_\_\_

Date:

\_\_\_\_\_

Print name of authorized individual:

\_\_\_\_\_

Position held:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

E-mail:

\_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

Deliver by e-mail to the securities regulatory authority or regulator of each applicable participating jurisdiction:

<p><b>Ontario</b>  Ontario Securities Commission  20 Queen Street West, 22nd Floor  Toronto, Ontario M5H 3S8  Toll free: 1-877-785-1555  E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a>  <a href="http://www.osc.ca">www.osc.ca</a>  OSC Electronic Filing Portal  <a href="https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6">https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6</a></p>	<p><b>New Brunswick</b>  Financial and Consumer Services Commission  85 Charlotte Street, Suite 300  Saint John, New Brunswick E2L 2J2  Toll free: 1-866-933-2222  E-mail: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a>  <a href="http://www.fcnb.ca">www.fcnb.ca</a></p>
<p><b>Alberta</b>  The Alberta Securities Commission  Suite 600, 250-5th Street SW  Calgary, Alberta T2P 0R4  Telephone: 403-297-6454  E-mail: <a href="mailto:registration@asc.ca">registration@asc.ca</a>  <a href="http://www.asc.ca">www.asc.ca</a></p>	<p><b>Nova Scotia</b>  Nova Scotia Securities Commission  Suite 400, 5251 Duke Street  Halifax, Nova Scotia B3J 1P3  Telephone: 902-424-7768  Toll free in Nova Scotia: 1-855-424-2499  E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a>  <a href="http://nssc.novascotia.ca">nssc.novascotia.ca</a></p>
<p><b>British Columbia</b>  British Columbia Securities Commission  P.O. Box 10142, Pacific Centre  701 West Georgia Street  Vancouver, British Columbia V7Y 1L2  Telephone: 604-899-6854  Toll free in Canada: 1-800-373-6393  E-mail: <a href="mailto:portal@bcsc.bc.ca">portal@bcsc.bc.ca</a>  <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a></p>	<p><b>Québec</b>  Autorité des marchés financiers  Direction de l'encadrement des intermédiaires  800, rue du Square-Victoria, 4th floor  P.O. Box 246, Tour de la Bourse  Montréal, Québec H4Z 1G3  Telephone: 514-395-0337  Toll free in Québec: 1-877-525-0337  E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a>  <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a></p>
<p><b>Manitoba</b>  The Manitoba Securities Commission  500 - 400 St Mary Avenue  Winnipeg, Manitoba R3C 4K5  Telephone: 204-945-2548  Toll free in Manitoba: 1-800-655-2548  E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a>  <a href="http://www.mbsecurities.ca">www.mbsecurities.ca</a></p>	<p><b>Saskatchewan</b>  Financial and Consumer Affairs Authority of Saskatchewan  Securities Division  Suite 601 – 1919 Saskatchewan Drive  Regina, Saskatchewan S4P 4H2  Telephone: 306-787-5645  E-mail: <a href="mailto:registrationfcaa@gov.sk.ca">registrationfcaa@gov.sk.ca</a></p>

**Appendix 4**

**Form 4**

**Start-Up Crowdfunding – Funding Portal - Individual Information Form**

**GENERAL INSTRUCTIONS:**

- (1) *This form must be typed, printed, signed and delivered via e-mail with any attachments and the corresponding Start-up Crowdfunding - Funding Portal Information Form to the securities regulatory authority or regulator of each of the participating jurisdictions where the funding portal facilitates or intends to facilitate a start-up crowdfunding distribution at the e-mail address(es) provided on the last page of this form.*
- (2) *This form must be completed and certified by each promoter, director, officer, and control person of the funding portal.*
- (3) *The information provided on this form must be specific to the individual certifying this form.*
- (4) *Question 5 and questions 11 to 23: Please check the appropriate space provided. If your answer to any of these questions is "Yes", you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. Responses must consider all time periods.*
- (5) *An attachment in response to any question must be signed and dated by the individual certifying this form.*
- (6) *If a change occurs and the form and documents filed with the securities regulatory authority or regulator are no longer up to date or the information they contain is no longer true, you must complete a new form setting out the change, and deliver it to the securities regulatory authority or regulator of each applicable participating jurisdiction as soon as practicable.*
- (7) *For funding portal information, please refer to the Start-up Crowdfunding Guide for Funding Portals available on the website of the securities regulatory authority or regulator of the participating jurisdictions.*

**FUNDING PORTAL INFORMATION**

- 1. Provide the full legal name of the funding portal as it appears on the funding portal's organizing documents.
- 2. Provide the name that the funding portal will be operating under.
- 3. Indicate the position(s) you hold with the funding portal.

**INDIVIDUAL INFORMATION**

- 4. Full legal name:

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First name	Middle name(s)	Last name
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- 5. Are you currently, or have you ever been, known by any name(s) other than your full legal name stated above, for example nicknames or names due to marriage?

Yes  No

If yes, you must provide details.

- 6. Telephone, fax number and e-mail address:

Residential:	( )	Fax number:	( )
Business:	( )	E-mail:	

**Decisions, Orders and Rulings**

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7. Provide all residential addresses for the past five years starting with your current residential address.

Number, street, city, province, territory or state, country and postal/ZIP code	From		To	
	MM	YYYY	MM	YYYY

8. If you are not a resident of Canada, you must have one address for service of process in Canada and provide the following information:

Name of agent for service:	
Name of contact person:	
Address for service:	
Telephone:	

9. Sex, date and place of birth:

Sex	Date of birth			Place of birth		
	MM	DD	YYYY	City	Province/Territory/State	Country
Female <input type="checkbox"/>						
Male <input type="checkbox"/>						

10. Country of citizenship: \_\_\_\_\_

11. Are you currently or have you ever been registered or licensed in any capacity with any Canadian securities regulatory authority or regulator, or with any other professional or regulatory entity?

Yes  No

If yes, you must provide your licence/ registration type, name of the entity, and the start date and ending date, if applicable:

12. Have you ever been dismissed for cause by an employer from a position following allegations that you:

- violated any statutes, regulations, rules or standards of conduct;
- failed to appropriately supervise compliance with any statutes, regulations, rules or standards of conduct; or
- committed fraud or the wrongful taking of property, including theft?

Yes  No

If yes, you must provide details.

**CRIMINAL DISCLOSURE**

13. Have you ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from:
- a summary conviction or indictable offence under the *Criminal Code* (R.S.C., 1985, c. C-46) (Canada),
  - a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction,
  - a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein, or
  - an offence under the criminal legislation of any other foreign jurisdiction.

Yes  No

If yes, you must provide details.

14. Are there any outstanding or stayed charges against you alleging a criminal offence that was committed?

Yes  No

If yes, you must provide details.

15. To the best of your knowledge, are there any outstanding or stayed charges against any entity of which you were, at the time the criminal offence was alleged to have taken place, a promoter, director, officer or control person?

Yes  No

If yes, you must provide details.

16. To the best of your knowledge, has any entity, when you were a promoter, director, officer or control person, ever been found guilty, pleaded no contest to or been granted an absolute or conditional discharge from a criminal offence that was committed?

Yes  No

If yes, you must provide details.

**CIVIL DISCLOSURE**

17. Have you ever been the subject of an order, judgment, decree, sanction, or administrative penalty in Canada or a foreign jurisdiction in the last ten years related to your involvement in any type of business, securities, insurance or banking activity?

Yes  No

If yes, you must provide details.

18. Are there currently any outstanding civil actions alleging fraud, theft, deceit, misrepresentation, or similar misconduct against you or an entity of which you are or were a promoter, director, officer or control person?

Yes  No

If yes, you must provide details.

19. Have you or an entity of which you are or were a promoter, director, officer or control person ever been a defendant or respondent in any civil proceeding in which a fraud, theft, deceit, misrepresentation, or similar misconduct is, or was, successfully established in a judgement?

Yes  No

If yes, you must provide details.

**FINANCIAL DISCLOSURE**

20. Have you or any entity when you were a promoter, director, officer or control person of that entity, ever had a petition in bankruptcy issued or made a voluntary assignment in bankruptcy or any similar proceeding?

Yes  No

If yes, you must provide details.

21. Have you or any entity when you were a promoter, director, officer or control person of that entity made a proposal under any legislation relating to bankruptcy or insolvency or any similar proceeding?

Yes  No

If yes, you must provide details.

22. Have you or any entity when you were a promoter, director, officer or control person of that entity ever been subject to proceedings under any legislation relating to the winding up or dissolution of that entity, or under the *Companies' Creditors Arrangement Act* (Canada) or similar legislation?

Yes  No

If yes, you must provide details.

23. Have you or any entity when you were a promoter, director, officer or control person of that entity ever been subject to, or initiated any proceedings, arrangement or compromise with creditors? This includes having a receiver, receiver-manager, administrator or trustee appointed by or at the request of creditors, privately, through court process or by order of a regulatory authority, to hold your assets.

Yes  No

If yes, you must provide details.

## **COLLECTION AND USE OF PERSONAL INFORMATION**

The personal information required under this form is collected, used and disclosed by the securities regulatory authority or, where applicable, regulator of the participating jurisdictions under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

By submitting this form, you consent to the collection, use and disclosure of this personal information by the securities regulatory authority or regulator of each participating jurisdiction and any police records, records from other government or non-governmental regulators or self-regulatory organizations, credit records and employment records about you that the securities regulatory authority or regulator may need to determine the completeness of the information submitted in this form and compliance with the conditions of the start-up crowdfunding registration and prospectus exemptions. The securities regulatory authority or regulator may contact government and private bodies or agencies, individuals, corporations and other organizations for information about you.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or regulator of any participating jurisdiction in which this form is delivered. Contact information is listed at the end of this form.



**CERTIFICATION**

By submitting this form, I:

- certify that the statements made in this form are true and complete, and
- agree to be subject to the securities legislation of each participating jurisdiction of Canada where I have submitted this form. This includes the jurisdiction of any tribunals or any proceedings that relate to my activities as a promoter, director, officer or control person of a funding portal under applicable securities legislation.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_

Position held: \_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

Deliver by e-mail to the securities regulatory authority or regulator of each applicable participating jurisdiction:

<p><b>Ontario</b>  Ontario Securities Commission  20 Queen Street West, 22nd Floor  Toronto, Ontario M5H 3S8  Toll free: 1-877-785-1555  E-mail: <a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a>  <a href="http://www.osc.ca">www.osc.ca</a>  OSC Electronic Filing Portal  <a href="https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6">https://eforms1.osc.gov.on.ca/e-filings/generic/form.do?token=ec7a3cb6-d86d-419d-9c11-f1febe403cb6</a></p>	<p><b>New Brunswick</b>  Financial and Consumer Services Commission  85 Charlotte Street, Suite 300  Saint John, New Brunswick E2L 2J2  Toll free: 1-866-933-2222  E-mail: <a href="mailto:emf-md@fcnb.ca">emf-md@fcnb.ca</a>  <a href="http://www.fcnb.ca">www.fcnb.ca</a></p>
<p><b>Alberta</b>  The Alberta Securities Commission  Suite 600, 250-5th Street SW  Calgary, Alberta T2P 0R4  Telephone: 403-297-6454  E-mail: <a href="mailto:registration@asc.ca">registration@asc.ca</a>  <a href="http://www.asc.ca">www.asc.ca</a></p>	<p><b>Nova Scotia</b>  Nova Scotia Securities Commission  Suite 400, 5251 Duke Street  Halifax, Nova Scotia B3J 1P3  Telephone: 902-424-7768  Toll free in Nova Scotia: 1-855-424-2499  E-mail: <a href="mailto:nssc.crowdfunding@novascotia.ca">nssc.crowdfunding@novascotia.ca</a>  <a href="http://nssc.novascotia.ca">nssc.novascotia.ca</a></p>
<p><b>British Columbia</b>  British Columbia Securities Commission  P.O. Box 10142, Pacific Centre  701 West Georgia Street  Vancouver, British Columbia V7Y 1L2  Telephone: 604-899-6854  Toll free in Canada: 1-800-373-6393  E-mail: <a href="mailto:portal@bcsc.bc.ca">portal@bcsc.bc.ca</a>  <a href="http://www.bcsc.bc.ca">www.bcsc.bc.ca</a></p>	<p><b>Québec</b>  Autorité des marchés financiers  Direction de l'encadrement des intermédiaires  800, rue du Square-Victoria, 4th floor  P.O. Box 246, Tour de la Bourse  Montréal, Québec H4Z 1G3  Telephone: 514-395-0337  Toll free in Québec: 1-877-525-0337  E-mail: <a href="mailto:financement-participatif@lautorite.qc.ca">financement-participatif@lautorite.qc.ca</a>  <a href="http://www.lautorite.qc.ca">www.lautorite.qc.ca</a></p>
<p><b>Manitoba</b>  The Manitoba Securities Commission  500 - 400 St Mary Avenue  Winnipeg, Manitoba R3C 4K5  Telephone: 204-945-2548  Toll free in Manitoba: 1-800-655-2548  E-mail: <a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a>  <a href="http://www.mbsecurities.ca">www.mbsecurities.ca</a></p>	<p><b>Saskatchewan</b>  Financial and Consumer Affairs Authority of Saskatchewan  Securities Division  Suite 601 – 1919 Saskatchewan Drive  Regina, Saskatchewan S4P 4H2  Telephone: 306-787-5645  E-mail: <a href="mailto:registrationfcaa@gov.sk.ca">registrationfcaa@gov.sk.ca</a></p>

**Appendix 5**

**Form 5**

***Start-Up Crowdfunding - Annual Working Capital Certification***

The funding portal certifies that it has sufficient working capital to continue its operations for at least the next 12 months.

On behalf of the funding portal, I certify that the statement made in this form is true and complete.

Full legal name of funding portal:

\_\_\_\_\_

Signature of the chief executive officer, chief financial officer or functional equivalent:

\_\_\_\_\_

Date:

\_\_\_\_\_

Print name of individual:

\_\_\_\_\_

Position held:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

E-mail:

\_\_\_\_\_

**IT IS AN OFFENCE TO MAKE A MISREPRESENTATION IN THIS FORM**

2.2.2 Majd Kitmitto et al.

IN THE MATTER OF  
MAJD KITMITTO,  
STEVEN VANNATTA,  
CHRISTOPHER CANDUSSO,  
CLAUDIO CANDUSSO,  
DONALD ALEXANDER (SANDY) GOSS,  
JOHN FIELDING  
AND  
FRANK FAKHRY

File No.: 2018-70

M. Cecilia Williams, Commissioner and Chair of the Panel

July 31, 2020

ORDER

**WHEREAS** on July 31, 2020, the Ontario Securities Commission (the **Commission**) held a hearing by teleconference;

**ON HEARING** the submissions of the representatives for Staff of the Commission (**Staff**) and for each of Majd Kitmitto, Steven Vannatta, Donald Alexander (Sandy) Goss, John Fielding and Frank Fakhry and agent for Christopher Candusso and Claudio Candusso (the **Respondents**);

**IT IS ORDERED**, for reasons to follow, that:

1. a further attendance in this proceeding is scheduled for August 7, 2020 at 2:00 p.m., by teleconference, or on such other dates and times as provided by the Office of the Secretary and agreed to by the parties;
2. the merits hearing dates scheduled for September 1, 2, 3, 4, 8, 9, 10, and 11, 2020 are vacated and the previously ordered merits hearing dates remain as scheduled, to be heard by videoconference, or on such other dates and times as provided by the Office of the Secretary and agreed to by the parties;
3. Staff shall serve affidavits for Staff's investigator witnesses on every other party by no later than 4:30 p.m. on September 11, 2020; and
4. Staff shall file affidavits for Staff's investigator witnesses by no later than 4:30 p.m. on September 25, 2020.

"M. Cecilia Williams"

## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions

#### 3.1.1 Coinsquare Ltd. et al. – ss. 127, 127.1

**Citation:** *Coinsquare Ltd. (Re)*, 2020 ONSEC 19

**Date:** 2020-07-21

**File No.** 2020-21

IN THE MATTER OF  
COINSQUARE LTD.,  
COLE DIAMOND,  
VIRGILE ROSTAND  
and  
FELIX MAZER

ORAL REASONS FOR APPROVAL OF A SETTLEMENT  
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

<b>Hearing:</b>	July 21, 2020	
<b>Decision:</b>	July 21, 2020	
<b>Panel:</b>	M. Cecilia Williams	Commissioner and Chair of the Panel
<b>Appearances:</b>	Carlo Rossi, Alvin Qian	For Staff of the Commission
	David Conklin Peter Kolla Robert Vaux	For Coinsquare Ltd.
	Shane D'Souza Rene Sorell	For Cole Diamond
	Melissa MacKewn	For Virgile Rostand
	Lawrence Ritchie James Smith	For Felix Mazer

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

*The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the transcript of the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.*

- [1] Enforcement Staff of the Ontario Securities Commission (**Staff**), Coinsquare Ltd. (**Coinsquare**), Cole Diamond (**Diamond**), Virgile Rostand (**Rostand**) and Felix Mazer (**Mazer**) (Coinsquare, Diamond, Rostand and Mazer are collectively the **Respondents**) have jointly submitted that it would be in the public interest to approve a settlement agreement among the parties dated July 16, 2020 (the **Settlement Agreement**).
- [2] I agree. These are my reasons for approving the Settlement Agreement.
- [3] The relevant facts and admissions, which are set out in detail in the Settlement Agreement, include:
- Coinsquare operates a crypto asset trading platform, based in Toronto (the **Coinsquare Platform**) that facilitates the buying and selling of crypto assets;
  - the crypto assets purchased and sold on the Coinsquare Platform were held in crypto wallets controlled by Coinsquare and transactions were recorded in Coinsquare's internal ledger;

- c. Coinsquare provided its clients with contractual rights or claims to these crypto assets; these contractual rights constituted securities and derivatives and the crypto assets themselves constituted commodities and/or underlying interests of derivatives;
- d. Rostand founded Coinsquare, developed the Coinsquare Platform, is Coinsquare's President and acted as the Chief Technology Officer until January 2019, after which time he remained in charge of the technological aspects of the Coinsquare Platform;
- e. Diamond is Coinsquare's Chief Executive Officer (**CEO**) and has been its *de facto* Chief Financial Officer since approximately January 2019;
- f. Mazer held the title of Chief Compliance Officer (**CCO**) at Coinsquare from May 2018 to June 2020 and reported directly to Diamond;
- g. Coinsquare is not registered with the Commission;
- h. Mazer is not registered in connection with his role as Coinsquare's CCO;
- i. Coinsquare inflated the trading volumes on the Coinsquare Platform through reporting "wash" trades (the **Activity**) representing over 90% of its reported trading volume between July 2018 and December 2019, through the use of a market volume function algorithm;
- j. The market volume function algorithm created simultaneous matching buy and sell orders from an internal Coinsquare account resulting in Coinsquare reporting the wash trades; the wash trades had no economic substance, involved no change in beneficial ownership and did not involve the exchange of funds or financial interests;
- k. Diamond directed that Coinsquare engage in the Activity;
- l. Rostand developed and implemented the market volume function algorithm to give effect to the Activity;
- m. the Activity took place while the Respondents were engaging with the Commission and with the Investment Industry Regulatory Organization of Canada (**IIROC**) for the purpose of seeking to register a Coinsquare subsidiary, Coinsquare Capital Markets Ltd. (**Coinsquare Capital Markets**), as an investment dealer and to operate an alternative trading system. The Respondents failed to disclose the Activity to the Commission, including during an on-site pre-registration review at Coinsquare's offices in March 2019;
- n. Coinsquare reported the inflated volumes resulting from the Activity on its website and through its application programming interface which, in turn, resulted in the inflated volumes being reported to the public by third party websites;
- o. Coinsquare admits that it engaged in market manipulation through reporting of the inflated trading volumes;
- p. in response to inquiries about the inflated trading volumes on a social media site and through emails from clients, Coinsquare made misleading statements about the possible source or cause of the inflated trading volumes and Diamond and Rostand admitted to authorizing, permitting and/or acquiescing in this conduct;
- q. Mazer became aware of the Activity in March 2019 and failed to take steps that a reasonable CCO would have taken in the circumstances, contrary to the public interest;
- r. Coinsquare also took a reprisal against an internal whistleblower (the **Internal Whistleblower**) who learned of the Activity and who reported concerns about the Activity to senior management, including Diamond and Rostand, between March 2019 and October 2019;
- s. Diamond authorized, permitted and/or acquiesced in the reprisal against the Internal Whistleblower; and
- t. Coinsquare also failed to implement appropriate controls to prevent other inappropriate trading practices, contrary to the public interest, which resulted in Coinsquare:
  - i. reporting additional non-economic internal trades valued at approximately 112,000 bitcoins between December 2014 and December 2019; and
  - ii. placing more than 10.5 million orders outside a range likely to result in executed trades.

- [4] The breaches of Ontario securities law here are serious. The conduct addressed in the Settlement Agreement arises in the context of the emerging crypto asset industry. The Settlement Agreement follows recent guidance from the Canadian Securities Administrators on the application of securities legislation to entities facilitating the trading of crypto assets. It must be clear to all who participate in the crypto asset industry that, where Ontario securities law applies to their activities, they are expected to meet the same high standards of honesty and responsible conduct that apply in the more traditional capital markets. It must also be clear that, while the Commission encourages innovation in the capital markets, it will not do so at the expense of fair and efficient markets. In addition, the protection against whistleblower reprisal is fundamental and the Commission expects that employees be free to raise concerns about potential breaches of Ontario securities law without fear of adverse impacts on their employment.
- [5] I have also taken into account mitigating circumstances. Specifically:
- a. the Respondents:
    - i. cooperated with Staff's investigation;
    - ii. had no prior disciplinary record with any securities regulatory authority, including the Commission; and
    - iii. sought to reach an early resolution of this matter, prior to the commencement of proceedings; and
  - b. Diamond and Rostand had no experience in the capital markets or securities industry prior to running Coinsquare.
- [6] The terms under which Staff and the Respondents have agreed to settle this matter are set out in detail in the Settlement Agreement and need not be repeated here. They include:
- a. Diamond and Rostand will resign from their positions with Coinsquare and will be prohibited from acting as a director or officer of a registrant for 3 years or of any other market participant for 3 and 2 years, respectively, subject to specified exceptions;
  - b. Diamond and Rostand will be prohibited from having any influence over the Coinsquare Platform for 3 years;
  - c. Diamond paid an administrative penalty of \$1 million;
  - d. Rostand paid an administrative penalty of \$900,000;
  - e. Mazer has resigned as Coinsquare's CCO, has made a voluntary payment of \$50,000 and will be prohibited for 1 year from acting as a director or officer of a registrant or holding a position that requires registration;
  - f. Coinsquare and Coinsquare Capital Markets have entered into an undertaking (the **Undertaking**) that will require them to make important corporate governance and internal control improvements, including creating and maintaining independent boards of directors, creating an internal whistleblower program, implementing policies and procedures designed to monitor and assess compliance with Ontario securities law and appointing new CEOs and CCOs;
  - g. Also as part of the Undertaking, Coinsquare Capital Markets will resubmit complete and updated applications for registration as an investment dealer and to operate a marketplace with the Commission and for membership with the IIROC; and
  - h. Coinsquare, Diamond and Rostand have also paid a total of \$300,000 towards the cost of Staff's investigation.
- [7] I have reviewed the Settlement Agreement in detail and have had the benefit of a confidential settlement conference, held by videoconference, with the parties' counsel. I asked questions of counsel and heard their submissions.
- [8] My obligation at this hearing is to determine whether the negotiated result reflected in the Settlement Agreement falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the Settlement Agreement.
- [9] The Settlement Agreement is the product of negotiations between Staff and the Respondents. When considering settlements for approval, the Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.

**Reasons: Decisions, Orders and Rulings**

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- [10] Approval of the Settlement Agreement would resolve the matter promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a lengthy, contested merits hearing. The payment of costs helps to reduce the burden on market participants to pay for investigations and enforcement proceedings.
- [11] All of these factors weigh in favour of approving the Settlement Agreement. However, I must still be satisfied that doing so would have the necessary deterrent effect, both generally to all those who participate in Ontario's capital markets, including those in the crypto asset industry, and specifically to the Respondents.
- [12] The Settlement Agreement is unique as it represents three firsts. It is the first time the Commission is settling allegations against a crypto asset platform. Secondly, it concerns the first allegations regarding market manipulation involving crypto assets. Finally, it concerns the first allegations involving the *Securities Act's* whistleblower protections from reprisals.<sup>1</sup>
- [13] It is not unusual in settlements that are the first of their kind that sanctions may be less severe than they might otherwise be in less novel circumstances.
- [14] Staff submits that the settlement strikes an appropriate balance between specific and general deterrence and reflecting the Commission's role in fostering innovation in the capital markets. I agree.
- [15] The significant sanctions against the individual respondents and the requirements for critical corporate governance and internal controls' improvements by Coinsquare and its subsidiaries and affiliates achieve both specific and general deterrence in these circumstances. The individual respondents are being held accountable for their specific misconduct and the market is on notice that the Commission will not tolerate deceptive conduct, reprisals against whistleblowers, or failures to maintain compliance systems.
- [16] The parties submit that the proposed financial sanctions and bans reflect the misconduct of the individual respondents and their roles and responsibilities at Coinsquare and they are proportionate in the circumstances. I agree.
- [17] In my view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances and represent an appropriate balance between the Commission's role in achieving the purposes of the Act and fostering innovation. The Settlement Agreement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.
- [18] For these reasons, I conclude it is in the public interest to approve the settlement. I will therefore issue an Order substantially in the form attached to the Settlement Agreement.

Dated at Toronto this 21st day of July, 2020.

"M. Cecilia Williams"

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<sup>1</sup> RSO 1990, c S.5, s 121.5 (the **Act**).



## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

### Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Alchemist Mining Incorporated	September 4, 2019	July 29, 2020
Empower Clinics Inc.	July 21, 2020	July 29, 2020
Green Growth Brands Inc.	July 29, 2020	
James E. Wagner Cultivation Corporation	July 29, 2020	
Spot Coffee (Canada) Ltd.	June 22, 2020	July 31, 2020

### 4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
SponsorsOne Inc.	22 June 2020	July 30, 2020

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Imaging Dynamics Company Ltd.	17 June 2020	
RYU Apparel Inc.	17 June 2020	
SponsorsOne Inc.	22 June 2020	July 30, 2020

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## Chapter 7

# Insider Reporting

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This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see [www.carswell.com](http://www.carswell.com)).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website ([www.sedi.ca](http://www.sedi.ca)).



# Chapter 6

## Request for Comments

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### 6.1.1 Proposed Amendments to OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions and Proposed Changes to Companion Policy 48-501CP – Request for Comments

#### Request for Comment

#### Proposed Partial Repeal of Ontario Securities Commission Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* and Proposed Changes to Companion Policy 48-501CP

August 6, 2020

#### 1. Introduction

The Ontario Securities Commission (**OSC**) is proposing amendments (**Partial Repeal**) of OSC Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* (**OSC Rule 48-501** or **the Rule**) and changes to its related Companion Policy (**48-501CP**). The Proposed Amendments would:

- remove restrictions on dealers involved in distributions, formal bids and share exchange transactions; and
- remove restrictions on insiders and associated entities (collectively, **Insiders**) of issuers and selling shareholders involved in a transaction covered by the Rule, provided the Insider is not acting jointly or in concert with the issuer or selling shareholder,

The exemption from the prospectus requirement contained in Part 4 of OSC Rule 48-501 (**Part 4**) would remain in whole.

A copy of the amending instrument for the Partial Repeal is attached as **Appendix A** of this Notice. A blacklined version of OSC Rule 48-501 and 48-501CP giving effect to the Partial Repeal is attached as **Appendix B**. A cost-benefit analysis is attached at **Appendix C**.

The comment period will expire on November 4, 2020. For further details, see the “Request for Comment” section below.

#### 2. Background

OSC Rule 48-501 places trading restrictions on issuers and selling shareholders and their affiliates, Insiders and dealers acting as an underwriter, dealer manager or in a similar capacity in respect of a transaction covered by the Rule.

Specifically, OSC Rule 48-501 restricts bids for, and purchases of, a security that is the subject of a transaction covered by the Rule (**Offered Securities**).<sup>1</sup> OSC Rule 48-501 generally restricts both bids and purchases of securities where they may affect the market price of an Offered Security. The Rule is intended to prevent market manipulation, specifically activity in the public markets, that can raise the market price of an Offered Security with the goal of improving the likelihood of success of a transaction covered by the Rule.

OSC Rule 48-501 complements the Universal Market Integrity Rules (**UMIR**) of the Investment Industry Regulatory Organization of Canada (**IIROC**), specifically UMIR Rule 7.7 *Trading During Certain Securities Transactions* (**UMIR Rule 7.7**), and also covers activity by entities outside of the regulatory jurisdiction of IIROC, such as issuers and Insiders.

UMIR Rule 7.7 contains the same restrictions and exemptions as OSC Rule 48-501 for dealer members of IIROC that are involved in distributions and other transactions covered by OSC Rule 48-501. For this reason, transactions by dealers made in compliance with UMIR Rule 7.7 are exempt from OSC Rule 48-501. The Proposed Amendments will therefore remove duplication with UMIR Rule 7.7.

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<sup>1</sup> The Rule also restricts bids and purchases of “connected securities,” which are securities related to the Offered Security, where price movements in the connected security could be expected to influence the market price of the Offered Security. This prevents persons restricted under the Rule from doing, indirectly through bids and purchases of a connected security, what they could not do directly through bids and purchases of the Offered Security. For the purposes of this Notice, references to “Offered Securities” should be read to include connected securities.

While no comments were received referencing OSC Rule 48-501 in response to OSC Staff Notice 11-784 *Burden Reduction*, Staff have identified revisiting the Rule as an opportunity to eliminate unnecessary duplicative regulation and restrictions on trading activity that are more onerous than necessary to prevent manipulative trading activity. In particular,

- the restrictions on dealer activity duplicate UMIR Rule 7.7, and
- the class of persons associated with an issuer who are restricted by OSC Rule 48-501 (“Issuer-Restricted Persons” as defined in the Rule) is broader than necessary to achieve the goal of preventing market manipulation, necessitating exemption applications by Insiders that are routinely granted.

This is discussed in more detail in the “Substance and Purpose” section below.

### **3. Substance and Purpose**

The Partial Repeal seeks to repeal provisions applicable to dealers (other than Part 4, as discussed below), and restrictions on Insiders by carving them out of the definition of “Issuer-Restricted Person,” unless they are acting jointly or in concert with an issuer. Trading by Insiders will continue to be subject generally to Ontario securities law, including provisions prohibiting manipulative and deceptive trading.

#### *a) The scope of the Rule is duplicative and broader than necessary to achieve the regulatory objective*

As noted above, the Rule duplicates the provisions of UMIR Rule 7.7 with respect to IIROC Dealer Members and is not necessary. Also, as an IIROC Rule, UMIR Rule 7.7 applies nationally, while OSC Rule 48-501 is limited to Ontario.

Staff believe that the inclusion of insiders and associated entities in the definition of “Issuer-Restricted Person” is broader than necessary to achieve the goal of preventing manipulative trading to ensure the success of a transaction covered by the Rule. The Partial Repeal will bring the definition in line with restrictions on issuer-related persons in analogous rules of the United States Securities and Exchange Commission.<sup>2</sup> Insiders will still be subject to section 126.1 of the Act, which prohibits market manipulation for any purpose, including attempting to ensure the success of a Subject Transaction.<sup>3</sup> Insiders will continue to be subject to OSC Rule 48-501 if they act jointly or in concert with the issuer. For clarity, a controlling shareholder of an issuer is presumed to be acting jointly or in concert with the issuer.

The OSC has received a number of exemption applications from Insiders requesting relief from OSC Rule 48-501 and has granted the requested relief. These exemptions should now be considered routine and indicative of an over-broad reach of the Rule.

#### *b) Potentially negative effects on at-the-market (ATM) distributions for Insiders*

Most distributions have a clear end of distribution, after which time OSC Rule 48-501 ceases to apply. In the case of prospectus offerings and private placements, it is when the securities being distributed have been sold and the underwriter has ceased stabilization activities in the public markets. In the case of other transactions, it is when the transaction closes.

However, in the case of ATM distributions specifically, the securities are sold continuously by the issuer, using an investment dealer acting as agent, in the open market. The period during which OSC Rule 48-501 applies is open-ended and can be much longer than for a traditional distribution.

Under both OSC Rule 48-501 and UMIR Rule 7.7, dealers subject to the rules have a number of exemptions to allow normal course trading activity, including a complete exemption for trading in “highly-liquid” securities.<sup>4</sup> In contrast, the exemptions available to Insiders are very limited. Insiders are effectively prohibited from trading in the market while the Rule is in effect. There is no equivalent to the exemption that dealers must trade highly-liquid securities without restriction. Therefore, the impact of the Rule on Insiders during an ATM is much greater than on dealers. This can create difficulties, such as when directors and officers need to purchase shares to meet minimum shareholding requirements set by the issuer.

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<sup>2</sup> Regulation M (17 CFR. §§ 242.100-242.105) restricts “affiliated purchasers” in addition to dealers, issuers and selling shareholders. “Affiliated purchaser” is defined in 17 CFR § 100(b) as affiliates of the issuer or selling shareholder and any person acting directly or indirectly in concert with an issuer or selling security holder.

<sup>3</sup> The Rule was adopted prior to the inclusion of section 126.1 in the Act, *i.e.*, before the Act had a prohibition on market manipulation.

<sup>4</sup> A “highly-liquid” security is a listed or quoted security that

- (a) has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period,
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day, or
- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” thereunder.

c) *Part 4 – Research Reports*

The Proposed Amendments will not affect Part 4 of OSC Rule 48-501. Part 4 contains an exemption from the prospectus requirements for dealers involved in transactions covered by the Rule, subject to certain conditions designed to ensure that the research is issued in the normal course and not to create demand for the securities involved. Repealing Part 4 could create uncertainty as to whether publication of research reports in the normal course during a distribution or other transaction is permitted. Furthermore, Part 4 is not duplicated in UMIR Rule 7.7.<sup>5</sup>

Several proposed amendments have been made to Part 4 to clarify that it applies to dealer-restricted persons during the dealer-restricted period (as defined in the Rule). These are not substantive changes.

d) *Ontario-only Rule*

As OSC Rule 48-501 is an OSC-only rule, and no other jurisdiction has adopted a similar rule, the restrictions on Issuer-Restricted Persons only apply in Ontario.

**4. Alternatives Considered**

The OSC could amend OSC Rule 48-501 to provide more exemptions for Issuer-Restricted Persons, such as a highly-liquid security exemption. However, much of the Rule is duplicated by UMIR Rule 7.7 with respect to dealers, and maintaining the Rule with a few modifications is not consistent with the objective of burden reduction. It would also maintain an unlevel playing field for Insiders in Ontario given that the Rule is an Ontario-only rule.

In proposing amendments to OSC Rule 48-501 and changes to 48-501CP, the OSC did not rely on any unpublished study, report, or other material.

**5. Authority for OSC Rule 48-501**

The Proposed Amendments would be made pursuant to the rule-making authority in the following provisions of the *Securities Act* (Ontario): (i) paragraph 143(1)11 authorizes the Commission to make rules regulating the trading of publicly traded securities and (ii) paragraph 143(1)13 authorizes the Commission to regulate trading in securities to prevent trading that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

**6. Request for Comment**

We welcome your comments on the Proposed Amendments. Please submit your comments in writing on or before November 4, 2020. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Please deliver your comments to:

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-595-2318  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Please note that comments received will be made publicly available and posted on the OSC Website. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions with respect to this Notice or the Proposed Amendments may be referred to:

Timothy Baikie  
Senior Legal Counsel, Market Regulation  
Ontario Securities Commission  
Email: [tbaikie@osc.gov.on.ca](mailto:tbaikie@osc.gov.on.ca)

Kortney Shapiro  
Legal Counsel, Market Regulation  
Ontario Securities Commission  
Email: [kshapiro@osc.gov.on.ca](mailto:kshapiro@osc.gov.on.ca)

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<sup>5</sup> IIROC does not have the authority to grant exemptions from the prospectus requirements, so a similar provision in UMIR Rule 7.7 is only available to an IIROC Dealer Member if publication of the research report is permitted under applicable securities legislation.

APPENDIX A

**AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 48-501  
Trading During Distributions, Formal Bids and Share Exchange Transactions**

1. **Ontario Securities Commission Rule 48-501 is amended by this Instrument.**
2. **Section 1.1 is amended by**
  - (a) **deleting the definition of “exchange-traded fund”, and**
  - (b) **replacing the definition of “issuer-restricted person” with the following:**

“issuer-restricted person” means, in respect of a particular offered security,

    - (a) the issuer of the offered security,
    - (b) a selling security holder of the offered security in connection with a prospectus distribution or restricted private placement,
    - (c) an affiliated entity of the issuer of the offered security or a selling security holder; or
    - (d) any person or company acting jointly or in concert with the person or company described in clause (a), (b) or (c) for a particular transaction;.
3. **Subsection 1.2(2) is repealed.**
4. **Section 2.1 is repealed.**
5. **Section 3.1 is repealed.**
6. **Section 4.1 is amended by replacing “Despite section 53 of the Act and section 2.1, a dealer-restricted person” with “Despite section 53 of the Act, during a dealer-restricted period, a dealer-restricted person”**
7. **Section 4.2 is amended by replacing “Despite section 53 of the Act and section 2.1, a dealer-restricted person” with “Despite section 53 of the Act, during a dealer-restricted period, a dealer-restricted person”.**



**CHANGES TO COMPANION POLICY 48-501CP**  
***Trading During Distributions, Formal Bids and Share Exchange Transactions***

1. ***Companion Policy 48-501CP Trading During Distributions, Formal Bids and Share Exchange Transactions is changed by this Document.***
2. ***Part 1 is deleted.***
3. ***Section 3.1 is changed by replacing “section 91 of the Act,” with “section 1.9 of National Instrument 62-104 Take-Over Bids and Issuer Bids,”.***
4. ***Part 4 is deleted.***
5. ***Sections 5.2, 5.2.1 and 5.3 are deleted.***

**APPENDIX B**

**Ontario Securities Commission  
Rule 48-501**

**Trading During Distributions, Formal Bids and Share Exchange Transactions**

**PART 1 - DEFINITIONS**

**1.1 Definitions**

In this Rule

“connected security” means, in respect of an offered security,

- (a) a security into which the offered security is immediately convertible, exchangeable or exercisable unless the security is a listed security or quoted security and the price at which the offered security is convertible, exchangeable or exercisable is greater than 110% of the best ask price of the security at the commencement of the restricted period,
- (b) a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may significantly determine the value of the offered security,
- (c) if the offered security is a special warrant, the security which would be issued on the exercise of the special warrant, and
- (d) if the offered security is an equity security, any other equity security of the issuer,

where the security trades on a marketplace or a market where there is mandated transparency of orders or trade information;

“dealer-restricted period” means, for a dealer-restricted person, the period,

- (a) in connection with a prospectus distribution or a restricted private placement of an offered security, commencing on the later of
  - (i) the date two trading days prior to the day the offering price of the offered security is determined, and
  - (ii) the date on which a dealer enters into an agreement or reaches an understanding to participate in the prospectus distribution or restricted private placement of securities, whether or not the terms and conditions of such participation have been agreed upon, andending on the date the selling process ends and all stabilization arrangements relating to the offered security are terminated,
- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of dissemination of the take-over bid circular, issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the withdrawal of the bid, and
- (c) in connection with an amalgamation, arrangement, capital reorganization or similar transaction, commencing on the date of dissemination of the information circular for such transaction and ending on the date of approval of the transaction by the security holders that will receive the offered security or the termination of the transaction by the issuer or issuers;

“dealer-restricted person” means, in respect of a particular offered security,

- (a) a dealer that
  - (i) is an underwriter, as defined in the Act, in a prospectus distribution or a restricted private placement,
  - (ii) is participating, as agent but not as an underwriter, in a restricted private placement, and

- (A) the number of securities to be issued under the restricted private placement would constitute more than 10% of the issued and outstanding offered securities, and
- (B) the dealer has been allotted or is otherwise entitled to sell more than 25% of the securities to be issued under the restricted private placement,
- (iii) has been appointed by an offeror to be the dealer-manager, manager, soliciting dealer or adviser in respect of a securities exchange take-over bid or issuer bid, or
- (iv) has been appointed by an issuer to be the soliciting dealer or adviser in respect of obtaining security holder approval for an amalgamation, arrangement, capital reorganization or similar transaction that would result in the issuance of securities that would be a distribution exempt from prospectus requirements in accordance with applicable securities law, where, in each case, adviser means an adviser whose compensation depends on the outcome of the transaction,
- (b) a related entity of the dealer referred to in clause (a) but does not include such related entity, or any separate and distinct department or division of a dealer referred to in clause (a) where,
  - (i) the dealer
    - (A) maintains and enforces written policies and procedures reasonably designed to prevent the flow of information regarding any prospectus distribution, private placement or transaction referred to in clause (a) to or from the related entity, department or division, and
    - (B) obtains an annual assessment of the operation of such policies and procedures,
  - (ii) the dealer has no officers or employees that solicit orders or recommend transactions in securities in common with the related entity, department or division, and
  - (iii) the related entity, department or division does not during the dealer-restricted period, in connection with the restricted security,
    - (A) act as a market maker (other than to meet its obligations under the rules of a recognized exchange),
    - (B) solicit orders from clients, or
    - (C) engage in proprietary trading,
- (c) a partner, director, officer, employee or a person holding a similar position or acting in a similar capacity for the dealer referred to in clause (a) or for a related entity of the dealer referred to in clause (b), or
- (d) any person or company acting jointly or in concert with a person or company described in clause (a), (b) or (c) for a particular transaction;

“exchange-traded fund” ~~[Repealed] means a mutual fund, the units of which are~~

- ~~(a) listed securities or quoted securities, and~~
- ~~(b) in continuous distribution in accordance with applicable securities legislation;~~

“highly-liquid security” means a listed security or quoted security that,

- (a) has traded, in total, on one or more marketplaces as reported on a consolidated market display during a 60-day period ending not earlier than 10 days prior to the commencement of the restricted period,
  - (i) an average of at least 100 times per trading day, and
  - (ii) with an average trading value of at least \$1,000,000 per trading day, or
- (b) is subject to Regulation M under the 1934 Act and is considered to be an “actively-traded security” thereunder;

“issuer-restricted period” means, for an issuer-restricted person, the period,

## Request for Comments

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- (a) in connection with a prospectus distribution or a restricted private placement of an offered security, commencing on the date two trading days prior to the day the offering price of the offered security is determined, and ending on the date the selling process ends and all stabilization arrangements relating to the offered security are terminated,
- (b) in connection with a securities exchange take-over bid or issuer bid, commencing on the date of the dissemination of the take-over bid circular, issuer bid circular or similar document and ending with the termination of the period during which securities may be deposited under such bid, including any extension thereof, or the withdrawal of the bid, and
- (c) in connection with an amalgamation, arrangement, capital reorganization or other similar transaction, commencing on the date of dissemination of the information circular for such transaction and ending on the date of approval of the transaction by the security holders that will receive the offered security or the termination of the transaction by the issuer or issuers;

“issuer-restricted person” means, in respect of a particular offered security,

- (a) the issuer of the offered security,
- (b) a selling security holder of the offered security in connection with a prospectus distribution or restricted private placement,
- (c) an affiliated entity, ~~associated entity or insider~~ of the issuer of the offered security or a selling security holder ~~but does not include a person who is an insider by virtue of clause (c) of the definition of “insider” under the Act so long as that person:~~
  - ~~(i) does not have, and has had not in the previous 12 months, any board or management representation in respect of the issuer or selling security holder; and~~
  - ~~(ii) does not have knowledge of any material information concerning the issuer or its securities that has not been generally disclosed; or~~
- (d) any person or company acting jointly or in concert with the person or company described in clause (a), (b) or (c) for a particular transaction;

“last independent sale price” means the last sale price of a trade on a market, other than a trade that a dealer-restricted person knows or ought reasonably to know was made by or on behalf of a person or company that is a dealer-restricted person or an issuer-restricted person;

“offered security” means all securities, that trade on a marketplace or a market where there is mandated transparency of orders or trade information, of the class of security that

- (a) is offered pursuant to a prospectus distribution or a restricted private placement,
- (b) is offered by an offeror in a securities exchange take-over bid in respect of which a take-over bid circular or similar document is required to be filed under securities legislation,
- (c) is offered by an issuer in an issuer bid in respect of which an issuer bid circular or similar document is required to be filed under securities legislation, or
- (d) would be issuable to a security holder pursuant to an amalgamation, arrangement, capital reorganization or similar transaction in relation to which proxies are being solicited from security holders that will receive the offered security in such circumstances that the issuance would be a distribution exempt from prospectus requirements in accordance with applicable securities legislation,

provided that, if the security referred to in clauses (a) to (d) is a unit comprised of more than one type or class, each security comprising the unit shall be considered an offered security;

“restricted private placement” means a distribution of offered securities made pursuant to sections 2.3 or 2.30 of National Instrument 45-106 *Prospectus and Registration Exemptions*; and

“restricted security” means the offered security or any connected security.

## 1.2 Interpretation

- (1) Affiliated Entity - The term "affiliated entity" has the meaning ascribed to that term in section 1.3 of National Instrument 21-101 – *Marketplace Operation*.
- (2) ~~[Repealed] Associated Entity — Where used to indicate a relationship with an entity, associated entity has the meaning ascribed to the term "associate" in subsection 1(1) of the Act and also includes any person or company of which the entity beneficially owns voting securities carrying more than 10 per cent of the voting rights attached to all outstanding voting securities of the person or company.~~
- (3) Equity Security - An equity security is any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon liquidation or winding up of the issuer, in its assets.
- (4) Related Entity - In respect of a dealer, a related entity is an affiliated entity of the dealer that carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation.
- (5) For the purposes of the definitions of "dealer-restricted period" and "issuer-restricted period":
  - (a) the selling process shall be considered to end,
    - (i) in the case of a prospectus distribution, if a receipt has been issued for the final prospectus, the dealer has allocated all of its portion of the securities to be distributed under the prospectus and all selling efforts have ceased, and
    - (ii) in the case of a restricted private placement, the dealer has allocated all of its portion of the securities to be distributed under the offering; and
  - (b) stabilization arrangements shall be considered to have terminated in the case of a syndicate of underwriters or agents when, in accordance with the syndication agreement, the lead underwriter or agent determines that the syndication agreement has been terminated such that any purchase or sale of a restricted security by a dealer after the time of termination is not subject to the stabilization arrangements or otherwise made jointly for the dealers that were party to the stabilization arrangements.

## PART 2 - RESTRICTIONS

### 2.1 ~~[Repealed] Dealer-restricted Person~~

~~Except as permitted under sections 3.1, 4.1 and 4.2, a dealer-restricted person shall not at any time during the dealer-restricted period,~~

- ~~(a) — bid for or purchase a restricted security for an account of a dealer-restricted person, an account over which the dealer-restricted person exercises direction or control, or, except in accordance with section 3.2, an account which the dealer-restricted person knows or reasonably ought to know, is an account of an issuer-restricted person; or~~
- ~~(b) — attempt to induce or cause any person or company to purchase any restricted security.~~

### 2.2 Issuer-restricted Person

Except as permitted under section 3.2, an issuer-restricted person shall not at any time during the issuer-restricted period,

- (a) bid for or purchase a restricted security for an account of an issuer-restricted person or an account over which the issuer-restricted person exercises direction or control; or
- (b) attempt to induce or cause any person or company to purchase any restricted security.

### 2.3 Deemed Re-commencement of a Restricted Period

If a dealer appointed to be an underwriter in a prospectus distribution or a restricted private placement receives a notice or notices of the exercise of statutory rights of withdrawal or rights of rescission from purchasers of, in the aggregate, not less than 5% of the offered securities allotted to or acquired by the dealer in connection with the prospectus distribution or the restricted private placement then a dealer-restricted period and issuer-restricted period

shall be deemed to have re-commenced upon receipt of such notice or notices and shall be deemed to have ended at the time the dealer has distributed its participation, including the securities that were the subject of the notice or notices of the exercise of statutory rights of withdrawal or rights of rescission.

### PART 3 - PERMITTED ACTIVITIES AND EXEMPTIONS

#### 3.1 ~~[Repealed] Exemptions – Dealer restricted Persons~~

~~(1) Section 2.1 does not apply to a dealer restricted person in connection with,~~

~~(a) market stabilization or market balancing activities on a marketplace where the bid for or purchase of a restricted security is for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interests for the restricted security, provided that the bid or purchase is at a price which does not exceed the lesser of~~

~~(i) in the case of an offered security~~

~~(A) the price at which the offered security will be issued in a prospectus distribution or restricted private placement, if that price has been determined, and~~

~~(B) the last independent sale price at the time of the entry of the bid or order to purchase, or~~

~~(ii) in the case of a connected security~~

~~(A) the last independent sale price at the commencement of the dealer restricted period, and~~

~~(B) the last independent sale price at the time of the entry of the bid or order to purchase,~~

~~provided that if the restricted security has not previously traded on a marketplace, the price also does not exceed the price of the last trade of the security executed on an exchange or organized regulated market outside of Canada that publicly disseminates details of trades executed on that market other than a trade that the dealer restricted person knows or ought reasonably to know has been entered by or on behalf of a person or company that is a dealer restricted person or an issuer restricted person;~~

~~(b) a restricted security that is~~

~~(i) a highly liquid security,~~

~~(ii) a unit or share of an exchange traded fund, other than an exchange traded fund that the Investment Industry Regulatory Organization of Canada has designated as subject to section 7.7 of the Universal Market Integrity Rules, or~~

~~(iii) a connected security of a security referred to in subclause (i) or (ii);~~

~~(c) a bid or purchase by a dealer restricted person on behalf of a client, other than a client that the dealer restricted person knows or ought reasonably to know is a person or company that is an issuer restricted person, provided that~~

~~(i) the client's order was not solicited by the dealer restricted person, or~~

~~(ii) if the client's order was solicited, the solicitation occurred before the commencement of the dealer restricted period;~~

~~(d) the exercise of an option, right, warrant or a similar contractual arrangement held or entered into by the dealer restricted person prior to the commencement of the dealer restricted period;~~

~~(e) a bid for or purchase of a restricted security pursuant to a Small Securityholder Selling and Purchase Arrangement made in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;~~

~~(f) the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid;~~

- ~~(g) a subscription for or purchase of an offered security pursuant to a prospectus distribution or restricted private placement;~~
  - ~~(h) a bid for or purchase of a restricted security to cover a short position entered into prior to the commencement of the dealer restricted period; or~~
  - ~~(i) a bid for or purchase of a restricted security if the bid or purchase is made through the facilities of a marketplace in accordance with applicable marketplace rules.~~
- ~~(2) Where a dealer restricted person is also an issuer restricted person the exemptions in subsection (1) and sections 4.1 and 4.2 continue to be available to the dealer restricted person.~~

### 3.2 Exemptions - Issuer-restricted Persons

Section 2.2 does not apply to an issuer-restricted person in connection with,

- (a) the exercise of an option, right, warrant, or a similar contractual arrangement held or entered into by the issuer restricted person prior to the commencement of the issuer-restricted period;
- (b) a bid or purchase of a restricted security pursuant to a Small Securityholder Selling and Purchase Arrangement made in accordance with National Instrument 32-101 or similar rules applicable to any marketplace on which the bid or purchase is entered or executed;
- (c) an issuer bid described in clauses 93(3)(a) through (d) of the Act if the issuer did not solicit the sale of the securities sold under those clauses;
- (d) the solicitation of the tender of securities to a securities exchange take-over bid or issuer bid; or
- (e) a subscription for or purchase of an offered security pursuant to a prospectus distribution or restricted private placement.

## PART 4 - RESEARCH REPORTS

### 4.1 Compilations and Industry Research

Despite section 53 of the Act ~~and section 2.4, during a dealer restricted period,~~ a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security provided that such information, opinion or recommendation,

- (a) is contained in a publication which:
  - (i) is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person, and
  - (ii) includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of companies in the issuer's industry or contains a comprehensive list of securities currently recommended by the dealer-restricted person; and
- (b) is given no materially greater space or prominence in such publication than that given to other securities or issuers.

### 4.2 Issuers of Highly-liquid Securities

Despite section 53 of the Act ~~and section 2.4, during a dealer restricted period,~~ a dealer-restricted person may publish or disseminate any information, opinion, or recommendation relating to the issuer of a restricted security that is a highly-liquid security provided that such information, opinion, or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of the business of the dealer-restricted person.

**PART 5 - EXEMPTION**

**5.1 Exemption**

The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**PART 6 [Lapsed]**



**Companion Policy 48-501 CP to Rule 48-501  
Trading During Distributions, Formal Bids and  
Share Exchange Transactions**

**Part 1 — Introduction** [Repealed]

~~**1.1 Purpose** — Ontario Securities Commission Rule 48-501 Trading during Distributions, Formal Bids and Share Exchange Transactions (the "Rule") imposes trading restrictions on dealers, issuers and certain related parties involved in a distribution of securities, take-over bids and certain other transactions. The Rule generally prohibits purchases of or bids for restricted securities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. This Companion Policy sets out the views of the Ontario Securities Commission (the "Commission") as to the interpretation of various terms and provisions in the Rule.~~

**Part 2 — Definitions and Interpretations**

**2.1** "connected security" — The definition of "connected security" in section 1.1 of the Rule includes, among other things, a security of the issuer of the offered security or another issuer that, according to the terms of the offered security, may *significantly determine* the value of the offered security. The Commission takes the view that, absent other mitigating factors, a connected security "significantly determines" the value of the offered security, if, in whole or in part, it accounts for more than 25% of the value of the offered security.

**2.2** [Repealed]

**2.3** End of "dealer-restricted period" and "issuer-restricted period" — distribution of securities and exercise of over-allotment option — The definitions of "dealer-restricted period" and "issuer-restricted period", with respect to a prospectus distribution and a "restricted private placement", refer to the end of the period as the date that the selling process ends and all stabilization arrangements relating to the offered security are terminated. Paragraph (a) of subsection 1.2(5) provides interpretation as to when the selling process is considered to end. As further clarification, the selling process is considered to end for a prospectus distribution when the receipt for the prospectus has been issued, the dealer has distributed all securities allocated to it and is no longer stabilizing, all selling efforts have ceased and the syndicate is broken. Selling efforts have ceased when the dealer is no longer making efforts to sell, and there is no intention to exercise an over-allotment option other than to cover the syndicate's short position. If the dealer or syndicate subsequently exercises an over-allotment option in an amount that exceeds the syndicate short position, the selling efforts would not be considered to have ceased. Securities allocated to a dealer that are held and transferred to their inventory account at the end of the distribution are considered distributed. Subsequent sales of such securities are secondary market transactions and should occur on a marketplace subject to any applicable exemptions (unless the subsequent sale transaction is a distribution by prospectus). To provide certainty around when the distribution has ended, appropriate steps should be taken to move the securities from the syndication account to the dealer's inventory account.

**Part 3 — Restricted Persons**

**3.1** Meaning of "acting jointly or in concert" — The definitions of "dealer-restricted person" and "issuer-restricted person" in section 1.1 of the Rule include a person or company acting jointly or in concert with a person or company that is also a dealer-restricted person or an issuer-restricted person for a particular transaction. For the purposes of the Rule, "acting jointly or in concert" has a similar meaning to that phrase as defined in ~~section 91 of the Act~~, section 1.9 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*, with necessary modifications. In the context of this Rule only, it is a question of fact whether a person or company is acting jointly or in concert with a dealer- or issuer-restricted person and, without limiting the generality of the foregoing, every person or company who, as a result of an agreement, commitment or understanding, whether formal or informal, with a dealer-restricted person or an issuer-restricted person, bids for or purchases a restricted security will be presumed to be acting jointly or in concert with such dealer-restricted person or issuer-restricted person.

**3.2** Exclusion of "related party" — The definition of "dealer-restricted person" in clause 1.1(b) excludes a related entity where certain conditions are met. Subclause (i)(B) requires the dealer to obtain an annual assessment of the operation of the policies and procedures referred to in subclause (i)(A). In the Commission's view, this assessment may be conducted as part of the annual policy and procedure review of the supervision system as required by Policy 7.1 of the Universal Market Integrity Rules.

**Part 4 — Marketplace and Marketplace Rules** [Repealed]

- ~~4.1~~ ~~Meaning of "marketplace" — In this Rule, marketplace means all marketplaces as defined in section 1.1 of National Instrument 21-101 — *Marketplace Operation*.~~
- ~~4.2~~ ~~Meaning of "marketplace rules" — Marketplace rules refer to the rules, policies and other similar instruments adopted by a recognized stock exchange or recognized quotation and trade reporting system as approved by the applicable securities regulatory authority but not including any rules, policies or other similar instruments relating solely to the listing of securities on a stock exchange or to the quoting of securities on a quotation and trade reporting system.~~

**Part 5 — Exemptions**

- 5.1 Fraud and Manipulation — Provisions against manipulation and fraud are found in securities legislation, specifically, Part 3 of National Instrument 23-101 — *Trading Rules* (NI 23-101) and section 126.1 of the *Securities Act* (Ontario) (when that provision comes into force). NI 23-101 prohibits manipulative or deceptive trading, including activities that may create misleading pricing or trading activity that is detrimental to investors and the integrity of the markets. The Rule specifically prohibits certain trading activities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction. The Rule also provides certain exemptions to permit purchases and bids in situations where there is no, or a very low, possibility of manipulation. However, the Commission is of the view that notwithstanding that certain trading activities are permitted under the Rule these activities continue to be subject to the general provisions relating to manipulation and fraud found in securities legislation such that any activities carried out in accordance with the Rule must still meet the spirit of the general anti-manipulation and anti-fraud provisions.
- 5.2 ~~[Repealed] Market Stabilization and Market Balancing — Subsection 3.1(1) of NI 23-101 prohibits manipulation or fraud which includes, among other things, a transaction or series of transactions that a person or company knows, or ought reasonably to have known, would contribute to a misleading appearance of trading activity or an artificial price for a security. Companion Policy 23-101CP to NI 23-101 states that the Canadian securities regulatory authorities do not consider market stabilization activities carried out in connection with a distribution of securities to be activities in breach of subsection 3.1(1) provided such activities are carried out in accordance with applicable marketplace rules or provisions of securities legislation that permit market stabilization activities. Clause 3.1(1)(a) of the Rule provides dealer restricted persons with an exemption for market stabilization and market balancing activities subject to price limitations. Market stabilization and market balancing activities should be engaged in for the purpose of maintaining a fair and orderly market in the offered security by reducing the price volatility of or addressing imbalances in buying and selling interest for the restricted security.~~
- ~~The Commission considers it to be inappropriate for a dealer to engage in market stabilization activities in circumstances where the dealer knows or should reasonably know that the market price is not fairly and properly determined by supply and demand. This might exist where, for example, the dealer is aware that the market price is a result of inappropriate activity by a market participant or that there is undisclosed material information regarding the issuer.~~
- ~~Market balancing activities should contribute to a fair and orderly market by contributing to price continuity and depth and by minimizing supply demand disparity. Market balancing does not seek to prevent or unduly retard any price movements, but merely to prevent erratic or disorderly changes in price.~~
- 5.2.1 ~~[Repealed] Exchange traded funds — Section 1.1 of the Rule defines an "exchange traded fund" as an open-ended mutual fund, the units of which are listed or quoted securities. Generally trading in exchange traded funds has not given rise to concerns of a misleading appearance of trading activity or artificial price and the Rule exempts trading in exchange traded funds. However, if the Investment Industry Regulatory Organization of Canada makes a designation that trading in a particular fund is subject to the corresponding provisions of the Universal Market Integrity Rules because it is concerned that trading in units of the fund may be susceptible to manipulation, trading in that exchange traded fund will be subject to the Rule.~~
- 5.3 ~~[Repealed] Short position Exemption — Subclause 3.1(1)(h) provides an exemption from the Rule for a dealer restricted person in connection with a bid for or purchase to cover a short position provided it was entered into before the commencement of the dealer restricted period. Short positions entered into during the dealer restricted period may be covered by purchases made in reliance upon the market stabilization exemption in clause 3.1(1)(a), subject to the price limits set out in that exemption.~~

**Part 6 — Research**

- 6.1** Section 53 of the Act — Part 4 of the Rule provides exemptions from section 53 of the Act which prohibits providing research that in the Commission's view constitutes an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade prior to the filing and receipt of the preliminary prospectus and prospectus. The Commission is of the view that although sections 4.1 and 4.2 do permit dealer-restricted persons to disseminate research reports, this dissemination continues to be subject to the usual restrictions applicable to dealer-restricted persons when they are in possession of material inside information regarding the issuer.
- 6.2** Meaning of "reasonable regularity" — Sections 4.1 and 4.2 of the Rule provides circumstances where a dealer-restricted person may publish or disseminate information, an opinion, or a recommendation relating to the issuer of a restricted security. Clause 4.1(a) and section 4.2 require that the information, opinion or recommendation is contained in a publication which is disseminated with reasonable regularity in the normal course of business of the dealer-restricted person. The Commission considers that it is a question of fact whether a publication was disseminated "with reasonable regularity" and whether it was in the "normal course of business". A research publication would not likely be considered to have been published with reasonable regularity if it had not been published within the previous twelve month period or there had been no coverage of the issuer within the previous twelve month period. The nature and extent of the published information should also be consistent with prior publications and the dealer should not undertake new initiatives in the context of the distribution. For example, the inclusion of projections of issuers' earnings and revenues would likely only be permitted if they had previously been included on a regular basis. In considering whether it was "in the normal course of business", the Commission may consider the distribution channels. The research should be distributed through the dealer-restricted person's usual research distribution channels and should not be targeted or distributed specifically to prospective investors in the distribution as part of a marketing effort. However, the research may be distributed to a prospective investor if that investor was previously on the mailing list for the research publication.
- 6.3** Meaning of "similar coverage" and of "substantial number of companies" — Clause 4.1(b) of the Rule requires that the information, opinion or recommendation includes similar coverage in the form of information, opinions or recommendations with respect to a substantial number of issuers in the issuer's industry. This should not be interpreted as requiring that the opinions and recommendations relating to the issuer and other issuers in the issuer's industry must be similar or the same. In this context, in determining what is a "substantial number of issuers", reference should be made to the relevant industry. Generally, the Commission would consider a minimum of six issuers to be a sufficient number. However, where there are less than six issuers in an industry, then all issuers should be included in the research report. In any event the number of issuers should not be less than three.

**APPENDIX C**  
**COST BENEFIT ANALYSIS**

As set out in the main body of this Notice, the OSC is proposing the following amendments and changes:

- a Partial Repeal of OSC Rule 48-501 to limit its scope; and
- consequential changes to Companion Policy 48-501CP;

Please refer to the main body of this Notice.

Terms that are defined in the Notice have the same meaning in this Appendix.

1. Overview

The Partial Repeal

- removes restrictions on dealers involved in distributions, formal bids, and share exchange transactions as these duplicate provisions found in the UMIR; and
- remove restrictions on Insiders of an issuer or selling shareholder involved in a transaction covered by the Rule, provided the Insider is not acting jointly or in concert with the issuer or selling shareholder.

The Rule is an Ontario-only rule and will therefore have no effect on other jurisdictions should it be partially repealed.<sup>6</sup> During the comment period, should the OSC be advised of concerns from marketplace participants, OSC staff will review and carefully analyse whether there are any material concerns or risks to be aware of should the proposed partial repeal of the Rule be approved.

2. Affected Stakeholders

*Dealers and Insiders*

The stakeholders are dealers, issuers and Insiders subject to the Rule.

- i. **Dealers:** The proposed amendments will remove duplication between 48-501 and UMIR Rule 7.7. Part 4 of 48-501, *Research Reports*, would continue to remain in effect, providing an exemption from prospectus requirements for normal course research reports issued during a distribution or other transaction. We understand that many research reports are issued by dealers in reliance of the exemption from the prospectus requirements in Part 4 of 48-501 and therefore we believe these dealers would not support a repeal of Part 4. Dealers will still be subject to the equivalent restrictions in UMIR Rule 7.7.
- ii. **Insiders:** The OSC has, over time, received a number of requests for exemptions from 48-501 to allow open market purchases by Insiders and the requested relief has been granted in each case. Staff believe that the Rule creates an unnecessary burden on Insiders. The proposed amendments would remove trading restrictions imposed on Insiders and put Ontario-based Insiders in the same position as Insiders in other jurisdictions as the Rule is an Ontario-only rule.
- iii. **Issuers:** Issuers, selling shareholders and their affiliates will continue to be subject to the restrictions in 48-501, as will Insiders acting jointly or in concert with any of the foregoing.

3. Qualitative and Quantitative Analysis of the Anticipated Costs and Benefits of the Proposed Amendments

3.1 *Qualitative Analysis*

- i. **Dealers:** As the provisions of the Rule that apply to dealers are duplicated in UMIR Rule 7.7, there will be little or no impact on dealers unless a dealer is also an issuer or Insider, which is rare.
- ii. **Insiders:** Staff do not have any data with respect to Insiders' lost ability to trade under the current Rule, which is the most significant impact of the Rule. However, staff are able to estimate the costs associated with exemptive relief applications from the requirements in 48-501 and the administrative costs associated with

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<sup>6</sup> UMIR 7.7 applies to IIROC dealer members involved in distributions and other transactions nationally.

such exemptions on behalf of applicants' filing counsel. With the proposed amendments to 48-501, Insiders will no longer have to apply to the OSC for what is now routine relief, nor will they be required to pay the related fees for such exemption applications.

### 3.2 *Quantitative Analysis*

The information set out below provides the estimated cost reductions (subject to the assumptions below) that may arise as a result of the proposed amendments to 48-501.

As part of our research, Staff analyzed historical applications filed by Insiders requesting relief from the Rule between 2016 and 2019. OSC staff received three exemptive relief applications over that period, or an average of one per year. Each application has an associated filing fee of \$4,800.

With respect to administrative costs associated with the filing of 48-501 applications, we assume that an Insider applying for exemptive relief would engage external counsel to assist with drafting the application. We assume that a lawyer with approximately 6 to 10 years of experience would assist with the drafting and the average hourly rate in Ontario for a lawyer with this level of experience is \$327.50<sup>7</sup>. We further assume that it would take external counsel approximately 20 hours to complete the application for a total cost of \$6,550 per filing.

Therefore, based on this analysis and using the estimated cost information noted above, we have estimated the cost savings resulting from the Proposed Amendments to be approximately \$11,350 per application.

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<sup>7</sup> Bruineman, Marg. "The right price: Canadian Lawyer's 2018 Legal Fees Survey shows some bright spots for law firms despite a highly competitive market" Canadian Lawyer, April 2018 [https://www.canadianlawyermag.com/staticcontent/AttachedDocs/CL\\_Apr\\_18\\_LegalFeesSurvey.pdf](https://www.canadianlawyermag.com/staticcontent/AttachedDocs/CL_Apr_18_LegalFeesSurvey.pdf) consulted on November 1, 2019

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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### INVESTMENT FUNDS

**Issuer Name:**

Premium Income Corporation

Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus (NI 44-102) dated July 28, 2020

NP 11-202 Preliminary Receipt dated July 28, 2020

**Offering Price and Description:**

Maximum: \$300,000,000 - Preferred Shares and Class A Shares

Price: \$12.50 per Preferred Shares and \$3.50 per Class A Shares

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #3087720

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**Issuer Name:**

GreenWise Balanced Portfolio

GreenWise Conservative Portfolio

GreenWise Growth Portfolio

Principal Regulator – Quebec

**Type and Date:**

Preliminary Simplified Prospectus dated Jul 29, 2020

NP 11-202 Preliminary Receipt dated Jul 30, 2020

**Offering Price and Description:**

Class F Units, Class A Units and Class P Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #3088531

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**Issuer Name:**

Evolve Future Leadership Fund

Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Jul 27, 2020

NP 11-202 Preliminary Receipt dated Jul 28, 2020

**Offering Price and Description:**

USD Unhedged ETF Units, Hedged ETF Units and Unhedged ETF Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #3087105

**Issuer Name:**

Axiom All Equity Portfolio

Axiom Balanced Growth Portfolio

Axiom Balanced Income Portfolio

Axiom Canadian Growth Portfolio

Axiom Diversified Monthly Income Portfolio

Axiom Foreign Growth Portfolio

Axiom Global Growth Portfolio

Axiom Long-Term Growth Portfolio

Renaissance Canadian All-Cap Equity Fund

Renaissance Canadian Balanced Fund

Renaissance Canadian Bond Fund

Renaissance Canadian Core Value Fund

Renaissance Canadian Dividend Fund

Renaissance Canadian Equity Private Pool

Renaissance Canadian Fixed Income Private Pool

Renaissance Canadian Growth Fund

Renaissance Canadian Monthly Income Fund

Renaissance Canadian Small-Cap Fund

Renaissance Canadian T-Bill Fund

Renaissance China Plus Fund

Renaissance Corporate Bond Fund

Renaissance Diversified Income Fund

Renaissance Emerging Markets Equity Private Pool

Renaissance Emerging Markets Fund

Renaissance Equity Income Private Pool

Renaissance Flexible Yield Fund

Renaissance Floating Rate Income Fund

Renaissance Global Bond Fund

Renaissance Global Bond Private Pool

Renaissance Global Equity Private Pool

Renaissance Global Focus Currency Neutral Fund

Renaissance Global Focus Fund

Renaissance Global Growth Currency Neutral Fund

Renaissance Global Growth Fund

Renaissance Global Health Care Fund

Renaissance Global Infrastructure Currency Neutral Fund

Renaissance Global Infrastructure Fund

Renaissance Global Markets Fund

Renaissance Global Real Estate Currency Neutral Fund

Renaissance Global Real Estate Fund

Renaissance Global Science & Technology Fund

Renaissance Global Small-Cap Fund

Renaissance Global Value Fund

Renaissance High Income Fund

Renaissance High-Yield Bond Fund

Renaissance International Dividend Fund

Renaissance International Equity Currency Neutral Fund

Renaissance International Equity Fund

Renaissance International Equity Private Pool

Renaissance Money Market Fund

Renaissance Multi-Asset Global Balanced Income Private Pool

Renaissance Multi-Asset Global Balanced Private Pool

Renaissance Multi-Sector Fixed Income Private Pool

Renaissance Optimal Conservative Income Portfolio  
Renaissance Optimal Global Equity Currency Neutral Portfolio  
Renaissance Optimal Global Equity Portfolio  
Renaissance Optimal Growth & Income Portfolio  
Renaissance Optimal Income Portfolio  
Renaissance Optimal Inflation Opportunities Portfolio  
Renaissance Real Assets Private Pool  
Renaissance Real Return Bond Fund  
Renaissance Short-Term Income Fund  
Renaissance U.S. Dollar Corporate Bond Fund  
Renaissance U.S. Dollar Diversified Income Fund  
Renaissance U.S. Equity Currency Neutral Private Pool  
Renaissance U.S. Equity Fund  
Renaissance U.S. Equity Growth Currency Neutral Fund  
Renaissance U.S. Equity Growth Fund  
Renaissance U.S. Equity Income Fund  
Renaissance U.S. Equity Private Pool  
Renaissance U.S. Equity Value Fund  
Renaissance U.S. Money Market Fund  
Renaissance Ultra Short-Term Income Private Pool  
Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated Jul 27, 2020  
NP 11-202 Final Receipt dated Jul 29, 2020

**Offering Price and Description:**

Class FH-Premium units, Class T4 units, Class N-Premium T4 units, Class T6 units, Class A units, Class FH units, Class FT4 units, Class NH-Premium units, Class F units, Class S units, Premium-T4 Class units, Class C units, Class H-Premium T4 units, Class HT6 units, Class F-Premium T6 units, Class NH-Premium T4 units, Class OH units, Class H units, Class FH-Premium T6 units, Premium T4 Class units, Class FHT6 units, Class N-Premium units, Class N-Premium T6 units, Class F-Premium units, Class HT4 units, Class H-Premium units, Class A (Pools) units, Class O units, Premium Class units, Premium-T6 Class units, Class FH-Premium T4 units, Class H-Premium T6 units, Class FT6 units, Class F Premium units, Class FHT4 units, Class NH-Premium T6 units, Class I units and Class F-Premium T4 units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3071450**

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**Issuer Name:**

Desjardins Alt Long/Short Equity Market Neutral ETF Fund  
Principal Regulator – Quebec

**Type and Date:**

Preliminary Simplified Prospectus dated Jun 26, 2020  
NP 11-202 Final Receipt dated Jul 29, 2020

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3050215**

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**Issuer Name:**

Epoch Global Equity Class  
Epoch Global Equity Fund  
Epoch Global Shareholder Yield Fund  
Epoch International Equity Fund  
Epoch U.S. Blue Chip Equity Currency Neutral Fund  
Epoch U.S. Blue Chip Equity Fund  
Epoch U.S. Large-Cap Value Class  
Epoch U.S. Large-Cap Value Fund  
Epoch U.S. Shareholder Yield Fund  
TD Advantage Balanced Growth Portfolio  
TD Advantage Balanced Income Portfolio  
TD Advantage Balanced Portfolio  
TD Balanced Growth Fund  
TD Balanced Index Fund  
TD Canadian Blue Chip Dividend Fund  
TD Canadian Bond Fund  
TD Canadian Bond Index Fund  
TD Canadian Core Plus Bond Fund  
TD Canadian Corporate Bond Fund  
TD Canadian Diversified Yield Fund  
TD Canadian Equity Class  
TD Canadian Equity Fund  
TD Canadian Equity Pool  
TD Canadian Equity Pool Class  
TD Canadian Index Fund  
TD Canadian Large-Cap Equity Fund  
TD Canadian Low Volatility Class  
TD Canadian Low Volatility Fund  
TD Canadian Money Market Fund  
TD Canadian Small-Cap Equity Class  
TD Canadian Small-Cap Equity Fund  
TD China Income & Growth Fund (formerly TD Asian Growth Fund)  
TD Comfort Aggressive Growth Portfolio  
TD Comfort Balanced Growth Portfolio  
TD Comfort Balanced Income Portfolio  
TD Comfort Balanced Portfolio  
TD Comfort Conservative Income Portfolio  
TD Comfort Growth Portfolio  
TD Corporate Bond Plus Fund  
TD Diversified Monthly Income Fund  
TD Dividend Growth Class  
TD Dividend Growth Fund  
TD Dividend Income Class  
TD Dividend Income Fund  
TD Dow Jones Industrial Average Index Fund  
TD Emerging Markets Class



TD Emerging Markets Fund  
TD Emerging Markets Low Volatility Fund  
TD European Index Fund  
TD Fixed Income Pool  
TD Global Balanced Opportunities Fund  
TD Global Conservative Opportunities Fund  
TD Global Core Plus Bond Fund  
TD Global Entertainment & Communications Fund  
(formerly TD Entertainment & Communications Fund)  
TD Global Equity Focused Fund  
TD Global Equity Pool  
TD Global Equity Pool Class  
TD Global Income Fund  
TD Global Low Volatility Class  
TD Global Low Volatility Fund  
TD Global Risk Managed Equity Class  
TD Global Risk Managed Equity Fund  
TD Global Tactical Monthly Income Fund (formerly TD  
Strategic Yield Fund)  
TD Global Unconstrained Bond Fund  
TD Health Sciences Fund  
TD High Yield Bond Fund  
TD Income Advantage Portfolio  
TD International Growth Class  
TD International Index Currency Neutral Fund  
TD International Index Fund  
TD International Stock Fund  
TD Monthly Income Fund  
TD Nasdaq Index Fund  
TD North American Dividend Fund  
TD North American Small-Cap Equity Fund  
TD North American Sustainability Balanced Fund  
TD North American Sustainability Equity Fund  
TD Precious Metals Fund  
TD Premium Money Market Fund  
TD Real Return Bond Fund  
TD Resource Fund  
TD Retirement Balanced Portfolio  
TD Retirement Conservative Portfolio  
TD Risk Management Pool  
TD Science & Technology Fund  
TD Short Term Bond Fund  
TD Short Term Investment Class  
TD Tactical Monthly Income Class  
TD Tactical Monthly Income Fund  
TD Tactical Pool  
TD Tactical Pool Class  
TD U.S. Blue Chip Equity Fund  
TD U.S. Corporate Bond Fund  
TD U.S. Dividend Growth Fund  
TD U.S. Equity Portfolio  
TD U.S. Index Currency Neutral Fund  
TD U.S. Index Fund  
TD U.S. Low Volatility Fund  
TD U.S. Mid-Cap Growth Class  
TD U.S. Mid-Cap Growth Fund  
TD U.S. Money Market Fund  
TD U.S. Monthly Income Fund  
TD U.S. Monthly Income Fund - C\$  
TD U.S. Quantitative Equity Fund  
TD U.S. Risk Managed Equity Class  
TD U.S. Risk Managed Equity Fund

TD U.S. Small-Cap Equity Fund  
TD Ultra Short Term Bond Fund  
TD US\$ Retirement Portfolio  
Principal Regulator - Ontario  
**Type and Date:**  
Combined Preliminary and Pro Forma Simplified  
Prospectus dated Jul 29, 2020  
NP 11-202 Final Receipt dated Jul 30, 2020  
**Offering Price and Description:**  
O-Series, D-Series, Private Series, Investor Series,  
Institutional Series Securities, D-Series Securities, T8  
Series Securities, e-Series Securities, FT5 Series  
Securities, F-Series Securities, Institutional Series, T5  
Series Securities, O-Series Securities, Advisor Series,  
Advisor Series Securities, Premium Series Securities, H8  
Series Securities, Private-EM Series Securities, Investor  
Series Securities, W-Series Securities, Private Series  
Securities, H5 Series Securities, FT8 Series Securities and  
F-Series  
**Underwriter(s) or Distributor(s):**  
N/A  
**Promoter(s):**  
N/A  
**Project #3071000**

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NON-INVESTMENT FUNDS

**Issuer Name:**

Adventus Mining Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated July 31, 2020  
NP 11-202 Preliminary Receipt dated July 31, 2020

**Offering Price and Description:**

C\$35,000,057.00  
27,559,100 Common Shares  
\$1.27 per Offered Share

**Underwriter(s) or Distributor(s):**

RAYMOND JAMES LTD.  
HAYWOOD SECURITIES INC.  
NATIONAL BANK FINANCIAL INC.  
CORMARK SECURITIES INC.  
BMO NESBITT BURNS INC.  
EIGHT CAPITAL  
LAURENTIAN BANK SECURITIES INC.

**Promoter(s):**

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**Project #3087910**

**Issuer Name:**

Alpha Lithium Corporation  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated July 29, 2020  
NP 11-202 Preliminary Receipt dated July 29, 2020

**Offering Price and Description:**

\$5,000,001.50 - 7,692,310 Units  
Consisting of 7,692,310 Common Shares and 7,692,310 Warrants  
Price: \$0.65 per Unit

**Underwriter(s) or Distributor(s):**

Leede Jones Gable Inc.

**Promoter(s):**

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**Project #3088703**

**Issuer Name:**

Amarillo Gold Corporation  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated July 28, 2020  
NP 11-202 Preliminary Receipt dated July 28, 2020

**Offering Price and Description:**

\$21,509,700.00  
71,699,000 Common Shares  
Price: \$0.30 per Common Share

**Underwriter(s) or Distributor(s):**

MACKIE RESEARCH CAPITAL CORPORATION  
SPROTT CAPITAL PARTNERS LP, by its General Partner,  
SPROTT CAPITAL PARTNERS GP INC.

**Promoter(s):**

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**Project #3086010**

**Issuer Name:**

CanBud Distribution Corp. (formerly, Cannabis Clonal Corporation)

**Type and Date:**

Amendment dated July 29, 2020 to Preliminary Long Form Prospectus dated April 30, 2020  
(Preliminary) Received on July 30, 2020

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

Robert Tjandra  
Rajkumar (Raj) Ravindran

**Project #3080982**

**Issuer Name:**

High Mountain 2 Capital Corporation  
Principal Regulator - Alberta

**Type and Date:**

Preliminary CPC Prospectus dated July 29, 2020  
NP 11-202 Preliminary Receipt dated July 29, 2020

**Offering Price and Description:**

Minimum Offering: \$300,000.00 (3,000,000 Common Shares)  
Maximum Offering: \$350,000.00 (3,500,000 Common Shares)  
Price: \$0.10 per common share

**Underwriter(s) or Distributor(s):**

HAYWOOD SECURITIES INC.

**Promoter(s):**

William A. Kanters

**Project #3088601**

**Issuer Name:**

Mount Logan Capital Inc. (formerly, Marret Resource Corp.)  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated July 31, 2020  
NP 11-202 Preliminary Receipt dated July 31, 2020

**Offering Price and Description:**

\$25,000,000.00  
\* Common Shares  
\$\* per Common Share

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.

**Promoter(s):**

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**Project #3090483**

**Issuer Name:**

Neovasc Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Shelf Prospectus dated July 27, 2020  
NP 11-202 Preliminary Receipt dated July 28, 2020

**Offering Price and Description:**

U.S.\$100,000,000.00  
Common Shares  
Preferred Shares  
Debt Securities  
Subscription Receipts  
Units  
Warrants

**Underwriter(s) or Distributor(s):**

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**Promoter(s):**

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**Project #3087357**

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**Issuer Name:**

Numinus Wellness Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated July 27, 2020  
NP 11-202 Preliminary Receipt dated July 28, 2020

**Offering Price and Description:**

\$4,050,000.00 - 15,000,000 Units  
Price: \$0.27 per Unit

**Underwriter(s) or Distributor(s):**

Mackie Research Capital Corporation

**Promoter(s):**

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**Project #3087366**

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**Issuer Name:**

RIOCAN REAL ESTATE INVESTMENT TRUST  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 30, 2020  
NP 11-202 Preliminary Receipt dated July 31, 2020

**Offering Price and Description:**

\$3,000,000,000.00  
Debt Securities (Senior Unsecured)  
Units  
Preferred Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3090171**

**Issuer Name:**

Shopify Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 28, 2020  
NP 11-202 Preliminary Receipt dated July 28, 2020

**Offering Price and Description:**

\$7,500,000,000.00  
Class A Subordinate Voting Shares  
Preferred Shares  
Debt Securities  
Warrants  
Subscription Receipts  
Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3087513**

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**Issuer Name:**

Stormcrow Holdings Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated July 28, 2020  
NP 11-202 Preliminary Receipt dated July 29, 2020

**Offering Price and Description:**

Minimum of \$1,000,000.00  
10,000,000 Common Shares  
Maximum of \$2,000,000.00  
20,000,000 Common Shares  
Price: \$0.10 per Common Share

**Underwriter(s) or Distributor(s):**

INDUSTRIAL ALLIANCE SECURITIES INC.

**Promoter(s):**

-

**Project #3087854**

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**Issuer Name:**

White Gold Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated July 29, 2020  
NP 11-202 Preliminary Receipt dated July 29, 2020

**Offering Price and Description:**

\$50,000,000.00  
Common Shares  
Debt Securities  
Subscription Receipts  
Warrants  
Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3088247**

**Issuer Name:**

Altina Capital Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Final CPC Prospectus dated July 27, 2020  
NP 11-202 Receipt dated July 29, 2020

**Offering Price and Description:**

\$400,000.00 OR 4,000,000 COMMON SHARES  
PRICE: \$0.10 PER COMMON SHARE

**Underwriter(s) or Distributor(s):**

HAYWOOD SECURITIES INC.

**Promoter(s):**

Mirza Rahimani

**Project #3061480**

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**Issuer Name:**

Drone Delivery Canada Corp. (formerly Asher Resources Corporation)

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 28, 2020  
NP 11-202 Receipt dated July 28, 2020

**Offering Price and Description:**

\$8,050,000.00  
11,500,000 Units  
\$0.70 per Unit

**Underwriter(s) or Distributor(s):**

ECHELON WEALTH PARTNERS INC.  
CANACCORD GENUITY CORP.  
CORMARK SECURITIES INC.

**Promoter(s):**

Tony Di Benedetto

Paul Di Benedetto

Richard Buzbuzian

**Project #3082974**

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**Issuer Name:**

GHP Noetic Science-Psychedelic Pharma Inc.

Principal Regulator - Ontario

**Type and Date:**

Final CPC Prospectus dated July 29, 2020  
NP 11-202 Receipt dated July 30, 2020

**Offering Price and Description:**

Minimum Offering: \$500,000.00 or 2,500,000 Common Shares  
Maximum Offering: \$1,000,000.00 or 5,000,000 Common Shares  
Price: \$0.20 per Common Share

**Underwriter(s) or Distributor(s):**

ECHELON WEALTH PARTNERS INC.

**Promoter(s):**

-

**Project #3073835**

**Issuer Name:**

Kerr Mines Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 31, 2020  
NP 11-202 Receipt dated July 31, 2020

**Offering Price and Description:**

\$5,000,800.00  
35,720,000 Units  
PRICE: \$0.14 PER UNIT

**Underwriter(s) or Distributor(s):**

HAYWOOD SECURITIES INC.

**Promoter(s):**

-

**Project #3084617**

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**Issuer Name:**

Medicenna Therapeutics Corp.

Principal Regulator - Ontario

**Type and Date:**

Final Shelf Prospectus dated July 28, 2020  
NP 11-202 Receipt dated July 28, 2020

**Offering Price and Description:**

\$100,000,000.00  
Common Shares  
Preferred Shares  
Subscription Receipts  
Warrants  
Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3068592**

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**Issuer Name:**

Revival Gold Inc.

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 31, 2020  
NP 11-202 Receipt dated July 31, 2020

**Offering Price and Description:**

\$13,090,000.00  
11,900,000 Units  
PRICE: \$1.10 PER UNIT

**Underwriter(s) or Distributor(s):**

BMO NESBITT BURNS INC.

**Promoter(s):**

-

**Project #3086360**

**Issuer Name:**

Royal Road Minerals Limited  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated July 29, 2020  
NP 11-202 Receipt dated July 29, 2020

**Offering Price and Description:**

\$10,045,500.00  
27,150,000 Ordinary Shares

Price: \$0.37 per Ordinary Share

**Underwriter(s) or Distributor(s):**

STIFEL NICOLAUS CANADA INC.  
POLLITT & CO. INC.  
SPROTT CAPITAL PARTNERS LP, by its General Partner,  
SPROTT CAPITAL PARTNERS GP INC.  
LEEDE JONES GABLE INC.  
RED CLOUD SECURITIES INC.

**Promoter(s):**

Tim Coughlin  
Project #3083605

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**Issuer Name:**

The Very Good Food Company Inc. (formerly The Very  
Good Butchers Inc.)  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated July 28, 2020  
NP 11-202 Receipt dated July 28, 2020

**Offering Price and Description:**

\$7,410,000.00  
5,700,000 Units

Price: \$1.30 per Unit

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.

**Promoter(s):**

Mitchell Scott  
James Davison  
Project #3083801

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Amalgamation	CI Investments Inc. and CI ETF Investment Management Inc.  To form: CI Investments Inc.	Investment Fund Manager, Exempt Market Dealer, Portfolio Manager, Commodity Trading Counsel and Commodity Trading Manager	July 1, 2020
Name Change	From: SUN LIFE GLOBAL INVESTMENTS (CANADA) INC. / PLACEMENTS MONDIAUX SUN LIFE (CANADA) INC.  To: SLGI Asset Management Inc. / Gestion d'actifs PMSL Inc.	Mutual Fund Dealer, Investment Fund Manager, Commodity Trading Manager, Portfolio Manager	July 20, 2020
Voluntary Surrender	Fiera Investments LP	Portfolio Manager, Mutual Fund Dealer, Exempt Market Dealer and Investment Fund Manager	July 31, 2020

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# Index

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<b>Alchemist Mining Incorporated</b>		
Cease Trading Order .....	6271	
<b>AltaCorp Capital Inc.</b>		
Decision .....	6231	
<b>Auxly Cannabis Group Inc.</b>		
Decision .....	6231	
<b>Candusso, Christopher</b>		
Notice from the Office of the Secretary .....	6229	
Order .....	6266	
<b>Candusso, Claudio</b>		
Notice from the Office of the Secretary .....	6229	
Order .....	6266	
<b>CI ETF Investment Management Inc.</b>		
Amalgamation .....	6351	
<b>CI Investments Inc.</b>		
Amalgamation .....	6351	
<b>Coinsquare Ltd.</b>		
Notice from the Office of the Secretary .....	6229	
Oral Reasons for Approval of a Settlement – ss. 127, 127.1 .....	6267	
<b>Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations</b>		
Notice .....	6179	
<b>Companion Policy 45-106CP Prospectus Exemptions</b>		
Notice .....	6179	
<b>Companion Policy 48-501CP Trading During Distributions, Formal Bids and Share Exchange Transactions</b>		
Request for Comments .....	6273	
<b>CSA Staff Notice 11-342 Notice of Local Amendments and Changes in Certain Jurisdictions</b>		
Notice .....	6218	
<b>Diamond, Cole</b>		
Notice from the Office of the Secretary .....	6229	
Oral Reasons for Approval of a Settlement – ss. 127, 127.1 .....	6267	
<b>Empower Clinics Inc.</b>		
Cease Trading Order .....	6271	
<b>Fakhry, Frank</b>		
Notice from the Office of the Secretary .....	6229	
Order .....	6266	
<b>Fielding, John</b>		
Notice from the Office of the Secretary .....	6229	
Order .....	6266	
<b>Fiera Investments LP</b>		
Voluntary Surrender .....	6351	
<b>Goss, Donald Alexander (Sandy)</b>		
Notice from the Office of the Secretary .....	6229	
Order .....	6266	
<b>Green Growth Brands Inc.</b>		
Cease Trading Order .....	6271	
<b>Imaging Dynamics Company Ltd.</b>		
Cease Trading Order .....	6271	
<b>James E. Wagner Cultivation Corporation</b>		
Cease Trading Order .....	6271	
<b>Kitmitto, Majd</b>		
Notice from the Office of the Secretary .....	6229	
Order .....	6266	
<b>Mazer, Felix</b>		
Notice from the Office of the Secretary .....	6229	
Oral Reasons for Approval of a Settlement – ss. 127, 127.1 .....	6267	
<b>National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations</b>		
Notice .....	6179	
<b>National Instrument 45-106 Prospectus Exemptions</b>		
Notice .....	6179	
<b>Ontario Instrument 45-506 Start-Up Crowdfunding Registration and Prospectus Exemptions (Interim Class Order)</b>		
Notice .....	6227	
General Order .....	6237	
<b>OSC Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions</b>		
Request for Comments .....	6273	
<b>Performance Sports Group Ltd.</b>		
Cease Trading Order .....	6271	
<b>Rostand, Virgile</b>		
Notice from the Office of the Secretary .....	6229	
Oral Reasons for Approval of a Settlement – ss. 127, 127.1 .....	6267	
<b>RYU Apparel Inc.</b>		
Cease Trading Order .....	6271	

---

<b>SLGI Asset Management Inc. / Gestion d'actifs PMSL Inc.</b>	
Name Change.....	6351
<b>SponsorsOne Inc.</b>	
Cease Trading Order .....	6271
<b>Spot Coffee (Canada) Ltd.</b>	
Cease Trading Order .....	6271
<b>Sun Life Global Investments (Canada) Inc. / Placements Mondiaux Sun Life (Canada) Inc.</b>	
Name Change.....	6351
<b>Vannatta, Steven</b>	
Notice from the Office of the Secretary .....	6229
Order.....	6266